

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

CSP 777/230-232/NCLT/MB/MAH/2017
CSP 778/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Aaradhak Commercial Ventures Private
Limited

.....Petitioner in CSP 777/2017
(Transferor Company)

M/s. Pee Dee Retail Assets Private Limited

.....Petitioner in CSP 778/2017
(Transferee 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. Hemant Sethi, Advocate i/b. Hemant Sethi & 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. Aaradhak Commercial Ventures Private Limited (Transferor Company) with M/s. Pee Dee Retail Assets Private Limited (Transferee Company).
2. 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.
3. The Transferor Company is engaged in the business of trading of merchandise.

Hemant Sethi:

4. The Transferee Company is engaged in the business of trading and commission of textile & textile items.
5. The proposed Scheme would inter alia have the following benefits:
 - a. Reduction in number of entities leading to simplification of group structure;
 - b. Pooling of resources;
 - c. Enable cost saving and reduction in administrative inefficiencies; and
 - d. Reduction in administrative overheads and enhancing shareholder's value.
6. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company and the Transferee Company is Rs. 1,00,000/- comprising of 10,000 equity shares of Rs. 10/- each, fully paid up.
7. 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 13.10.2017 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 (a) to (g) of the said Report, the Regional Director has stated that:-

"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

a. 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 Standards such as AS-5 (IND AS-8) etc.

b. In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Company may be directed to file a Certified from the Company's Auditor to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting

Standard as prescribed under Section 133 of the Companies Act, 2013.

c. As regards Clause 12.2 of Part III of the Scheme, the Hon'ble Tribunal may kindly direct to the Transferee Company that the determination of fair value of any Asset and Liabilities shall be done in proper way with the consultation /reports of the Experts in such field.

d. 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 the Regional Director (WR) also issued a reminder dt. 05-10-2017.

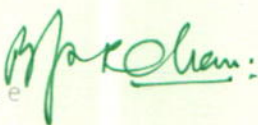
e. The tax implications if any arising out of the Scheme is subject to the final decision of Income tax Authorities. The approval of the Scheme by this Hon'ble Tribunal may not deter the Income tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the Scheme. The decision of the income tax authority is binding on the petitioner company.

f. As the amalgamation is between the Holding Company and its wholly owned Subsidiary Company, the Hon'ble Tribunal may kindly direct the companies involved in the Scheme to file Solvency Certificate with the Registrar of Companies, Mumbai as required u/s 233(1)(c) read with section 233(12) of the Companies Act, 2013 and pass appropriate orders as deem fit.

g. As regards Para No 15 of the Scheme, the Transferee Company may be directed to make compliance of Section 12 of the Companies Act, 2013 and rules made thereunder by filing requisite fees with the Office of Registrar of Companies, Mumbai in respect of alteration of objects of the said company, after the approval of the Scheme by the Hon'ble NCLT.

H. K. Chaudhary:

- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply AS-14 (Ind AS-103), AS-5 (Ind AS-8) and other applicable Accounting Standards.
- d) Apropos observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies have obtained certificate from the Statutory Auditor of the Company and the same has been filed with the Hon'ble Tribunal along with the petition of the Transferee Company as Exhibit E.
- e) Apropos observations made in paragraph IV (c) of the Regional Director is concerned, the Petitioner Companies undertakes to comply with obtaining consultation/report from the expert for the purpose of determining fair valuation of assets and liabilities as on the Appointed Date.
- f) Apropos observations made in paragraph IV (d) of the Report of Regional Director, the Petitioner Companies have complied with the requirements of sending notices to the Income tax authorities.
- g) Apropos observations made in paragraph IV (e) of the Report of Regional Director, the Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act and all tax implications arising out of the Scheme will be met and answered in accordance with applicable law.
- h) Apropos observations made in paragraph IV (f) of the Report of Regional Director, the Petitioner Companies submits that the present petition is filed under sections 230 to 232 of the Companies Act, 2013 and therefore solvency certificate as required under section 233 of the Companies Act, 2013 is not applicable in the present case. Counsel for the Petitioner Companies further submits that the Scheme does not involve any arrangement with any of the creditors of the Petitioner Companies and their rights shall not be prejudiced pursuant to the Scheme.
- i) Apropos observations made in paragraph IV (g) of the Report of Regional Director, the Petitioner Companies undertakes to comply with applicable provisions of Section 12 of the Companies Act, 2013 and rules made thereunder by filing requisite e-forms with the Office of the Registrar of Companies, Mumbai in respect of alteration of objects of the Petitioner Companies.
- j) The Official Liquidator has filed his report dated 01.09.2017 and stating therein that, the affairs of the 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.

- k) It is further submitted that, no objector has approached neither to the Petitioners nor before Tribunal, to oppose this Scheme.
8. 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) Since the entire Share Capital of the Transferor Company is held by the Transferee Company hence, upon Scheme becomes effective the Shares held by the Transferee Company in the Transferor Company shall stand automatically cancelled and no Share shall be issued and allotted by the Transferee Company to in lieu of consideration of the Scheme.
 - d) 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.
 - e) Transferor company is to be dissolved without winding-up after Scheme becomes effective.
 - f) 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.

- g) 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.
 - h) Each Petitioner Companies 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.
 - i) Transferor Company (i.e. Petitioner in CSP No. 777 of 2017) 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.
 - j) 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.
 - k) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
 - l) Any concerned Authority is at liberty to approach this Bench for any further clarification after sanctioning of the Scheme.
 - m) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 15th March, 2017.
9. Ordered accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Dated : 22.01.2018

Avinash

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)