

**NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.**

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**BEFORE NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD.**

**COMPANY PETITION No. 96 OF 2017**

(Under sections 230, 231 & 232 of the Companies Act, 2013)

**CORAM: SRI H.P. CHATURVEDI, MEMBER (Judicial)**

**IN THE MATTER OF**

Indian toners and Developers Limited,  
having its registered office at 10.5 Km.  
Milestone, Rampur-Bareilly Road,  
Rampur, Uttar Pradesh

-----Transferee Company / Applicant

**And in the matter between**

**AND**

ITDL Imagetec Limited,  
having its registered office  
At 1224, DLF Tower 'B' Jasola,  
New Delhi-110025.

-----Transferor Company

**AND**

ABC Commercial Company Limited,  
having its registered office  
At 1224, DLF Tower 'B' Jasola,  
New Delhi-110025.

-----Transferor Company-2

**AND**

Alankar Securities Private Limited,  
having its registered office  
At 110-D, Kamla Nagar,  
New Delhi-110007.

-----Transferor Company-3

**AND**

Trivini Securities Private Limited  
having its registered office  
At 11-D, Kamla Nagar,  
New Delhi-110007.

-----Transferor Company-4

**AND**

Mahavir Prototech Private Limited,  
having its registered office  
At 1224, DLF Tower 'B' Jasola,  
New Delhi-110025.

-----Transferor Company-5

**PRESENT:** Sri Shahid Kazmi, Advocate for petitioner company  
and Sri M.K. Bagri, OL for Central Government.






**ORDER****(Pronounced on 09.05.2017)**

The instant company petition is filed under Sections 230, 231 and 232 of the Companies Act, 2013 seeking prayer for sanction of the proposed scheme of arrangement for amalgamation of transferor company with the transferee company being the petitioner company. The present company petition is connected with earlier Company Application No. (M) 27 of 2016 filed before the Hon'ble Allahabad High Court. The arrangement for amalgamation as proposed among following companies (hereinafter to be named as transferor companies) with the transferee company Indian Toner Developers Limited, are as under:

- (i). ITDL Imagetec Limited
- (ii). ABC Commercial Company Limited.
- (iii). Alankar Securities Private Limited.
- (iv). Triveni Securities Private Limited.
- (v). mahavir Prototech Private Limited.

As per the proposed scheme of arrangement of amalgamation the whole business and undertaking of transferor companies is proposed to be merged with the transferee company. Such amalgamation shall take effect from the appointed date as prescribed / defined in the scheme of arrangement of amalgamation.

It is also stated that as per the scheme all the assets, liabilities, proceedings, interest of the transferor companies subject to all charges if any existing on such assets as well as all applications concerning the same and any part thereof on the appointed date shall deemed to have been vested with the transferee company pursuant to the provision of Sections 391, 392 & 394 of the Companies Act, 1956 read with corresponding provision of the present Company Act, 2013. It is also stated that all the assets, liabilities without further act and deed are proposed to be merged with and vested in the transferee company (e.g. with the Indian Toners and Developers Limited) without being wound up, with effect from the appointed date. It is also stated that the transferor and transferee company are agreed to and abide by changes in share exchange ratio as may be decided by this Tribunal. The share exchange ratio






has been determined in accordance with share valuation reports in respect of the transferor companies and transferee company. The valuation report of share exchange ratio is prepared by one M/s. AARA & Company, Chartered Accountant, as per the settled principle of valuation. The same was submitted to Board of Directors of the respective companies who in turn also approved it.

