

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

CSP 821/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. DKS Advisory Services Private Limited  
..... Petitioner Company  
(1<sup>st</sup> Transferor Company)

Order delivered on: 22.01.2018

**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. M/s. Rajesh Shah & Co. – Advocate for the Petitioners.

**For the Regional Director :**

Mr. Ramesh Gholap – Dy. Registrar (WR).

*Per : Bhaskara Pantula Mohan, Member (J)*

**ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Merger by Absorption (hereinafter as **Scheme**) between M/s. DKS Advisory Services Private Limited (1<sup>st</sup> Transferor Company) and M/s. SJD Advisory Services Private Limited (2<sup>nd</sup> Transferor Company) with M/s. South West Mining Limited.
2. It is stated that, the 2<sup>nd</sup> Transferor Company and the Transferee Company both are registered with the RoC, Bengaluru, State of Karnataka and with regard to those Companies the necessary Petition is filed with the NCLT, Bengaluru for sanction of the Scheme.
3. The Transferor Company and the Transferee Company have approved the said Scheme by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.

*Mr. Ramesh Gholap :*

4. The First and Second Transferor Company are engaged in the business of providing advisory services.
5. The Transferee Company at present is engaged in the business of mining.
6. The merger of the First Transferor Company and the Second Transferor Company with the Transferee Company is with a view to simplify corporate structure, elimination of holding through multiple entity i.e. streamlining promoter holding and rationalization of management and other operating expenses.
7. The Authorised Share Capital of the First Transferor Company is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each whereas the Issued Share capital is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each and the Subscribed and Paid Up Share capital is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each, fully paid up.
8. The Authorised Share Capital of the Second Transferor Company is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each whereas the Issued Share capital is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each and the Subscribed and Paid Up Share capital is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each, fully paid up.
9. The Authorised Share Capital of the Transferee Company is ₹ 1,00,00,00,000/- comprising of 10,00,00,000 equity shares of ₹ 10/- each whereas the Issued Share capital is ₹ 56,48,07,000/- comprising of 5,64,80,700 equity shares of ₹ 10/- each and the Subscribed and Paid Up Share capital is ₹ 56,48,07,000/- comprising of 5,64,80,700 equity shares of ₹ 10/- each, fully paid up.
10. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
  - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company 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 a Report on 04.01.2018 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 (1) to (5) of the said Report, the Regional Director has stated that:-

1. *"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 Income Tax Authority to scrutinize the tax returns filed by the transferee Company, after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*

2. *Transferor Company 2 and Transferee Company are registered with ROC Karnataka and therefore, the sanction of the scheme is subject to the sanction of the Hon'ble Tribunal at Bengaluru.*

3. *ROC and Regional Director has observed that there are no employees in both the transferor companies. In this regard, petitioner companies have to clarify the same.*

4. *Petitioner Companies have to undertake to comply with Accounting Standard 14 as notified under section 133 of the Act, 2013.*

5. *Petitioner Companies have not proposed for combination of the authorized share capital of the transferor companies. In this regard, petitioner companies have to clarify the same and further undertake to comply with section 232(3)(i) of Companies Act, 2013."*

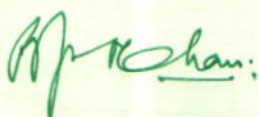
c) Apropos observations made in paragraph IV (1) of the Report of the Regional Director is concerned, it is stated that the Transferee Company will comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

d) Apropos observations made in paragraph IV (2) of the Report of the Regional Director is concerned, it is submitted that the sanction of the Scheme by this Tribunal is conditional upon the sanction of the Hon'ble Tribunal at Bengaluru.

*M. K. Chann:*

- e) Apropos observations made in paragraph IV (3) of the Report of the Regional Director is concerned, it is submitted that there are no staff/ workmen/ employees in employment with the Transferor Companies.
  - f) Apropos observations made in paragraph IV (4) of the Report of the Regional Director is concerned, it is stated that the Transferee Company will comply with Accounting Standard - 14. Further, the Transferee Company will pass such accounting entries as may be necessary in connection with the Scheme to comply with other Accounting Standards such as Accounting Standard - 5, etc. to the extent applicable.
  - g) Apropos observations made in paragraph IV (5) of the Report of the Regional Director is concerned, it is stated that the Transferee Company has sufficient share capital and does not wish to combine the Authorized share capital of the Transferor Companies.
  - h) The Official Liquidator, Mumbai has filed his report dated 23.10.2017 in respect of the 1<sup>st</sup> Transferor Company and stating therein that, the affairs of the 1<sup>st</sup> Transferor Company have been conducted in a proper manner and accordingly the Transferor Company may be ordered to dissolve without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.
  - i) It is further submitted that, no objector has approached neither to the Petitioners nor before Tribunal, to oppose this Scheme.
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, **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) Presently, the entire Issued, Subscribed and Paid Up Share Capital of the 2<sup>nd</sup> Transferor Company is held by the 1<sup>st</sup> Transferor Company hence, in lieu of consideration of the Scheme no Share of the Transferee Company shall be issued and allotted to the 2<sup>nd</sup> Transferor Company as the 1<sup>st</sup> Transferor Company will cease to exit after sanctioning of the Scheme.
- d) Hence, in lieu of the consideration of the Scheme, 5,64,80,700 equity shares of the Transferee Company of ₹ 10/- each shall be issued and allotted to all the shareholders of the 1<sup>st</sup> Transferor Company in proportion of their holdings in the 1<sup>st</sup> Transferor Company.
- e) The reduction of share capital of the Transferee Company as provided in the Scheme shall operate as an integral part of the Scheme and this Order of the NCLT shall be deemed to be also the Order for the purpose of confirming the reduction.
- f) 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.
- g) 1<sup>st</sup> Transferor company is to be dissolve without winding-up after Scheme becomes effective. The dissolution of the 2<sup>nd</sup> Transferor Company is subject to sanction of the Scheme by the NCLT, Bengaluru.
- h) Petitioner Companies 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, 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.
- i) The Petitioner Companies to lodge a copy of this Order and the Scheme 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 days from the date of receipt of the Order.



- j) Petitioner Company to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- k) Petitioner Company to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- l) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- m) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- n) Any concerned Authority is at liberty to approach this Bench for any further clarification after sanctioning of the Scheme.
- o) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 31<sup>st</sup> March, 2017.

12. Ordered accordingly. To be consigned to Records.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Dated : 22.01.2018**

Avinash