

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

COMPANY SCHEME PETITION NO.103 OF 2017
(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.946 OF 2016

Prescient Securities Private Limited

.....Petitioner/the Transferor Company.

AND

COMPANY SCHEME PETITION NO.104 OF 2017
(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.947 OF 2016

Prescient Wealth Management Private Limited

..... Petitioner/the Transferee Company.

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013.

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of the Scheme of Amalgamation of: Prescient Securities Private Limited.

WITH

Prescient Wealth Management Private Limited.

AND

their Respective Shareholders.

Called for Hearing

Mr. Chandrakant Mhadeshwar, Advocate for the Petitioner in both the Petition.

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director in both the Petition.

Mr. Santosh Dalvi, Representative of Official Liquidator present in Transfer Company Scheme Petition No. 103 of 2017.

Coram: SH. B. S. V. Prakash Kumar Member (J)
and SH.V.Nallasenapathy Member (T)

Date: 19th April, 2017

1. Heard learned counsel for parties. No objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of Prescient Securities Private Limited, the Transferor Company with Prescient Wealth Management Private Limited, the Transferee Company and their respective shareholders. Both the Companies are jointly hereinafter referred to as "the Petitioner Companies".
3. The Learned counsel for the Petitioner Companies states that the Transferor Company is presently carrying on business of dealing in Shares & Securities and also earning rental incomes. The Transferee Company is presently carrying on business of investment in shares & securities.
4. The Learned counsel for the Petitioner Companies further states that the circumstances that have necessitated or benefits of Scheme of Amalgamation shall as follows:-
 - a) Integration of operations.
 - b) Consolidate its business operation and provide significant impetus to growth of the Transferee Company business.
 - c) The amalgamation would result in optimum utilization of management and other resources and would reduce the administrative costs and other overheads which are presently being multiplied because of separate entities.
 - d) Enhance values of all stake holders in the long run.
5. The Learned counsel for the Petitioner states that the Board of Directors of the Petitioner Companies have approved the said

Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Transfer Company Scheme Petitions.

6. The Learned counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the respective Transfer Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Summons for Direction.
7. The Learned counsel appearing on behalf of the Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Court/Tribunal and they have filed necessary affidavits of compliance in the Court/Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and rules made there under whichever is applicable. The said undertaking given by the Petitioner Companies are accepted.
8. The Regional Director has filed his Report dated 12th April, 2017 stating therein save and except the observations as stated in para IV (1) to (5) of the report it appears that Scheme is not prejudicial to the interest of shareholders and public. The Tribunal may take this report on record and consider the observation made in para IV (1) to (5) and pass such other order or orders as deem fit in the facts and circumstances of the case.

In paragraphs IV of the said Report, the Regional Director has observed that:

1. *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of*

the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

- 2. The Transferor Company and the Transferee Company have submitted the proof of serving notice, upon the Income Tax Authorities dated 02.02.2017&01.02.2017respectively for comments. This Directorate has also issued a reminder letter to the Income Tax Department dated 06.04.2017.*
- 3. Petitioner in clause 9.4 has inter alia mentioned that notwithstanding the accounting treatment mentioned in 9.1 to 9.3 the Board of Directors of the Transferee Company, in consultation with statutory auditors, is authorized to account for any of the balances in any other manner, if such accounting treatment is considered more appropriate.*

In this regard Petitioner has to clarify as to why he intends to deviate from the accounting standards.

- 4. Petitioner in clause 16 of the Scheme inter alia mentioned that the consent/resolution approving the Scheme shall be deemed to be the approval of clubbing and/or reclassification in the Authorised Share Capital of the Transferee Company under Section 13 and other applicable provisions of the Companies Act, 2013. The words and figures in Clause V(a) of the Memorandum of Association of the Transferee Company relating to the Authorised Share Capital, shall without any further act, instrument be and stand clubbed and/or re classified pursuant to Sections 13 of the Companies Act, 2013 and Section 394 and other applicable provisions of the Act.*

In this regard it is submitted that as per the scheme there is no reclassification proposed, the Petitioner proposed for reclassification in future through the Board which is beyond the scheme. Therefore in view of this Petitioner has to undertake to mention the Combined Authorized share capital according to which capital clause of the Memorandum of Association will be altered and take separate approval of shareholders after the scheme is affected.

5. *Petitioner in clause 16.3 inter alia clarified that the Transferee Company through its Board, if required, would be entitled to make appropriate reclassification of its Authorised Share Capital and provide suitable clarifications to the Registrar of Companies with regard to the clubbing of the Authorised Share Capital of the Transferor Company with the Transferee Company.*

In this regard it is submitted that it is contradictory to para 16.2.

9. As far as the observations made in paragraph IV(1)& (2) of Regional Director Report is concerned, the Learned counsel for the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
10. As far as the observations made in paragraph IV (3) of Regional Director Report is concerned, the learned counsel for the Petitioner Companies states that the accounting treatment proposed in the scheme of amalgamation is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 and necessary certificate for Company's auditor has been filed with the Tribunal. However, the learned counsel for the

Petitioner Companies undertakes that clause 9.4 will not be implemented by the Transferee Company.

11. As far as the observations made in paragraph IV (4) & (5) of Regional Director Report are concerned, the learned counsel for the Petitioner Companies undertakes to pass a separate resolution in the meeting of member for the reclassification of Authorised Share Capital of the Transferee Company.
12. The Official Liquidator has filed his report dated 23rd March, 2017 in the Transfer Company Scheme Petition No 103 of 2017 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved by this Court/Tribunal.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forwarded to oppose the Scheme of Amalgamation.
14. Since all the requisite statutory compliances have been fulfilled, the Transfer Company Scheme Petition No.103 of 2017 filed by the Transferor Company are made absolute in terms of prayer clause (a) to (c) and Transfer Company Scheme Petition No.104 of 2016 filed by the Transferee Company are made absolute in terms of prayer clauses (a) & (b).
15. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the receipt of this order.

16. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 2013.
17. The Petitioner Companies to pay costs of Rs 25,000/- each to the Regional Director, Western Region Mumbai in Transfer Company Scheme Petition No. 103 of 2017 & Transfer Company Scheme Petition No. 104 of 2017 and costs of Rs. 25,000/- to Official Liquidator, High Court, Bombay in Transfer Company Scheme Petition No. 103 of 2017. Costs to be paid within four weeks from the date of the Order.
18. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
19. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy Member (Technical)

Sd/-

B. S. V. Prakash Kumar Member (Judicial)