

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CSP 1004/230-232/NCLT/MB/MAH/2017

CSP 1008/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Parikh Paper Agencies Private Limited

.....Petitioner in CSP 1004/2017

(Transferor Company)

M/s. Zeal Investment And Trading Company
Private Limited

.....Petitioner in CSP 1008/2017

(Transferee Company)

Order delivered on : 12.01.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Rajesh Shah, Advocate a/w. Mr. Ahmed Chunawala, Advocate i/b. Rajesh Shah & Co.

– Advocates for the Petitioners.

For the Regional Director:

Mr. Ramesh Gholap, Dy. Registrar (WR).

Per : Bhaskara Pantula Mohan, Member (J)

COMMON ORDER

1. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, and Section 66 of the Companies Act, 2013 to the Composite Scheme of Merger by Absorption (hereinafter as **Scheme**) of M/s. Parikh Paper Agencies Private Limited (Transferor Company) with M/s. Zeal Investment and Trading Company Private Limited (Transferee Company) and their respective shareholders.
2. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.



3. The Transferor Company is engaged in the business of consultancy services for import of paper from Russia, indenting business for import of newsprint, trading in commodities.
4. The Transferee Company is engaged in the business of financial services sector.
5. The rationale for the said Scheme provides following benefits to the group:
 - a) Consolidation of companies within the Group,
 - b) Reduction of intra - group transactions and compliance requirements under various laws,
 - c) Reduction of operating and compliance costs and
 - d) Achieve administrative, operational and management efficiencies.
6. The Authorised Share Capital of the Transferor Company is ₹ 16,00,000/- comprising of 14,000 equity shares of 100/- each and 2000 11% Non-Cumulative Redeemable Preference Shares of 100/- each. Whereas the Issued, Subscribed and Paid-up Share capital of Transferor Company is ₹ 6,88,000/- comprising of 6,880 equity shares of ₹ 100/- each.
7. The Authorised Share Capital of the Transferee Company is ₹ 5,00,000/- comprising of 40,000 equity shares of ₹ 10/- each and 10,000 11% Non-Cumulative Redeemable Preference Shares of ₹10/- each. The Issued, Subscribed and Paid- up Share Capital of the Transferee Company is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each.
8. The averments made in the Petition and the submissions made by the Learned Advocate for the Petitioners are:
 - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
 - b) The Regional Director has filed his Report dated 8th January, 2018 stating therein that save and except the observations stated in paragraph IV (a) to (d) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:



(a) In addition to compliance of AS-14 (IND AS-103), 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 (IND AS-8) etc;

(b) As per Part-I Definitions & Share Capital Clause 1.2 of the Scheme. 'Appointed Date' means the 1st day of April, 2017 or such other date as may be fixed or approved by the National Company Law Tribunal, or any competent authority may otherwise direct. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st day of April, 2017;

(c) As regards Part-II Clause 5 of the Scheme, upon the Scheme becoming effective name of the Transferee Company shall stand Change to 'Parikh Paper Agencies Private Limited' In this regard it is submitted that the same is subject to

- (i) The petitioner to submit Justification for the change of name of Transferee Company to Transferor Company Accordingly, the Company to amend its main object as per provisions of Companies Act, 2013
- (ii) The change of name of Transferee Company to the name of Transferor Company is subject to compliance with the provisions of section 4(2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014.

(d) As regards Part-II Clause 6 of the Scheme (Combination of Authorised Capital), and fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3) (i) of the Companies Act, 2013.

(e) As regards Part-II Clause 7 of the Scheme. It is submitted that as M/s. Zeal Investment and Trading Company Private Limited (The Transferee Company – ZEAL) holds approximately 98% (6,730 equity shares of ₹100/- each) stake in M/s. Parikh Paper Agencies Private Limited (The Transferor Company) On amalgamation, to the extent of shares held by the Transferee Company in the Share Capital of Transferor Company shall stands cancelled. Hence, Transferee Company cannot allot any shares in its own name. Accordingly,

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consideration clause of the Scheme needs modification. Hon'ble Bench may kindly direct the petitioners to take suitable action;

(f) 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 17th August 2017 has served a copy Company Scheme Application No. 748 of 2017 along with relevant orders etc.

