

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**TRANSFERRED COMPANY SCHEME PETITION NO. 327 OF 2017**

(Company Scheme Petition No. 852 of 2016)

SUNIDHI SECURITIES & FINANCE LIMITED

...Petitioner/ Demerged Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 328 OF 2017**

(Company Scheme Petition No. 853 of 2016)

SUNIDHI WEALTH ADVISORS PRIVATE LIMITED

...Petitioner/ Resulting Company

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

AND

In the matter of Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

AND

In the matter of Scheme of Arrangement ('Scheme') between Sunidhi Securities & Finance Limited and Sunidhi Wealth Advisors Private Limited and their respective shareholders and creditors

**Called for hearing**

Mr. Hemant Sethi, M/s Hemant Sethi & Co., Advocate for the Petitioners in both Petitions.

Mr. R. Pola, Deputy ROC from the office of Registrar of Companies.

**Coram: M. K. Shrawat, Member (Judicial)**

**V. Nallasenapathy, Member (Technical)**

**DATE: 12<sup>th</sup> April, 2017**

**MINUTES OF THE ORDER**

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between Sunidhi Securities



& Finance Limited and Sunidhi Wealth Advisors Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioner Companies states that the Demerged Company is currently engaged in the business of (a) broking business in capital markets, wholesale debt market, forex market; (b) carrying on diverse activities of financial services either directly or through investment in one or more subsidiaries / associate companies engaged in commodity broking, stock broking, nonbanking financial services, insurance broking; (c) distribution and marketing of financial products i.e. in mutual funds, fixed deposit, portfolio management services and other financial products; (d) investments in quoted and un-quoted securities other than strategic in nature; (e) distributing public offers of all types of securities (sub-broking); (f) other financial services not specifically listed above; and (g) providing business centre services. The Resulting Company had been engaged into activities of mutual fund distribution business, portfolio management services and investment in quoted and unquoted securities.
4. The proposed Scheme shall enhance the value for the shareholder in future and allow a focused strategy in operations of both the Petitioner Companies. The proposed demerger will lend greater focus to the operations of each of the undertakings and will also provide scope for independent collaboration, consolidation and expansion of activities of each of the undertakings.
5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court/Tribunal and they have filed necessary Affidavits of compliance in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all 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.
8. The Regional Director has filed his Report dated 31<sup>st</sup> March, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and



public. In paragraph IV of the said Affidavit, the Regional Director has stated 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 the giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
2. *It is submitted that the office of the Regional Direction received letter no. PCIT- 3/Scheme of Amalgamation/ 2016-17 dated 28.12.2016 from the Income Tax Department forwarding letter No. Addl.CIT.Rg 3(3) of the Scheme if Amalgamation/ 2016-17 dated 21.12.2016 along with the report of the ITO-3(3)(3) of the Scheme of Demerger/ Sunidhi/ 2016-17 dated 20.12.2016. With reference to para no 2 to 6 of the said report it is inter mentioned that the right of the Income Tax Department to ascertain/ assess correct income in correct hands as per provisions of the Income Tax Act, especially with respect to the period involving appointed date and the effective date may be kept reserved. The Department should be at the liberty to take appropriate action as per law in case of an event if any tax avoidance or violation of Income Tax Law or any other similar issue. It is therefore requested that the above declaration may be incorporated while filing of your response to the Hon'ble High Court. In this regard the petitioner undertakes to comply with the directions of the Income Tax Authorities.*
3. *Petitioner in clause 6 of the Scheme has inter alia mentioned about the accounting treatment adopted, but the accounting standard adopted is not mentioned in the Scheme. In this regard, the petitioner has to undertake to comply with accounting standards prescribed under section 133 of the Companies Act, 2013.*
4. *Petitioner in clause 6.4 of the Scheme inter alia has mentioned that the utilization of share premium account of the company as mentioned in clause 6.3 of the Scheme shall be effected as integral part of the scheme and the order of the Hon'ble High Court shall be deemed to be the order u/s 102 for the purpose of confirming reduction.*
9. In so far as observations made in paragraph IV (1) and (2) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961



and all tax issues arising out of the Scheme will be met and answered in accordance with law.

10. In so far as observations made in paragraph IV (3) of the Report of Regional Director are concerned, the Petitioner Companies through its Counsel undertakes to comply with accounting standards prescribed under section 133 of the Companies Act, 2013.
11. In so far as observations made in paragraph IV (4) of the Report of Regional Director are concerned, the Petitioner Companies through its Counsel submits that the proposed reduction is being done as integral part of the Scheme therefore order of the NCLT shall be deemed to be order under section 66 of the Companies Act 2013 for the purpose of confirming reduction.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
14. Since all the requisite statutory compliances have been fulfilled, transferred Company Scheme Petition No. 327 and 328 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
15. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated 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 date of receipt of the order.
16. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.
17. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of Order.
18. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.



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 (T)

Sd/- 12/11/17  
M. K. Shrawat, Member (J)