The main object and purpose for the proposed amalgamation as stated in the company petition may be reproduced hereinbelow:

*".....with a view to optimally utilize the available resources, assets and facilities and to enhance the competitive strength of the merged entity and to carry out the operations as part of unified entity and to avail the benefits of economies have initiated integration of the entities by consolidating the business enterprises.*

*Board of Directors of the transferor and transferee companies are also of the opinion that the business of the companies could be carried out more profitably and in an economical manner if the companies are amalgamated and that it will be advantageous to consolidate the business and achieve rationalization of the management structure and economies of scale for further stable growth and expansion. The amalgamation would also enable consolidation and further expansion of the transferee company. The amalgamation will contribute in furthering and fulfilling the objectives and business strategies of all the companies thereby accelerating growth, expansion and development of their business....."*

The petitioner company further informs that the transferee company Indian Toner and Developers Limited is a widely listed company therefore, it applied to the Stock Exchange (BSE) as well as to the SEBI for obtaining their no objection / observations in respect of the proposed scheme. It is reported that the BSE vide its letter dated 15.06.2016, provided its observation letter (No Objection) confirming the present scheme of arrangement for amalgamation. It is also informed that scheme of amalgamation has already been approved and recommended by the Board of Directors of respective companies and their decision was duly communicated to the Hon'ble High Court, Allahabad in the CA No. 27 (M) of 2016. It is also informed that the transferee company is having one secured creditors and three unsecured creditors all of them have expressed their consent in writing to the scheme of arrangement. Their no objection letters with relevant certificates are duly certified and issued by a chartered accountant and collectively has been with Misc. Application No. 27 of 2017.






In addition to the above, the transferee company being a widely listed company and having around 13531 shareholders conducted voting of its public shareholders through postal ballots and e-voting and through this voting they have approved the proposed scheme for merger amalgamation / expressing their no objection and ratified the resolution passed by the Board of Directors of the transferee company / transferor companies. Such result has further been communicated to the respective Hon'ble High Courts i.e. Hon'ble Allahabad High Court and Hon'ble Delhi High Court. It is also submitted that the object incidentally or ancillary to the attainment of the main object of memorandum of association of the transferee company and transferor companies permit for such merger & amalgamation. It is also stated that the Directors of the transferor companies and the transferee company, their relatives are having no material interest in the proposed scheme of amalgamation except to the extent of their shareholdings. The transferee company and transferor companies have neither issued nor agreed to issue any debenture and as such there is no proceeding pending under the provision of Sections 235 to 251 of the Companies Act, 1956 read with relevant corresponding provisions of Companies Act, 2013 against the company. Therefore, the petitioner transferee company makes such request stating inter alia that the proposed scheme of amalgamation would be in the interest of the transferee company and their respective shareholders, as well as to the public interest, therefore, the scheme of amalgamation as proposed be approved and sanctioned with or without modification by this Tribunal.

For the same of convenience the resolution as passed by the transferee company in respect of the proposed amalgamation is reproduced hereinbelow:

*".....The extract of the resolution passed by the shareholders of the transferee company is as under:*

*Resolved that pursuant to the provisions of Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 and / or under the corresponding provisions of the Companies Act, 2013, the rules, circulars and notifications made thereunder (including any statutory modification or re-enactment thereof) as may be applicable, the Securities and Exchange Board of India Circular No. CIR/CFD/CMD/16/2015 dated 30.11.2015, Regulation 44 of SEBI (Listing obligations and*






*Disclosure Requirements), 2015 the observations letter issued by BSE Limited dated 15.06.2016 and relevant provisions of applicable laws and subject to the approval of the Hon'ble High Court of Judicature at Delhi and the Hon'ble High Court of Judicature at Allahabad and subject to all such conditions and modifications as the case may be prescribed or imposed by the Hon'ble High Court of Judicature at Delhi / Allahabad while granting such approvals, permissions and sanctions, which may be agreed to by the company, the consent of the member be and is hereby accorded to the Amalgamation of ITDL Imagetec Limited (transferor company 1), ABC Commercial Company Limited (transferor company 2), Alankar Securities Private Limited (transferor company 3), Triveni Securities Private Limited (transferor company 4) and Mahavir Phototech Private Limited (transferor company 5) with Indian Toners & Developers Limited (Transferee Company).*

