

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 252 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 405 OF 2016
(HIGH COURT TRANSFERRED PETITION).

SHANTI KUNJ SOLVENT LIMITED

....Petitioner/ the Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 253 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 406 OF 2016
(HIGH COURT TRANSFERRED PETITION)

RAJARAM SOLVEX LIMITED

....Petitioner/ the Transferee Company
In the matter of the Companies Act, 2013
(18 of 2013);

AND

In the matter of the Companies Act,
1 of 1956 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 Scheme of Amalgamation of SHANTI KUNJ SOLVENT LIMITED, the Transferor Company with RAJARAM SOLVEX LIMITED, the Transferee Company.

Called for hearing

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V. Nallasenapathy Hon'ble Member (T)

Date: 29th March, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of SHANTI KUNJ SOLVENT LIMITED, the Transferor Company with RAJARAM SOLVEX LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of SHANTI KUNJ SOLVENT LIMITED, the Transferor Company with RAJARAM SOLVEX LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 405 of 2016 and 406 of 2016 of the Hon'ble Bombay High Court.

5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted

6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of Solvent Extraction and refining of edible oil and the Transferee Company has been carrying on the business of Solvent Extraction and refining of edible oil . As per the opinion of the management both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamated Company will have the benefit of the combined

assets and cash flows of the two companies and that the combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively and it will be conducive to better and more efficient and economical control and conduct of the Companies and with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and a larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company

7. The Regional Director has filed a Report on 20th day of March, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:

- a) In addition to compliance of AS-14 the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.*
- b) As per clause 3.4 of the scheme the Appointed date Means 1st February, 2016 or such other date as the High Court of Judicature at Mumbai or other competent authority may otherwise direct/ fix. In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be 1st February, 2016.*
- c) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide*

letter dated 5th December, 2017 has served a copy company petition No. CSP 766 and 767 of 2017 along with relevant order etc. The directorate has also issued a reminder letter to the Income Tax Department dated 15.03.2016. However, as on date there is no response from Income Tax Department.

d) 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."

8. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 etc.
9. So far as the observation in paragraph V(b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Appointed date in terms of provisions of Section 232(6) of the Companies Act, 2013 will be 1st February, 2016.
10. So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that they vide letter dated 5th

December, 2017 has served a copy company petition No. CSP 766 and 767 of 2016 along with relevant order etc.

11. In so far as the observation made in paragraph IV (d) of the Affidavit of the Regional Director is concerned, Learned Counsel for the Petitioners states that the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
12. Mr. S. Ramakantha, Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western region, Mumbai, states that they are satisfied with the explanations given by the Petitioner Company.
13. The Official Liquidator has filed his report on 23rd March, 2017 in the Company Petition No. 252 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 252 of 2017 is made absolute in terms of prayers clause (a) to (d) and 253 of 2017 is made absolute in terms of prayer clauses (a) to (c).

16. Petitioners are directed to lodge 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 1956 / 2013.
17. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any.
18. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 15 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.
19. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

B.S.V. Prakash Kumar, Member (J)

Sd/-

V. Nallasenapathy, Member (T)