

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

**COMPANY SCHEME PETITION NO. 854 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 240 OF 2017**

Master Zippel Cleaning Systems Private Limited
..... Petitioner Company
AND

**COMPANY SCHEME PETITION NO. 855 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 241 OF 2017**

Master Handlers Private Limited Petitioner Company

In the matter of the Companies Act
2013

AND

In the matter of 230 to 232 of the
Companies Act;

AND

In the matter of Scheme of
Amalgamation of Master Zippel
Cleaning Systems Private Limited
(Transferor Company)

With

Master Handlers Private Limited
(Transferee Company)

AND

Their respective shareholders

Order Delivered on: 08th February, 2018

CORAM:

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

For the Petitioner(s) : Ms. Prachi Wazalwar, Advocates for the Petitioner.

Mr. S. Ramakantha, Joint Director for the Regional Director

Mr. Parvez Naikwadi, Assistant ROC for the Registrar of Companies

Mr. Santosh Dalvi, Assistant for the Official Liquidator

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Hon'ble Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought pursuant to 230 to 232 of the Companies Act, 2013 and other applicable provisions of Companies Act, 2013, to the Scheme of Amalgamation between of Master Zippel Cleaning Systems Private Limited with Master Handlers Private Limited and their respective shareholders.
3. The Ld. Counsel for the Petitioner Companies submit that the Transferor Company is engaged in the business of manufacturing industrial components cleaning machine as per specifications of customers. The Transferee Company manufacturing of material handling system needed by various industries for automation.
4. The Counsel for the Petitioner Company submit that the rationale behind the scheme is as under:-

Rationale for Scheme of Amalgamation

- (a) The two companies will be able to share resources for the development of their business which will reduce the combined administrative costs and expenses of both companies. Greater integration, financial strength and flexibility for the amalgamation entity, which would result in improved overall shareholder value.
- (b) Cost savings are expected to flow from more focused operation efforts, reduction of overheads and other expenses, rationalization, standardization and

simplification of business process, improved procurement and the elimination of duplication.

- (c) The greater efficiency in cash management of the amalgamated entity will allow the cash flow generated by the combined entity to be deployed more effectively in order to fund growth opportunities.
 - (d) The greater integration, better resources utilisation and improved financial strength of the combined entity is likely to result in maximization of overall shareholder value and will also improve the competitive position of the combined entity.
5. The Ld. Counsel for the Petitioner Company submit that the Petitioner in their respective Board Meetings have approved the said Scheme of Amalgamation which are annexed to the Company Scheme Petition.
 6. The Ld. Counsel appearing on behalf of the Petitioner Company further submits that the petition has been filed in consonance with the order passed by this Hon'ble Tribunal in Company Summons Application No. 240 and 241 of the 2017.
 7. The Ld. Counsel for the Petitioners further states that the Petitioner have complied with all requirements as per directions of this Hon'ble Tribunal and they have filed necessary Affidavits of compliance before this Hon'ble Tribunal. Moreover, the Petitioner Company through their Counsel undertakes 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 Petitioners are accepted.
 8. The Regional Director has filed his Report dated 29th September 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report it is stated that "
 - (a) *As per existing practice, the petitioner companies are required to serve Notice for scheme of Amalgamation to the Income Tax Department for their comments. The Petitioner*

Companies Served copy of this Scheme along with relevant orders etc. Further, the office of regional Director (WR), Mumbai also issued a reminder dt. 26/09/2017.

- (b) *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 Authorities 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 Companies.*
 - (c) *As per Clause 4.3 Definition of Scheme. "The Appointed Date" means the 1st day of January, 2016 or as maybe fixed or approved by the Hon'ble High Court of Judicature at Bombay or such other Competent Authority. In this regards, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013, it should be 1st days of January, 2016.*
 - (d) *Regarding Clause 15.4 of the Scheme it is submitted that the surplus/deficit, if any arising out of the scheme shall be credited/debited into Capital Reserve, whether the sufficient balance in the said Account is available or not. It can be shown as + positive or - Negative Capital Reserve but not permitted to be adjusted against General Reserve of the Transferee Company.*
 - (e) *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 Standard such as AS-5(Ind As-8) etc.*
 - (f) *In accordance to proviso to Section 232(3) of the Companies Act, 2013, the 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 the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.*
9. *As far as observations made in paragraph IV (a), the Ld. Counsel for the Petitioner Companies state that they have issued notice to the concerned Income Tax Department in*

accordance with the directions of Hon'ble Tribunal and the proof of service of the same is attached to the respective company scheme petitions.

10. As far as observations made in paragraph IV (b) of the Regional Director is concerned, the transferee and transferor 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.
11. As far as observations made in paragraph IV (c) of the Regional Director is concerned, the counsel for the Petitioners submit that the Petitioner Companies Clarify that the Appointed Date of the Scheme shall be construed as 01st January, 2016.
12. As far as observations made in paragraph IV (d) of the Regional Director is concerned, the Ld Counsel for the Petitioner Companies undertake that the surplus/deficit, if any arising out of the scheme shall be credited/debited into Capital Reserve shall not be adjusted against General Reserve of the Transferee Company.
13. As far as observations made in paragraph IV (e) 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 applicable Accounting Standards including AS-14 & AS-5. We have also filed the statutory auditors certificate u/s 133 of the Companies Act, 2013 to the effect that accounting treatment proposed in the Scheme of Amalgamation is in compliance with the Accounting Standards.
14. In so far observations made in paragraph IV (f) of the Regional Director is concerned, the Ld. Counsel for the Petitioner Companies state that the company has filed the Auditors Certificate to the effect that the Accounting Treatment as proposed in the scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013. The Copy of the Auditors Certificate

is annexed in the Petition of both, Transferees and Transferor Company as Exhibit-H.

15. Report of Regional Director are concerned, the Petitioner Companies through its Counsel submits that the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all income tax issues arising out of the Scheme will be met and answered with law.
16. The observations made by the Regional Director have been explained by the Petitioners in paragraph 9 to 15 above. The clarifications and undertakings given by the Petitioner Companies with regard to observations of RD, are hereby accepted.
17. The Official Liquidator has filed his report on 03rd February, 2018 in the Company Scheme Petition No. 854 and 855 of 2017 inter-alia, 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 without winding up by this Hon'ble Tribunal.
18. 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.
19. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 854 and 855 of 2017 has been made absolute in terms of prayer of the respective petition mentioned therein.
20. The Petitioner Company are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to the physical copy as per the relevant provisions of Companies Act, 2013.
21. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified 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 certified copy of the order.

22. 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.
23. All concerned regulatory 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.
24. 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)