

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

**CSP NO.1066 OF 2017
with
CSP NO.1065 OF 2017**

Under Sections 230 to 232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation of
Intelligent Conveyors and Stackers Private
Limited, the Transferor Company with Intech
Surface Coating Private Limited, the Transferee
Company

INTELLIGENT CONVEYORS AND STACKERS PRIVATE LIMITED

.....Petitioner Company
(Transferor Company)

WITH

INTECH SURFACE COATING PRIVATE LIMITED

.....Petitioner Company
(Transferee Company)

ORDER DELIVERED ON: 24th JANUARY, 2018

CORAM:

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

Hon'ble V. Nallasenapathy, Member (Technical)

Advocate for the Petitioner: 1. Advocate Shruti Kelji-Pednekar
2. Advocate Rahul Risbud
3. Advocate A. S. Lambhate
4. Advocate Sunila Chavan

For Regional Director: P. Sheela, Joint Director

For Registrar of Companies: Ramesh Gholap, Asst. ROC

For Official Liquidator: Santosh Dalvi, representative
(in Company Scheme Petition No.1066 of 2017)

PER: V. Nallasenapathy, Member (Technical)

ORDER

1. Heard Advocate for the parties. Neither any objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Intelligent Conveyors and Stackers Private Limited, the Transferor Company with Intech Surface Coating Private Limited, the Transferee Company and their respective shareholders and creditors.
3. The Learned Advocate for the Petitioner Companies state that the Transferor Company is engaged in the business of manufacturing, importing, exporting, buying, selling and repairing and dealing in roller-conveyors, screw conveyors, slat conveyors, wire-mesh belt conveyors, bucket conveyors, elevators, idlers, loaders, triplets, packing machine, stackers, etc. and the Transferee Company is engaged in the business of manufacturing of surface coating plants and equipments, powder coating plants and equipments and liquid coating plants and equipments, etc.
4. The Learned Advocate for the Petitioner Companies state that ICSPL the Transferor Company is engaged in the business of manufacturing of conveyor systems and for that purpose had created infrastructure for manufacturing facilities, including factory land and building, dies and moulds etc. which is given on rent and does not carry any commercial activity and after suspension of manufacturing activities had surrendered all government registrations, licenses etc. and has left with no business but only assets/infrastructure in addition to the technical

expertise/drawings/designs manufacturing know how etc. and Transferee Company is engineering based Company capable of using technical expertise/drawings/designs manufacturing know how etc. of Transferor Company and proposed amalgamation would provide synergies of integration, consolidation of the readymade infrastructure and technical expertise etc. and thus it would lead to a more efficient utilization of capital and create a stronger base for future growth of amalgamated entity and cost savings are expected to flow from more focused operational efforts, standardization and simplification of business processes and rationalization of administrative expenses and with proposed amalgamation Transferee Company will get better avenues in its business activities in different diversified products and since the Transferor Company is 100% subsidiary company of Transferee Company, thus the ultimate ownership of both companies vests with the same shareholders.

5. The Learned Advocate for the Petitioner Companies states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the respective Company Scheme Applications and that the Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Scheme Application.
7. The Learned Advocate appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavit of compliance in the Tribunal. Moreover, the Petitioner Companies undertake 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 undertakings given by the Petitioner Companies are accepted.

8. The Official Liquidator has filed his report dated 2nd January, 2018 in the Company Scheme Petition No.1066 of 2017 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.
9. The Regional Director has filed his report dated 19th December, 2017 wherein it is stated that save and except as stated in paragraph IV (a) to IV(h), 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 (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 existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It appears that the company vide letter dated 05.10.2017 has served a copy company scheme Application No.590 & 591 of 2017 along with relevant orders etc.*
- (c) 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 Companies.*
- (d) It is observed that the Transferor Company has not filed an affidavit affirmed by the Director. The Deponent prays that the Transferor Company may be asked to submit the Affidavit to this Directorate.*

- (e) *As per Clause 1.2 of the Scheme, "Appointed Date means 1st April, 2016 or such other date as the Hon'ble National Company Law Tribunal (NCLT) may direct. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2016. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*
 - (f) *As Para No.15 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.*
 - (g) *Petitioner in the Clause 13.5 of the scheme inter alia has mentioned that the excess of the net assets of ICSPL transferred to ISCPL pursuant to the Hon'ble NCLT orders as reduced by the face value of the shares of ICSPL would be credited to Reserve Account and in the event of there being a shortfall, the same shall be debited to Goodwill Account/Amalgamation Reserves.
The Deponent prays that the above said amount be credited to Capital Reserve instead of Reserve Account.*
 - (h) *Petitioner in the Clause 13.6 of the Scheme inter alia has mentioned that in case of any differences in the accounting policy between the Companies, the impact of the same till the amalgamation will be quantified and adjusted in the reserves of the Transferee Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of the consistent accounting policy.
The Deponent prays that the above difference will be quantified and adjusted in the General Reserve instead of Reserves.*
10. As far as the observations in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that the Transferee Company undertakes that in addition to compliance of AS-14 (IND AS-103) accounting treatment,

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.

11. As far as the observations in paragraph IV (b) and IV (c) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies state that the Petitioner Companies have served the concerned Income Tax Department on 6th October, 2017 respectively and filed the original acknowledgements with this Tribunal vide its Affidavit of Service (Annexure F). Further, the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
12. As far as the observations in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that the Transferor Company has filed an affidavit affirmed by the Director to Regional Director's office on 18th January, 2018.
13. As far as the observations in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that the Appointed Date will be 1st day of April, 2016.
14. As far as the observations in paragraph IV (f) of the Report of the Regional Director is concerned, the Petitioner Companies states that the Petitioner Companies undertakes to comply with provisions of Section 232(3)(i) of the Companies Act, 2013, if applicable.
15. As far as the observations in paragraph IV (g) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that the Petitioner Companies undertakes to transfer excess of the net assets of Transferor Company to Transferee Company as reduced by the face value of the shares of Transferor Company will be credited to Capital Reserve.
16. As far as the observations in paragraph IV (h) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner

Companies states that the Petitioner Companies undertakes that in case of any differences in the accounting policy between the Companies, the impact of the same till the amalgamation will be quantified and adjusted in the General Reserve of the Transferee Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of the consistent accounting policy.

17. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 10 to 16 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
18. 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.
19. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.1066 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No.1065 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (c).
20. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai 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 receipt of the order.
21. The Petitioner Companies are further 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 physical copy, as per the relevant provisions of the Companies Act, 2013.
22. The Petitioner Companies to pay costs of Rs.25,000/-each to the Regional Director, Western Region, Mumbai and cost of Rs.25,000/- to the Official Liquidator, High Court, Bombay in Company Scheme Petition

No.1066 of 2017. Costs to be paid within four weeks from the date of receipt of the Order.

23. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
24. 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/-

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

Date: 24th January, 2018