

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

CSP 1013/230-232/NCLT/MB/MAH/2017

CSP 1014/230-232/NCLT/MB/MAH/2017

CSP 1015/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Tanish Stone Crusher Private Limited

.....Petitioner in CSP 1015/2017

(1st Transferor Company)

M/s Capacity Constructions and Infrastructures
Private Limited

.....Petitioner in CSP 1014/2017

(2nd Transferor Company)

M/s New Consolidation Projects &
Constructions Private Limited

.....Petitioner in CSP 1013/2017

(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 :

Mr. Ajit Singh Tawar, Advocate a/w. Mr. Rushil Aiya, Advocate i/b. Ajit Singh Tawar &
Co. – Advocates for Petitioner Companies.

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 a Scheme of Amalgamation of M/s. Tanish Stone Crusher Private Limited (1st Transferor Company) and M/s. Capacity Constructions and Infrastructures Private Limited (2nd Transferor Company) With M/s. New Consolidation Projects & Constructions Private Limited (Transferee Company).



2. The Transferor Companies and Transferee Company have approved the said Scheme of Amalgamation by passing the board resolutions, which are annexed to the respective Company Scheme Petitions.
3. The Transferor Companies are presently engaged in the business of Construction and development of real estate and allied activities.
4. The Transferee Company is presently engaged in the business of Construction and development of real estate and allied activities.
5. The amalgamation of the Transferor Companies with the Transferee Company would, inter-alia, have the following benefits:- achieving operational and management efficiency by way of Consolidation of Business; consolidation and simplification of the group structure; lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax filings, company law requirements at present to be carried out by the Transferor Companies and the Transferee Company.
6. The Authorised Share Capital of the First Transferor Company is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹ 10/- each. The Issued, Subscribed and Paid-up Share Capital is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹ 10/- each.
7. The Authorised Share Capital of the Second Transferor Company is Rs.1,00,000/- comprising of 10,000 Equity Shares of ₹ 10/- each. The Issued, Subscribed and Paid-up Share Capital is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹ 10/- each.
8. The Authorised Share Capital of the Transferee Company is Rs.1,00,000/- comprising of 10,000 Equity Shares of ₹ 10/- each. The Issued, Subscribed and Paid-up Share Capital is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹ 10/- each.
9. Presently the entire Issued, Subscribed and paid-up Share Capital of the Transferor Companies is held by Transferee Company.
10. The averments made in the petitions and the submissions made by the Learned Counsel for the Petitioners are:
 - a) The Petitioner Companies had complied with all the requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this

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Tribunal. Moreover, the Petitioner Companies 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.

- b) The Regional Director has filed its report on 15th December, 2017 stating therein that save and except as stated in paragraph IV (a) to (e) of the said Report; it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said report reads as follows:

(a) 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 the Income Tax Authority is binding on the Petitioner Company.

(b) It is submitted that all the Petitioner Companies are into real estate business. In this regard, Petitioner Companies have to undertake to serve notice to Real Estate Regulator under Real Estate (Regulation and Development Act), 2016 read with rule to the Hon'ble NCLT and to the Directorate.

(c) Petitioner Companies not submitted admitted copy of the petition with minutes of order of the Hon'ble NCLT and Chairman's Report of the meeting of shareholders and Creditors. In this regard Petitioner to undertake to submit the same for the record of Regional Director.

(d) Petitioner Companies in the clause 14 of the scheme inter alia mentioned that combination of Authorized Capital. In this regard Hon'ble NCLT may direct Transferee/Resulting Company to comply with provisions of Section 232 3(i) of the Companies Act, 2013, if applicable.

(e) Petitioner Companies in the clause 18 of the scheme inter alia mentioned that Upon the coming into effect of the Scheme, the resolutions of the Transferor Companies as are considered necessary by the Board of Directors of the Transferee Company

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which are validly subsisting be considered as resolutions of the Transferee Company.

In this regard, petitioner companies have to undertake to file requisite form as per various provisions of Companies Act, 2013 for combining such resolution.

