

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO. 142 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 570 OF 2016
(HIGH COURT TRANSFERRED APPLICATION).
UNIVERSAL IMPORT EXPORT INDIA PRIVATE LIMITED
....Petitioner/ the Transferor Company

AND
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO. 143 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 571 OF 2016
(HIGH COURT TRANSFERRED APPLICATION)
UNIVERSAL HOTELS PRIVATE LIMITED
....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1956 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
UNIVERSAL IMPORT EXPORT INDIA PRIVATE
LIMITED, the Transferor Company with
UNIVERSAL HOTELS PRIVATE 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. Mr. Ashish Lalpuria, Practising Company Secretary

Mr. Pola Raghunath, Deputy Registrar of Companies

Mr. Arvind, representing from the office of Official Liquidator.

Mr. Ramesh Golap, Assistant Director in the office of Regional Director.

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

Date: 06th April, 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 UNIVERSAL IMPORT EXPORT INDIA PRIVATE LIMITED, the Transferor Company with UNIVERSAL HOTELS PRIVATE 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 UNIVERSAL IMPORT EXPORT INDIA PRIVATE LIMITED, the Transferor Company with UNIVERSAL HOTELS PRIVATE 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. 570 of 2016 and 571 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 at present is in the business as importers, exporters and traders household and consumer durable goods and the Transferee Company at present is in the business of Hospitality. As per the opinion of the management that the combined operations offer better business opportunities owing to economies of scale, integrated operations and reductions in costs and the amalgamation would enable optimum utilization of Funds & Resources and that the amalgamation would also enable the merged entity to grow much faster with consolidated resources and that the amalgamation will integrate all activities of management functions thereby achieving reduction in overhead costs and improving control over costs and it will also lead to administrative convenience and greater internal controls.
7. The Registrar of Companies has filed a representation dated 7th December, 2016 with the Office of the Regional Director and has made four observations:

a) *Averments made in scheme are incorrect.*

In so far as Observation 1 of para 29 of the RoC Report is concerned, it is clarified that the shareholders of transferor and Transferee companies are from the same Pagarani family and therefore comprised of the same group of shareholders.

b) *Record date for issue of new shares of the Transferee Company not fixed.*

In so far as Observation 2 of para 29 of the RoC Report is concerned, it is clarified that the record date for the purpose of this scheme shall be the appointed date i.e., 1st April, 2015.

c) *Impairment of true and fair financial position as reported in balance Sheet of the Transferor Company resulting in non-compliance of proviso below section 391(2) of the Companies Act, 1956 by the Transferor Company.*

In so far as Observation 3 of para 29 of the RoC Report is concerned, it is clarified that due to oversight, the word 'Buildings' was omitted and the word 'Office was mentioned in isolation.

d) *Others.*

In so far as Observation 4 of para 29 of the RoC Report is concerned, it is clarified that Directors Report and MGT 9 (extract of annual return) has already been provided to the Registrar of Companies.

8. The Regional Director has filed a Representation on 24th day of February, 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) The Transferee Company shall pass such Accounting Entries which are necessary in connection with the Scheme to comply with applicable Accounting Standards such as AS-5, AS-14 etc/ and ensure that the Financial Statement of the Transferee Company does not impair the true and fair view of the Financial Statements of the Transferee Company after post-amalgamation.*
- b) 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.”*

9. 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-5, AS-14, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards.
10. So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the tax implication if any arising out of the Scheme is subject to final decision of the Income Tax Authorities and the decision of the Income Tax Authority shall be binding on the Petitioner Companies.
11. The Official Liquidator has filed his representation on 24th February, 2017 in the Company Petition No. 142 of 2017 inter alia, submitted that the

Para 7 of the Chartered Accountant be taken into consideration vis-avis scheme as proposed and the matter be decided as merits.

12. So far as the observation in paragraph 7 of the Report of the Chartered Accountant is concerned, the Learned Counsel for the Petitioner Companies submits that they have filed an Affidavit-in-Reply to the Official Liquidator dated 10th March, 2017 which is filed in National Company Law Tribunal, Mumbai Bench and given the copy of the same to the Official Liquidator, Bombay High Court and have dealt about the same in details which are self explanatory. The Petitioner Company states that there were certain observations raised by the Chartered Accountant appointed to assist the Official Liquidator which has been dealt and explained. However, the same has been confronted by the Chartered Accountant assisting the Official Liquidator. Thus, this bench hereby directs that the Registrar of Companies is free to take action, if any against the petitioner Company for non-compliance of law. The Petitioner/Transferee Company undertakes that in case prosecution or any other action under Companies Act, 2013 or any other law is made out against the Transferor Company, the same shall be enforced against the Transferee Company, M/s. Universal Hotels Private Limited wherein the Transferor Company, M/s. Universal Import Export India Private Limited will be merged.
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.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 142 of 2017 is made absolute in terms of prayers clause (a) to (c) and 143 of 2017 is made absolute in terms of prayer clauses (a) to (d).

15. 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.
16. 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. 142 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.
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 within a period of 60 days, if any.
18. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified copy by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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