

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

COMPANY PETITION NO.12 OF 2016

IN

COMPANY APPLICATION NO.9 OF 2016
(UNDER SECTION 391/394 OF COMPANIES ACT, 1956)

IN THE MATTER OF

AMPEE LABORATORIES (INDIA) LTD.

Regd. Office: 728/4, Netaji Nagar, PAC Turn,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 1

ASIAN PACIFIC CONTINENTAL PVT. LTD.

Regd. Office: 26/X-1 Krishna Nagar,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 2

CERASTIUM PROPMART PVT. LTD.

Regd. Office: H-1/4, Krishna Puram, G.T. Road,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 3

DEVBHUMI TRADECOM PVT. LTD.

Regd. Office: 72-C Block, Shyam Nagar,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 4

H R V INTERNATIONAL PVT. LTD.

Regd. Office: H-1/4, Krishna Puram, G.T. Road,
Harjinder Nagar, Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 5

JAYANT TEXTILES PVT. LTD.

Regd. Office: 117/396, O Block Geeta Nagar,
Kanpur 208 025, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 6

MAC GLASSES PVT. LTD.

Regd. Office: 81/84, K Shri Sadan
Dhankutti, Kanpur 208 001, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 7

NAV CHETNA MERCANTILES LTD.

Regd. Office: 117/9/24-B, Rani Ganj,
Kanpur 208 005, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 8

NAV NIRMAN MERCANTILES LTD.

Regd. Office: 127/N-2, Road Lal Banglow,
Kanpur 208 002, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 9



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H R V INTERNATIONAL PVT. LTD.

Regd. Office: 19/X-1, Krishna Puram,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 10

ON LINE INDIA T.V. NEWS LTD.

Regd. Office: 19/X-1, Krishna Puram,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 11

SACHIN INDUSTRIAL CONSULTANTS PVT. LTD.

Regd. Office: 728/4, Netaji Nagar, PAC Turn,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 12

SHREE GANPATI MULTI-FAB PVT. LTD.

Regd. Office: H/X-1, Krishna Puram, G.T. Road,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 13

SYGNUS TEN TRADECOM PVT. LTD.

Regd. Office: 7/40, Tilak Nagar,
Kanpur 208 002, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 14

SYNERGY INFOTRADES PVT. LTD.

Regd. Office: 728, Netaji Nagar, PAC Turn,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFEROR'S COMPANY NO. 15

WITH

DIVYA TRADE IMPEX PVT. LTD.

Regd. Office: 19/X-1, Krishna Puram, G.T. Road,
Kanpur 208 007, Uttar Pradesh

PETITIONER/TRANSFeree COMPANY

JUDGMENT/ORDER DELIVERED ON 21.12.2017



CORAM

: Sh. Harihar Prakash Chaturvedi, Member(J)

FOR THE PETITIONER

**: Sh. Rajeev Goel, Advocate alongwith
Sh. Ankit Kumar Singh, PCS**

FOR THE CENTRAL GOVT : Sh. M.K. Bagri, OL

PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

ORDER/JUDGMENT

1. The present company petition was filed under Section 391/394 of the Companies Act, 1956 by the petitioner companies before the Hon'ble Allahabad High Court for seeking prayer to sanction the Company Scheme of Arrangement as proposed between *Amalgamation of Ampee Laboratories (India) Ltd., Asian Pacific Continental Pvt. Ltd., Cerastium Propmart Pvt. Ltd., Devbhumi Tradecom Pvt. Ltd., H R V International Pvt. Ltd., Jayant Textiles Pvt. Ltd., Mac Glasses Pvt. Ltd., Nav Chetna Mercantiles Ltd., Nav Nirman Mercantiles Ltd., H R V International Pvt. Ltd., On Line India T.V. News Ltd., Sachin Industrial Consultants Pvt. Ltd., Shree Ganpati Multi-Fab Pvt. Ltd., Sygnus Ten Tradecom Pvt. Ltd. and Synergy Infotrades Pvt. Ltd. (Petitioner Transferor's Companies 1 to 15) with Divya Trade Impex Pvt. Ltd. (Petitioner Transferee Company).*
2. The petitioner companies through the present company petition have stated that the Proposed Company Scheme of Arrangement has been approved by its Board of Directors & Shareholders in their respective meeting held on **14.01.2016.**
3. As per the present Company Scheme, the appointed date for amalgamation is 01.04.2015.
4. The present Company Scheme proposes certain measures and action to be taken in respect of the present composite scheme of arrangement among the petitioner companies which may be stated as under:-



- i. All assets and liabilities including Income Tax and all other statutory liabilities, if any, of the Transferor's Companies will be transferred to and vest in the Transferee Company.
- ii. All the employees of the Transferor's Companies in service, if any, from the effective date, shall become the employees of the Transferee Company without any break or interruption in service and upon such terms and conditions not less favorable than those subsisting in the concerned Transferor's Company on the said date.
- iii. The appointed date for Amalgamation would be 1st April, 2015 or such other date, as the Hon'ble High Court(s) may approve.
- iv. The Share Exchange Ratio for the Arrangement would be:
 - a. The Transferee Company will issue 127 (one hundred twenty seven) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.1-**Ampee Laboratories (India) Ltd.**
 - b. The Transferee Company will issue 95 (ninety five) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.2-**Asian Pacific Continental Pvt. Ltd.**
 - c. The Transferee Company will issue 119 (one hundred nineteen) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.3-**Cerastium Propmart Pvt. Ltd.**



