

TCSP NO 158 OF 2017

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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

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Zenith Metaplast (P) Limited

.....Petitioner/Transferee Company

AND

Zigma Laminates and Systems (P) Limited

....Petitioner/Second Transferor Company

In the matter of the Companies Act, 1956 (1 of 1956) and Companies Act, 2013

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions (Sections 230 to 232) of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement and Amalgamation of Zigma Modular Systems Private Limited And Zigma Laminates and Systems (P) Limited (collectively, the "Transferor Companies") With Zenith Metaplast (P) Limited (the "Transferee Company")

Order delivered on 4th January 2018

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V .Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Mr. S Ramakantha, Joint Director in the office of Regional Director

Mr. Parvez Naikwadi Assistant Registrar of Companies, Mumbai

Per: **V .Nallasenapathy , Member (J)**

ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.

2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme Arrangement and Amalgamation of Zigma Modular Systems Private Limited And Zigma Laminates and Systems (P) Limited (collectively, the "Transferor Companies") With Zenith Metaplast (P) Limited (the "Transferee Company") and their respective shareholders.
3. Learned counsel for the Petitioner Companies submit that Zigma Laminates and Systems (P) Limited is engaged in the business of Mfg of Engineering Goods, Modular Furniture and parts thereof, Particle Board Lamination, foil lamination, Press and moulded components etc Zenith Metaplast (P) Limited is engaged in the business of Mfg of engineering goods, Travel goods and luggage's, modular furniture for office, home and schools, electrical control panel, irrigation products, writing instruments and engineering stationery, tools, moulds, dies, jig and fixtures
4. The rationale for scheme is that the Transferee Company is a well-established Company carrying on business as per its Memorandum of Association. At present, 6,10,000 Equity Shares issued by Zigma Laminates and Systems (P) Limited (one of the Transferor Company) is held by the Applicant Company and its nominees. For the better and more economic and efficient management, control and running of the businesses of the companies concerned. For the optimum growth and development of the businesses of the Transferor Companies and Applicant Company. It will enable the companies concerned to utilization and streamline their management, businesses and finances to their common advantage. It will result in economies of scale, reduction in overheads and other expenses, reduction in administrative and procedural work, elimination of duplication of work, better and more productive utilization of the combined resources of all the companies concerned, enable the amalgamated company to withstand cyclical recession in business and, will enable the undertakings concerned to effect internal economies. It will strengthen and consolidate the position of the amalgamated company and will have beneficial results for the companies concerned, their shareholders and all concerned.
Accordingly the Scheme is considered desirable, and to be in interest of companies, their respective shareholders and other stakeholders (including employees) and would benefit all the stakeholders.
5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the board resolutions which are annexed to Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application No. 643 of 2017 of the Hon'ble Tribunal.

7. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.
8. The Regional Director has filed his report dated 12th October 2017, inter alia, stating therein that save and except as stated in paragraph IV of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said report, the Regional Director has stated that:-
- i. *The tax implication if any arising out of the scheme is subject to final decision of the 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.*
 - ii. *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;*
 - iii. *ROC Mumbai in their report dated 29.08.2017 inter alia mentioned that with reference to para no. 11 and 11.4 of the scheme, record date is not fixed and hence the same should be fixed before sanctioned of the scheme. Further mentioned that, with reference to the para no. 12.2. of the scheme, it should follow "Pooling of Interest Method" as all applicable conditions are met.*
 - iv. *It is submitted that the Petitioner Companies have not submitted the proof of serving the notice to Income Tax Authorities dated 25.07.2017.*
In this regard petitioner has to submit the proof as per the provision of the section 230(5) of the Act 2013.
 - v. *Certificate stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 read with Rules not submitted. In this regards petitioners to undertake to submit the same.*
 - vi. *Is submitted that in the petition there is no Part-1, Part-1 Starts with no.4. there are no serial no 10 to 12. After serial number 14, 11 appears in page no. 15. in this regards, petitioner companies have to undertake to clarify the same.*

9. As far as the observation made in paragraph IV (i) of the report of Regional Director is concerned, the Petitioner Companies through their 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.
10. As far as the observations made in paragraph IV (ii) of the report of Regional Director is concerned, the Transferee Company undertakes that it will comply AS-14 (IND AS-103) and 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).
11. As far as the observation made in paragraph IV (iii) of the report of Regional Director is concerned, the Counsel for the Petitioners clarify that post giving effect to the scheme, the Transferee Company shall fix record date for the purpose of identifying shareholders of the Transferor Companies who shall be entitled to shares in the Transferee Company as per the exchange ratio. The Counsel for the Petitioners further clarify that the Transferee Company will follow AS-14 pooling of Interest Method of accounting which has been unanimously approved by the Board of the respective Companies and the Shareholders.
12. As far as the observation made in paragraph IV (iv & v) of the report of Regional Director is concerned, the Counsel for the Petitioners submit that report of auditors as required under section 133 of the Companies Act, 2013 and proof of service of notice to Income Tax department has been submitted to the office of Regional Director by letter dated 2nd January 2017.
13. As far as the observation made in paragraph IV (vi) of the report of Regional Director is concerned, the Counsel for the Petitioners submit that Part-I of the Scheme is at internal page 1 of the scheme. Similarly Part-II is at internal page 4 of the Scheme.
14. The observations made by the Regional Director in his affidavit have been explained by the Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. The Official Liquidator has filed his report in Transferred Company Scheme Petition Nos. 159 of 2017 inter alia, stating therein that the affairs of Zigma Laminates and Systems (P) Limited has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without winding up by the Hon'ble Tribunal.
16. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.

17. Since all the requisite statutory compliances have been fulfilled, the Transferred Company Scheme Petition No.158 & 159 of 2017 are made absolute in terms of prayer clauses (a) of the respective petitions. .
18. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the Order duly certified by the Deputy Director or Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.
19. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Director or the Assistant Registrar, of the 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 a period of 60 days from the date of receipt of the Order.
20. The Transferor Companies and the Transferee Company to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Company to pay costs of Rs. 25,000/- each to the Official Liquidator. Costs to be paid within four weeks from the date of the receipt of the duly certified copy of this order.
21. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director or the Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)

Date: 4.1.2018