*Resolved further that for the purpose of giving effect to the above resolution and for removal of any difficulties or doubts, the Board of Directors of the transferee company (herein referred to as the 'Board', which term shall be deemed to include any committee or any persons(s) which the Board may constitute or nominate to exercise its powers, including the powers conferred under this resolution), be and is hereby authorised to do all such acts, deeds, matters and things as it may, in its absolute discretion, deem necessary, expedient, usual or proper, and to settle any questions or difficulties or doubts that may arise, including passing of such accounting entries and / or making such adjustments in the books of accounts as considered necessary to give effect to the above resolution, or to carry out such deletions / modifications / directions as may be required and / or imposed by the High Court of Judicature at Delhi and / or the High Court of Judicature at Allahabad while sanctioning the scheme, or by any other authorities under applicable law, to give effect to his resolution....."*

It is also matter of record that necessary decision has been taken by the shareholders of the transferee company / transferor companies by confirming the sanction of the proposed scheme and such is taken in pursuance of result of the voting amongst shareholders which were conducted through postal ballots and e-voting. The result of the same has also been published in the newspaper (e.g. business standard English and Hindi version) and copy thereof are annexed with the present company petition / application.

We considered the above stated averments made by the transferee company in the present company petition and perused the documents annexed therewith including the company Application No. 27 filed before the Hon'ble Allahabad High Court. It is a matter of record that the Central Government through the office of the Regional Director (Northern Region) has filed its representation / affidavit dated 23.03.2017 in respect of the present company scheme petition. The RD has pleased to make certain observation therein to be complied with by the petitioner companies and to be considered by this Tribunal while sanctioning of the proposed scheme. The RD in his






affidavit further referred to the report submitted by the Registrar of Companies mentioning about share exchange ratio among transferor and transferee companies (as stated in para 15) of his affidavit. The RD has pointed out that the transferee company, upon the scheme becoming effective for the amalgamation of the transferor companies shall be accounted as per the accounting for amalgamation prescribed under the Companies (accounting standard) Rules, 2006 issued by the Ministry of Corporate Affairs as amended from time to time. The RD also informed in his affidavit about the certain provisions of the scheme stating inter alia that as per Clause V of Part-III of the scheme ***“on occurrence of the effective date the transferor companies shall without any further act or deed stand dissolved without being winding up.*”**

He further informed that as per Clause VI of Part II of the scheme on occurrence of the effective date, all persons those were employed by the transferor companies, immediately before such date shall become employee of the transferee company with the benefit of continuity in their service on same terms and conditions as were applicable to such employees of transferor transferee company immediately prior to such transfer and without any break in or interruption in their service. The above stated observations of the RD are carefully considered for the purpose of sanction of the proposed scheme.

We have heard the argument of Sri Shahid Kazmi learned counsel representing the petitioner / transferee company as well as of Sri M.K. Bagri, learned OL representing the Central Government.

The learned OL has contended that the proposed scheme for amalgamation is to be considered on its merits provided that the observations / comments made by the RD in his affidavit be complied with or subject to furnishing of necessary undertaking by the petitioner company. Thus it may be seen that there is no specific objection of serious nature against sanctioned of the proposed scheme except the certain comments / observations of the R.D. made his affidavit as pointed out by the learned OL.





Responding to the above contention the petitioner counsel duly clarified contending such that the authorised signatory of the transferee company Sri Dilip Kumar Rastogi has filed reply / affidavit dated 04.04.2017 replying to the RD's affidavit by clarifying the issue raised by the RD. He has also given an undertaking to comply with all statutory requirement as per the provisions of the Companies Act and other statutory / Regulatory Laws. The petitioner company in its affidavit has further assured that it shall be treated, and be accounted as per the accounting standard 14 as prescribed in the companies accounting standard Rules, 2006. The authorised signatory further deposed that the petitioner company neither has been investigated under Sections 235/237 of the Companies Act nor under section 209-A of the Companies Act, 1956. He further informed that no prosecution proceedings are pending against the petitioner company and / or against its Directors for alleged violation of laws e.g. under the Companies Act FEMA, IPC, SEBI, RBI etc. nor the company fall's under any of the provisions / guidelines of FTPB and RBI. It is clarified that there are no pending Tax liabilities towards Income Tax Act, Sales Tax or / other Government Taxes / liability towards the benefit of the employees and workers nor there is any amount due or required to be transferred to the investor Education or production fund establish under section 205 (C) of the Companies Act, 1956. The above stated affidavit is taken on record and is duly considered.