(f) Petitioner Companies in the clause 6.5 of the scheme inter alia mentioned that The excess of net assets value (assets minus liabilities) of the Transferor Companies transferred to the Transferee Company, after making adjustment shall be recorded as Reserve / Profit & Loss Account in the books of the Transferee Company.

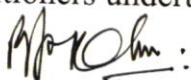
In this regard, petitioner companies have to undertake to transferred the profit into capital reserve account itself

- c) Apropos observation of the Regional Director, as stated in paragraph IV (a) of the Report is concerned, the Learned Counsel for the Petitioner undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues, if any arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
- d) Apropos observation of the observation of the Regional Director, as stated in paragraph IV (b) of the Report is concerned, the Learned Counsel for the Petitioners submits that, the Petitioner Companies has no real estate project at present which requires registration under the Real Estate Regulation and Development Act, 2016 (RERA) read with Maharashtra Rules and Regulation 2017 and hence it is not applicable.
- e) Apropos observation of the Regional Director, as stated in paragraph IV (c) of the Report is concerned, the Learned Counsel for the Petitioners submits that, the Petitioner Companies undertake to submit admitted copy of the petition with minutes of order of the Hon'ble NCLT and Chairman's Report of the meeting of shareholders and Creditors for the record of Regional Director.
- f) Apropos observation of the observation of the Regional Director, as stated in paragraph IV (d) of the Report is concerned, the Learned Counsel for the Petitioners submits that, the Petitioner Companies undertake to comply with provisions of

B. P. K. Sharma.

Section 232 3(i) of the Companies Act, 2013 as regards combination of Authorised Share Capital.

- g) Apropos observation of the observation of the Regional Director, as stated in paragraph IV (e) of the Report is concerned, the Learned Counsel for the Petitioners submits that, the Petitioner Companies undertake to file requisite form as per various provisions of Companies Act, 2013 for combining such resolution.
 - h) Apropos observation of the observation of the Regional Director, as stated in paragraph IV (f) of the Report is concerned, the Learned Counsel for the Petitioners submits that, the Petitioner Companies undertake to transferred the profit, if any arising out of the Scheme into capital reserve account instead of transferring it to Reserve / Profit & Loss Account.
 - i) The Official Liquidator filed his report dated 6th December, 2017 stating that the affairs of the Transferor Companies have been conducted in proper manner and that the Transferor Companies may be ordered to be dissolved without winding up by this Hon'ble Tribunal.
 - j) Further, the Learned Counsel for the Petitioner Companies submits that neither the Petitioner Companies nor the Tribunal has received any objection to the said Scheme of Amalgamation between the Transferor Companies and the Transferee Company.
11. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not in 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 Companies, shall, pursuant to Section 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 Petitioner Companies 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 undertake herein.

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- c) Transferor Companies to be dissolved without winding up from the date of said Scheme becomes effective.
- d) Since the entire Issued, Subscribed and Paid-up Share Capital of the Transferor Companies is held by the Transferee Company, no consideration shall be issued after the Amalgamation of the Transferor Companies with the Transferee Company.
- e) The Petitioner Companies are directed to file a copy of this order along with the Scheme of Amalgamation 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.
- f) The Petitioner Companies to lodge a copy of this Order and the Scheme of Amalgamation duly certified 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 working days from the date of the receipt of the Order.
- g) The Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified True Copy of this Order.
- h) Transferor Companies (i.e. Petitioners in CSP 1014 of 2017 and in CSP 1015 of 2017) to pay cost of ₹ 25,000/- each to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified True Copy of this Order.
- i) All authorities concerned to act on a copy of this order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- j) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modifications that may be necessary.



k) Any concerned authority is at liberty to approach this Bench to seek any clarification/direction hereinafter under this Scheme.

l) The Scheme is hereby sanctioned and the appointed date of the Scheme is fixed as 1st April 2017.

12. Ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated: 05.01.2018

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