

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

CSP 703/230-232/NCLT/MB/MAH/2017  
CSP 704/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Pee Dee Retail Assets Private Limited  
.....Petitioner in CSP 703/2017  
(Transferor Company)

M/s. Surplus Finvest Private Limited  
.....Petitioner in CSP 704/2017  
(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. Pee Dee Retail Assets Private Limited (Transferor Company) with M/s. Surplus Finvest 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 and distribution activities.
4. The Transferee Company is engaged in the business of fabric trading.

*Bhaskara Pantula Mohan:*



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 ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 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 (c) 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 Petitioner Companies 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.*

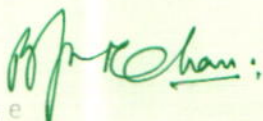
*b. As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the Company vide letter dt. 09.05.2017 has served a copy Company Scheme Application No. 541 and 542 of 2017 along*



*with relevant orders etc. Further this directorate has also issued a reminder on 12.10.2017 to the IT Department.*

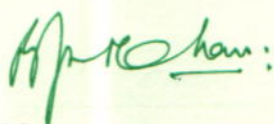
*c. The tax implications if any arising out of the Scheme is subject to the final decision of Income tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income tax Authority to scrutinize the tax return filed by the petitioner companies after giving effect to the Scheme.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

- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies submits that in addition to accounting treatment given in the Scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
  - d) Apropos observations made in paragraph IV (b) of the Report of Regional Director, the Petitioner Companies have complied with the requirements of sending notices to the Income tax authorities;
  - e) Apropos observations made in paragraph IV (c) 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 of Merger (by absorption) will be met and answered in accordance with applicable law.
  - f) The Official Liquidator has filed his report dated 12.10.2017 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.
  - g) 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. 703 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, 31<sup>st</sup> March, 2017.
9. Ordered accordingly. To be consigned to Records.

Sd/-

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

Sd/-

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

**Dated : 22.01.2018**

Avinash