

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

**CSP No. 1088 of 2017
AND
CSP No. 1089 of 2017**

BKT EXIM LIMITED Petitioner / Transferor Company

AND

BALKRISHNA INDUSTRIES LIMITED Petitioner / Transferee Company

In the matter of the Companies Act, 2013

AND

In the matter of Scheme of Amalgamation of BKT Exim Limited with Balkrishna Industries Limited and their respective shareholders ('Scheme')

AND

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

Order Delivered on: 24th January, 2018

CORAM:

Hon'ble B.S.V Prakash Kumar, Member (Judicial).

Hon'ble V. Nallasenapathy, Member (Technical).

For the Petitioner(s): Mr. Hemant Sethi, M/s Hemant Sethi & Co., Advocates for the Petitioners.

Mr. S Ramakantha, Joint Director for the Regional Director

Mr. Parvez Naikwadi, Assistant ROC for the Registrar of Companies

Mr. Santosh Dalvi, Assistant for the Official Liquidator

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. Heard the Learned Counsel for the Petitioner Companies. None appears before the Tribunal to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the Scheme of Amalgamation of BKT Exim Limited ('Transferor Company') with Balkrishna Industries Limited ('Transferee Company') and their respective shareholders.
3. The Learned Counsel for the Petitioner Companies states that the Transferor Company and the Transferee Company are part of the same group of companies and the Transferor Company is a wholly owned subsidiary of the Transferee Company. The Transferor Company is engaged in the business of import and export of products, goods, articles etc and generates revenue from brokerage and commission. The Transferee Company is primarily into tyre industry and within

which it focuses on “Off-Highway segment” which generally consist of agriculture tyres, industrial tyres, construction tyres, mining tyres, port tyres, lawn and garden tyres and all-terrain vehicle tyres.

4. The Learned Counsel for the Petitioner Companies further submits that the rationale for the Scheme is as under:
 - (a) Enable creation of a larger entity and derive optimal management and synergy benefits;
 - (b) Result in business synergies besides economies in cost by combining all the functions, related activities and operations and benefits in the form of managerial and technical expertise;
 - (c) Reduction in number of entities leading to simplification of group structure and multiple layer inefficiencies; and
 - (d) Enable cost saving, pooling of managerial skills and optimum utilization of valuable resources which will enhance the management focus thereby leading to higher operational efficiency and enhancing shareholders' value.
5. The Petitioner Companies have approved the said Scheme by passing the board resolutions which are annexed to the respective Company Scheme Petition.
6. The Learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions in joint order passed in the Company Scheme Application 472 of 2017 and that the Company Scheme Petition have been filed in consonance with the joint order passed in the Company Scheme Application.
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 Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed his Report dated 9th January, 2018 stating therein that save and except as stated in paragraph IV of the said Report, 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 as under:
 - a) *As per Clause 1.2 Definitions of the Scheme, “The Appointed Date” means the 1st April 2015 or such other date as may be fixed by the High Court or such other Competent Authority as may be applicable. In this regard, it is*

submitted in terms of provisions of Section 232(6) of the Companies Act, 2013, it should be specific as 1st day of April 2015;

- b) As regards Para No. 7 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013;*
 - c) In addition to compliance of IND AS-103 (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 IND AS-8 (AS-5) etc.;*
 - d) The Tax Implication, if any arising out of this Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Tribunal 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;*
 - e) In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Transferee Company may be directed to file a Certificate from the Company's Auditors to the effect that the accounting treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013;*
 - f) National Stock Exchange issued approval for six months from its letter dated 01-11-2016. The aforesaid prescribed time has been expired, therefore the Transferee Company may be directed to get extension for the same.*
9. In so far as observation of the Regional Director, as stated in paragraph IV (a) of the Report is concerned, the Petitioner Companies through their Counsel clarifies that the Appointed Date shall be 1st day of April, 2015.
 10. In so far as observation of the Regional Director, as stated in paragraph IV (b) of the Report is concerned, the Petitioner Companies through their Counsel undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.
 11. In so far as observation of the Regional Director, as stated in paragraph IV (c) of the Report is concerned, the Petitioner Companies through their Counsel

- undertakes that it will comply with all applicable Accounting Standards and shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other applicable Accounting Standard.
12. In so far as observation of the Regional Director, as stated in paragraph IV (d) of the Report is concerned, the Petitioner Companies through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues, if any arising out of the Scheme will be met and answered in accordance with law.
 13. In so far as observation of the Regional Director, as stated in paragraph IV (e) of the Report is concerned, the Petitioner Companies through their Counsel submits that the Transferee Company has already filed the Company Auditor certificate along with Company Scheme Petition of the Transferee Company, stating that the Accounting treatment for the proposed Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 with the Hon'ble Tribunal.
 14. In so far as observation of the Regional Director, as stated in paragraph IV (f) of the Report is concerned, the Petitioner Companies through their Counsel submits that the approval issued by NSE for the period of six months vide its letter dated 1st November, 2016 is for submission of Scheme with the Hon'ble High Court/NCLT. The Learned Counsel for the Petitioner Company submits that the Scheme was filed in Company Summons for Direction with the Hon'ble High Court on 13th December, 2016, hence, the requirement for extension of approval from NSE does not arise.
 15. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
 16. The Official Liquidator has filed his report on 12th January, 2018 in the Company Scheme Petition No. 1088 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 without winding up by this Hon'ble Tribunal.
 17. 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.
 18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 1088 and 1089 of 2017, filed by the Petitioner Companies are

made absolute in terms of prayer clauses (a) to (d) of the Transferor Company and (a) to (c) of the Transferee Company of their respective Company Scheme Petitions.

19. 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.
20. The Petitioner Companies are directed to file a 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.
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Company in Company Scheme Petition No 1088 of 2017 to pay sum of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of the receipt of the order.
22. All authorities concerned to act on a copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Dated: 24th January, 2018

Sd/-

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