

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 148 OF 2017

Poona Forge Private LimitedPetitioner/Transferee Company

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 254 OF 2016

In the matter of the Companies Act, 1956
(1 of 1956);

AND

In the matter of Sections 391 to 394 of
the Act

AND

In the matter of Scheme of
Amalgamation of Minimax Finlease
Private Limited ('Transferor Company')

WITH

Poona Forge Private Limited('Transferee
Company')

AND

Their respective Shareholders

Poona Forge Private Limited,)
a company incorporated under)
the Companies Act, 1956)
having its registered office at)
148 5 Block, Bhosari Industrial)
Estate, MIDC, Pune,)
Maharashtra- 411026).....Petitioner Company

ORDER DELIVERED ON 01ST FEBRUARY, 2018

Coram:

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

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

Advocate for Petitioner

Ms. Prachi Wazalwar, Advocates for the Petitioner.

Mr. S. Ramakantha, Joint Director for Regional Director

Mr. Manjesh Jadhav, for Asst. Registrar of Companies

Mr. Santosh Dalvi, Assistant in the office of Official Liquidator,

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard the learned Counsel for the Petitioner Companies. None appeared before this Tribunal either to oppose the Scheme or to controvert any averments made in the Petition.
2. The sanction of this Tribunal is sought under Section 391-394 of the Companies Act, 1956, to the Scheme of Amalgamation between Minimax Finlease Private Limited (Transferor Company) and Poona Forge Private Limited (Transferee Company) and their respective Shareholders.
3. The learned Counsel for the Petitioners submit that Transferor Company is presently engaged in the business of investment and providing loans and the transferee company is presently engaged in the business of making forged components for Automotive, Engineering and agricultural industry.
4. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:
 - a. The integration of Business activities will enable the Transferee Company to develop the inbuilt mechanism of generating funds for future capital expenses resulting into enhanced production capacity and profitability.
 - b. Liquidity available with Transferor Company along with regular dividend income can be effectively utilized to satisfy heavy working capital requirements of the Company.

- c. The consolidation of accumulated wealth of both the entities will result in increased growth opportunities.
 - d. The activities of the Company will be placed under the expertise of a unified Board resulting in unity of command, efficient management and simplification of business processes.
 - e. Greater integration, financial strength and flexibility for the amalgamated entity, which would result in improved overall shareholder value.
 - f. It will entail reduction in administrative costs, employee expenses etc. which can be put to the best advantage of the stakeholders.
5. The Counsel for the Petitioner Companies state that Board of Director of the Petitioner Companies in their respective board meetings have approved the said Scheme of Amalgamation which are annexed to their respective Company Scheme Petition.
6. The Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions. The Petitioner Companies have complied with all the directions passed in Company Scheme Petition and they have filed necessary Affidavits of compliance before the Hon'ble High Court.
7. The learned Counsel for the Petitioner Company further state that the Petitioner Company have complied with all requirements of this Hon'ble Tribunal including filing of statutory auditors certificate. Moreover, the Petitioner Company through their counsel undertakes to comply all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the rules made under whichever is applicable. The said undertaking is accepted.
8. The Official Liquidator has filed their report dated 4th September, 2017 stating therein that the affairs of the Transferor Company

namely Minimax Finlease Private Limited have been conducted in a proper manner.

9. The Regional Director has filed its Report dated 27th March, 2017 stating therein that save and except as stated in paragraph IV (a) to (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV (a) to (c) of the said Affidavit, the Regional Director has stated that:

- (a) Ongoing through the Scheme, it is observed that the Company had not mentioned anything about its policy as regards treatment with employees of the Transferor Company after merger. The Petitioner is required to clarify its policy in above matter to safeguard the interest of employees of the Transferor Company. The Petitioner is required to declare that the services of the employees shall have been continuous and shall not have been interrupted by reason of the transfer of the Undertaking of the Transferor Company and the terms and conditions of service applicable to the said staff, workmen or employees after such transfer shall not in any way be less favourable to them those applicable to them, immediately before the transfer;*
- (b) In addition to compliance of 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 AS-5 etc. and ensure that the Financial Statements of the Transferee Company does not impair the true and fair view of the Financial Statements of the Transferee Company after post amalgamation.*
- (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 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 Income Tax Authority is binding on the Petitioner Companies.*

10. As far as observations made in paragraph IV (a) of the Regional Director is concerned, the Petitioner Companies state that Transferor Company does not have any employees and thus the question of protecting their interest does not arise.
11. As far as observations made in paragraph IV (b) of the Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-14 & AS-5. We have also filed the statutory auditors certificate to the effect that accounting treatment proposed in the Scheme of Amalgamation is in compliance with the Accounting Standards prescribed under the Section 133 of the Companies Act, 2013.
12. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes 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.
13. The observations made by the Regional Director have been explained by the Petitioner Company in paragraphs 10 to 12 hereinabove. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No. 147 of 2017 filed by the Transferor Company be made absolute in terms of prayer clause (a), (b) and (c) of the Petition and Transferred Company Scheme Petition

No. 148 of 2017 filed by the Transferee Company be made absolute in terms of prayer clause (a) and (b) of the Petition.

16. The Petitioner Company is directed to file a copy of this order along with a copy of Scheme of Amalgamation 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.
17. Petitioners 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 within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies to pay costs of Rs.25,000/-each to the Regional Director, Western Region, Mumbai and Rs.25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
19. 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.
20. Any person interest shall be at the liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

B.S.V. Prakash Kumar
Member (Judicial)