Having heard the above stated submission of Sri Shahid Kazmi the petitioner counsel and of Sri M.K. Bagri, learned OL and by perusal of the records of the case, we find that there is no adverse material except some observation / comments made by the RD / ROC, is available on record against sanction of the proposed scheme. The above stated comments / observation are complied with or has been undertaken to be complied with. Therefore, the present scheme of amalgamation, appears to reasonable and deserves to be sanctioned.

For the sake of convenience the prayer sought for in the petition in terms of its prayer clause is being reproduce hereinbelow:



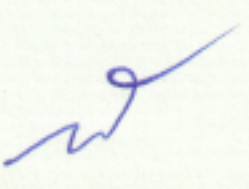
*"a. That the said scheme of arrangement of amalgamation may be sanctioned by the tribunal as to be binding on all the members, creditors and all the concerned parties of the petitioner company and on the petitioner company...."*

Considering the above stated grounds / reasons and having heard the submissions of the Learned Counsel Shri Shahid Kazmi, for Petitioner Companies and Shri M.K Bagri learned Official Liquidator representing Central Government and by perusal of the material available on record, the proposed Scheme appears to be reasonable and fair and is not violative of any provision of Law nor contrary to Public Policy nor detrimental to the interest of public at large.

Further all the statutory compliance seems to have been complied with or further undertaken to be complied with by Petitioner Companies. Therefore, Company Scheme Petition filed by the Petitioner is made absolute in terms of its Prayer Clause. Accordingly, the Company Scheme of Amalgamation between INDIAN TONNERS AND DEVELOPERS LIMITED (*Transferee / Applicant Company*) and ITDL IMAGETEC LIMITED (*Transferor Company -1*) and ABC COMMERCIAL COMPANY LIMITED (*Transferor Company -2*) and ALANKAR SECURITIES PRIVATE LIMITED (*Transferor Company -3*) and TRIVENI SECURITIES PRIVATE LIMITED (*Transferor Company -4*) and MAHAVIR PHOTOTECH PRIVATE LIMITED (*Transferor Company -5*) is sanctioned.

Further a cost of Rs. 15,000/- is awarded in favour of the Central Government through the office of Regional Director (N.R.) towards legal expenses incurred which is payable by the company within four weeks from the receipt of authentic copy of this order.

The Petitioner Company to serve a copy of this order along with Scheme of Amalgamation to the office of Registrar of Companies (Northern Region) and also to communicate the office of superintendent of stamp of the UP State Government, for the purpose of adjudication of stamp duty if payable / if required within 60 days of receipt of this order.





Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal to the Scheme will not come in the way of action being taken, albeit, in accordance with the Law, against the concerned persons, directors and officials of Petitioner Companies.

While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of taxes or any other charges, if any, and payment in accordance with Law or in respect to any permission/ compliance with any other requirement which may be specifically required under any Law.

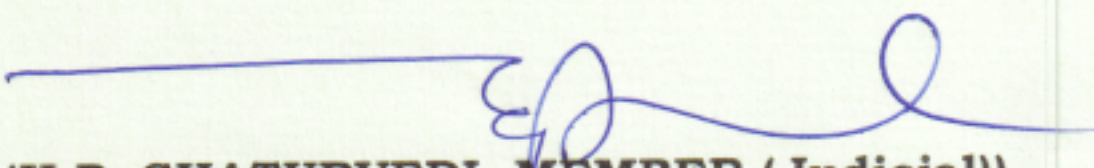
The counsel of the company to furnish a copy of draft order of sanction of the Scheme as per the prescribed format under Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication by the Registry of this Tribunal.

The parties to act upon as per operative portion of the order and to take necessary steps as per the provisions of Companies Act and Rules.

All concerned regulatory authorities may act on a copy of this order along with the Scheme duly authenticated by the Asst. Registrar, National Company Law Tribunal, Allahabad Bench.

Accordingly Petition stands disposed of.

**Order Date :** 09.05.2017  
**Sharad Srivastava**

  
**(H.P. CHATURVEDI, MEMBER (Judicial))**

9/05/2017