

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

CSP 958/230-232/NCLT/MB/MAH/2017

CSP 959/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Parikh Petro Chemicals Agencies Private
Limited

.....Petitioner in CSP 959/2017
(Transferor Company)

M/s. Vaani Finance and Leasing Private
Limited

.....Petitioner in CSP 958/2017
(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.

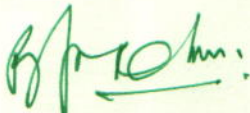
For the Regional Director:

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 to the Scheme of Merger by Absorption (hereinafter as **Scheme**) of M/s. Parikh Petro Chemicals Agencies Private Limited (Transferor Company) with M/s. Vaani Finance and Leasing 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 trading in commodities.
4. The Transferee Company is engaged in the business of financial services.
5. The rationale for the Scheme provides following benefits to the group:
 - Consolidation of companies within the Group,
 - Reduction of intra - group transactions and compliance requirements under various laws,
 - Reduction of operating and compliance costs and
 - Achieve administrative, operational and management efficiencies.
6. The Authorised Share Capital of the Transferor Company is ₹ 22,00,000/- comprising of 20,000 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 the Transferor Company is ₹ 10,62,000/- comprising of 10,620 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 06.12.2017 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 Para No. 5 of the Scheme, it is stated that upon the Scheme becoming effective, name of the Transferee Company shall stand change to M/s Parikh Petro Chemicals Agencies Private Limited, subject to such approvals as may be necessary. In this regard it is submitted that the same shall be subject to availability of the name and 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. Further the change of name of the Transferee Company into the name of Transferor Company is to be justified.

(b) It is observed from the main objects of the Transferee Company that the same has no consonance with new name of the Transferee Company. The ROC, Mumbai has also made their observation in their Report in this regard. Therefore, the Hon'ble NCLT may direct to the said Company to amend its objects accordingly under Section 12 and other applicable provisions of the Companies Act, 2013.

(c) 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 Authorised Share Capital subsequent to the Amalgamation for setting off fees paid by the Transferor Company on its Authorised Share Capital in accordance with the Provisions of Section 232(3)(i) of the Companies Act, 2013.

(d) 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.

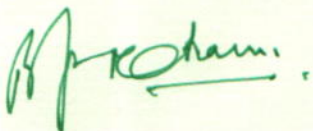
(e) As per Clause 1.2 of Part I of the Scheme, Appointed Date means 1st day of April, 2017 or such other date as may be fixed or approved by the National Company Law Tribunal (NCLT) or any competent authority may otherwise direct. In this regard, it is submitted in terms of provisions of section 232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

(f) 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.

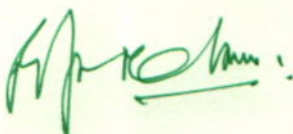
(g) In accordance to provisions to Section 232(3) of the Companies Act, 2013, the Transferee Company may be directed to file a Certificate from the Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.

- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, it is submitted that the Petitioner Company hereby undertakes to change the name of the Company subject to availability of name and compliance with the relevant provisions of Section 4(2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014, to the extent applicable, upon the Hon'ble National Company Law Tribunal approving the Scheme.
- d) Apropos observations made in paragraph IV (b) of the Report of Regional Director is concerned, the same is towards the observation made by ROC Mumbai, which states that the Transferee Company is required to amend the object clause in line with new name as proposed in clause no. 5 of the Scheme. The Petitioner Company through its Counsel submits that, a reference be made to the above para (iii), the Petitioner Company undertakes to amend the main object clause of the Memorandum of Association to include the main objects of the Transferor Company and to comply with all other requirements under Section 12 of the Companies Act, 2013 or any other applicable provisions, to the extent applicable, upon the Hon'ble National Company Law Tribunal approving the Scheme.
- e) Apropos observations made in paragraph IV (c) of the Report of Regional Director is concerned, it is stated that, the Petitioner Company hereby agrees to pay the applicable fees on such increase in Authorized Share Capital pursuant to this Scheme in compliance to Section 232(3)(i) of Companies Act, 2013, if the same is payable.
- f) Apropos observations made in paragraph IV (d) of the Affidavit of the Regional Director is concerned, it is clarified that the approval of the Scheme by this 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.

- g) Apropos observations made in paragraph IV (e) of the Report of Regional Director is concerned, it is submitted that the Petitioner Companies 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 Tribunal approving the Scheme.
 - h) Apropos observations made in paragraph IV (f) 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.
 - i) Apropos observation made in paragraph IV (g) of the Affidavit of Regional Director is concerned, it is submitted that the Petitioner Company has obtained a certificate from Company's Auditor to the effect that Accounting Treatment as proposed in the Scheme by the Transferee Company for merger by absorption is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013 and the said certificate has been already filed with the Tribunal by the Transferor Company and the Transferee Company.
 - 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 23.12.2017 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, 1 fully paid-up equity Share of ₹ 10/- each of the Transferee Company shall be issued and allotted for every 1 equity share of ₹ 100/- 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) Transferor Company to be dissolved without winding-up.
- f) The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, 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.
- g) 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 the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- h) 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.



- i) The Transferor Company (i.e. Petitioner in CSP 959/2017) 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.
- j) 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.
- k) Any person interested is at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- l) Any concerned Authority is at liberty to approach this Bench for any further clarification/direction under this Scheme.
- m) 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

Avinash