(g) 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 Petitioner Companies after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company."

- c) Apropos observations made in paragraph IV (a) of the Affidavit of Regional Director is concerned, it is submitted that the Transferee Company undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with Accounting Standard – 14 (IND AS-103), Accounting Standard – 5 (IND AS-8) and any other applicable Accounting Standard.
- d) Apropos observations made in paragraph IV (b) of the Report of Regional Director is concerned, it is stated that the Petitioner Company undertakes to make the Scheme effective from the Appointed Date which is 1st day of April, 2017 and to comply with the provisions of Section 232(6) of the Companies Act, 2013 or necessary provisions in connection thereto upon the Hon'ble National Company Law Tribunal approving the Scheme.
- e) Apropos observations made in paragraph IV (c) (i) and IV (c) (ii) of the Report of Regional Director is concerned, it is stated that the Petitioner Company undertakes to amend the main object clause of the Memorandum of Association to include the main objects of the Transferor Company. Regarding (c) (ii) the Company to comply with requirements as per provisions of Section 4 (2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014.
- f) Apropos observations made in paragraph IV (d) of the Report of Regional Director is concerned, it is submitted that the Petitioner Company hereby agrees to pay the applicable fees on such increase in Authorized Share Capital pursuant to this Scheme and also



undertake to comply/abide by the provisions of Sections 232(3) (i) of Companies Act, 2013, if the same is payable.

- g) Apropos observations made in paragraph IV (e) of the Report of Regional Director is concerned, it is stated that as per the clause 8.4 of the Scheme which states that, upon coming into effect of this Scheme, investment held by the Transferee Company in the Transferor Company shall stand cancelled. It is further submitted that as per the clause 7.1 of the said Scheme which states that shares shall be issued only to the members of the Transferor Company (i.e. Sunil I Parikh H.U.F and Mr. Indravadan M Parikh) as on the Effective date whose name appears in the Register of Members of the Transferor Company (other than the Transferee Company). Since, the consideration clause already captures the cancellation of investment held by the Transferee Company and issue of consideration to shareholders of the Transferor Company (other than the Transferee Company), no further modification is required in this regard.
- h) Apropos observations made in paragraph IV (f) of the Report of Regional Director is concerned, it is submitted that the Petitioner Companies have already complied with requirement to serve notice and the notice for the said Scheme was served to the Income-tax Authorities on 28th August, 2017 along with the entire set of Company Scheme Application No. 748 of 2017. But no reply is received from the Income-tax Authorities in respect of the same.
- i) Apropos observations made in paragraph IV (g) of the Affidavit of the Regional Director is concerned, it is clarified that the approval of the sanction of the said Scheme by this Hon'ble National Company Law Tribunal will not deter the Income-tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with the applicable law.
- j) It is further submitted that, no objector has approached, neither to the Petitioner nor before the Tribunal, to oppose this Composite Scheme of Arrangement and Amalgamation.
- k) The Official Liquidator has filed his report dated 27.11.2017 inter alia stating therein that the affairs of the Transferor Company have been conducted in proper manner and further that the Transferor Company may be ordered to dissolve without winding up.



9. 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. And hereby this bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of the consideration of the Scheme, 3 fully paid-up equity Shares of ₹10/- each of the Transferee Company shall be issued and allotted for every 2 equity shares of ₹ 100/- each to the shareholders Transferor Company.
- d) Further, during the course of hearing it is noticed that, the said Scheme is not a Scheme of Amalgamation as titled but contrary it is a Scheme of Merger by Absorption hence, a liberty is granted to the Petitioners to amend the Scheme appropriately.
- e) 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.
- f) 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, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.



- g) The Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of receipt of this order.
- h) The Transferor Company (i.e. Petitioner in CSP 1004/2017) to pay cost of ₹ 25,000/- to Official Liquidator, Bombay. Costs to be paid within four weeks from the date of receipt of this order.
- i) 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.
- j) Any person interested is at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- k) Any concerned Authority is at liberty to approach this Bench for any further clarification/direction under this Scheme.
- l) The Scheme is sanctioned hereby on above terms and directions. Further, the appointed date of the Scheme is fixed as 1st April, 2017.

10. Ordered accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated: 12.01.2018

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