

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

CSP 905/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Aswa Corporate Consulting Private
Limited

.....1st Petitioner
(Transferor Company)

M/s Bliss City Home Private Limited

.....2nd Petitioner
(Transferee Company)

Order delivered on : 05.01.2018

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Adv. Rushil Aiya a/w. Adv. Ajit Singh Tawar a/w. CA Nitin Gutka i/b. Abid & Co. –
Authorised Representative 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 Arrangement and Amalgamation of Aswa Corporate Consulting Private Limited (Transferor Company) with Bliss City Home Private Limited (Transferee Company) and their respective shareholders and creditors for Amalgamation of Aswa Corporate Consulting Private Limited with Bliss City Home Private Limited and reduction of Preference Share Capital of Bliss City Home Private Limited as an integral part of the Scheme.
2. The Petitioner Companies have approved the said Composite Scheme of Arrangement and Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.

3. The Transferor Company is presently carrying on the business of investment activities.
4. The Transferee Company is presently engaged in the business of financial consultancy services.
5. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits: -
 - a) The Transferee Company desires to consolidate its financial consultancy services, pool the available resources and also reorganize its capital structure.
 - b) Accordingly, with a view to consolidate its financial consultancy services, pool the available resources and to reorganise its share capital and to enable its financial consultancy services to be pursued and carried on more conveniently and advantageously with greater focus and attention, it is proposed to amalgamate the business of Transferor Company with the Transferee Company. The same will facilitate the business considerations and factors applicable to the financial consultancy business to be addressed more effectively and adequately and to maximize value for all the stakeholders of the both the companies. In consideration of the merger, the Equity shares of the Transferee Company shall be issued to the equity shareholders of the Transferor Company, on the agreed terms and conditions as set out herein.
 - c) The management proposes to achieve the above pursuant to this Scheme under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 (to the extent notified) or any corresponding provisions of the Companies Act, 1956, in the manner set out herein.
 - d) This Scheme is in the interest and benefit of shareholders, creditors and there is no likelihood that any shareholder or creditor of the Transferor Company would be prejudiced as a result of this Scheme.
 - e) The Transferee Company will continue its interests in the financial consultancy services as is presently being carried out but with greater focus on growth opportunities in its field, the regulatory requirements, risks etc. specific to its business.
6. The Authorised Share Capital of the Transferor Company is ₹ 1,00,000/- divided into 10,000 equity shares of ₹ 10/- each, fully paid up.



7. The Authorised Share Capital of the Transferee Company is ₹ 3,00,00,000/- divided into 20,000 equity shares of ₹ 10/- each, fully paid up and 2,98,000 Preference Shares of ₹ 100/- each fully paid.
8. The Issued, Subscribed and paid up share capital of the Transferor Company is ₹ 1,00,000/- divided into 10,000 equity shares of ₹ 10/- each, fully paid up.
9. The Issued, Subscribed and paid up share capital of the Transferee Company is ₹ 2,63,64,000/- divided into 10,000 equity shares of ₹ 10/- each, fully paid up and 2,62,640 1% Redeemable Non-Cumulative Non-Convertible Preference Shares of ₹ 100/- each fully paid.
10. 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 11th October, 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 addition to compliance of AS-14 (IND AS-103) of the Petitioner Companies 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 is observed that the company vide letter dated 10.07.2017 has served a copy company scheme application No. 344 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 15.09.2017 to IT Department.



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 Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

d) As per Clause 1.30 of Part A-Definition and Share Capital of the Scheme. "Appointed Date" means February 1, 2017 or such other date as may be appointed by the Tribunal. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be February 1, 2017. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

- c) Apropos observations made in paragraph IV (a) of the Report 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 or any applicable Accounting Standard such as Accounting Standard – 5. The Counsel for the Petitioner Companies further stated that IND – AS is not applicable to the Petitioner Companies hence question of complying with IND – AS does not arise.
- d) Apropos observations made in paragraph IV(b) and (c) of Regional Director Report is concerned, it is stated that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
- e) Apropos observations made in paragraph IV (d) of Regional Director Report is concerned, it is stated that the Appointed Date of the scheme will be 1st February, 2017 only.
- f) 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.
- g) The Official Liquidator has filed his report dated 29th August, 2017 in the Joint Company Scheme Application No 344 of 2017 stating 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.

11. 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, **doth 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, the Transferee Company shall issue and allot 1 Equity Share of ₹ 10/- each, fully paid up for every 1 Equity share of ₹ 10/- each to the shareholders of the Transferor Company.
- d) 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.
- e) 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.
- f) 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.



- g) The Transferor Company (i.e. 1st Petitioner Company) 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.
- h) 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.
- i) Any person interested is at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- j) Any concerned Authority is at liberty to approach this Bench for any further clarification/direction under this Scheme.
- k) The Scheme is sanctioned hereby on above terms and directions. Further, the appointed date of the Scheme is fixed as 1st February, 2017.

12. Ordered accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated: 05.01.2018

Avinash