- d. The Transferee Company will issue 26 (twenty six) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.4-**Devbhumi Tradecom Pvt. Ltd.**
- e. The Transferee Company will issue 66 (sixty six) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.5-**H R V International Pvt. Ltd.**
- f. The Transferee Company will issue 162 (one hundred sixty two) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.6-**Jayant Textiles Pvt. Ltd.**
- g. The Transferee Company will issue 793 (seven hundred ninety three) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.100 each held in the Transferor's Company No.7-**Mac Glasses Pvt. Ltd.**
- h. The Transferee Company will issue 206 (two hundred and six) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.8-**Nav Chetna Mercantiles Ltd.**
- i. The Transferee Company will issue 148 (one hundred forty eight) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.9-**Nav Nirman Mercantiles Ltd.**



- j. The Transferee Company will issue 127 (one hundred twenty seven) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.**10-H R V International Pvt. Ltd.**
- k. The Transferee Company will issue 38 (thirty eight) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.11-**On Line India T.V. News Ltd.**
- l. The Transferee Company will issue 149 (one hundred forty nine) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.100 each held in the Transferor's Company No.12-**Sachin Industrial Consultants Pvt. Ltd.**
- m. The Transferee Company will issue 163 (one hundred sixty three) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.13-**Shree Ganpati Multi-Fab Pvt. Ltd.**
- n. The Transferee Company will issue 26 (twenty six) Equity Shares of Rs.10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs.10 each held in the Transferor's Company No.14-**Sygnus Ten Tradecom Pvt. Ltd.**
- o. The Transferee Company will issue 1 (one) Equity Share of Rs.10 each, credited as fully paid up, to each of the shareholders of the



Transferor's Company No.15-Synergy Infotrades Pvt. Ltd.,
irrespective of number of shares held by such shareholders.

- v. Post-merger issued and paid up Equity Share Capital of the Transferee Company- Divya Trade Impex Pvt. Ltd. will be re-arranged/reduced to 10% by transferring 90% of its post-merger issued and paid up Equity Share Capital to Securities Premium Account.
5. The circumstances which justify and/or necessitate for the proposed amalgamation of the Transferor's Companies with the Transferee Company as described in the present company petitioner are stated inter alia as under:
- a. All the Transferor's and the Transferee Companies are closely held Group Companies engaged in similar activities. The proposed Amalgamation would result in business synergy, consolidation and pooling off their resources.
 - b. The proposed Amalgamation would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity.
 - c. The proposed Scheme of Arrangement will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.



- d. The said Scheme of Arrangement will contribute in fulfilling and furthering the objects of these Companies. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario.
 - e. The proposed Amalgamation would enhance the shareholders' value of the Transferor's and the Transferee Companies.
 - f. The said Scheme of Arrangement will have beneficial impact on all the Transferor's and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.
6. Further, circumstances which necessitated for the proposed re-arrangement/reduction of post-merger equity capital of the Transferee Company by way of transfer to the Securities Premium Account are described as under:-
- a. Due to disparity in the per-merger NAV and fair value of shares of Transferor's and Transferee Companies, a large number of new shares will be issued by the Transferee Company pursuant to the amalgamation. The Management of the Transferor's Companies and the Transferee Company are of the opinion that post merger capital base of the Transferee Company should be limited to service the same effectively by way of dividend, etc. It is felt that a large capital base of the Transferee Company will not be in the larger interest of the Company and its shareholders.



- b. To enable the Transferee Company to service the capital in better way, management of these Companies have decided that the Transferee Company, after issue of equity shares to the shareholders of the Transferor's Companies, will re-arrange/reduce its post-merger issued and paid up equity share capital to 10% by transferring 90% of its post-merger issued and paid up equity capital to the Securities Premium Account.
 - c. The proposed reduction would not involve either the diminution of any liability in respect of un-paid share capital or the payment to any shareholder of any paid-up share capital, and accordingly, the provisions of section 101(2) of the Act will not be applicable.
 - d. No creditor of the Transferee Company will be adversely affected by the proposed reduction of Share Capital. The Company is merely proposing to re-arrange its share capital by converting part of its post-merger paid up equity share capital into securities premium account.
7. The First Stage Motion in respect of the present case being Company Application No.9 of 2016 was earlier filed before the Hon'ble High Court of Allahabad to seek directions for dispensation with/to convene meetings of Shareholders and the Un-secured Creditors of the Transferor's Companies and of the Transferee Company. It is also stated that Transferor Companies and the Transferee Company have no Secured Creditors. Therefore, the Hon'ble High Court of Allahabad vide its order dated 29th February, 2016, allowed such Company Application and pleased to dispense with the requirement of convening separate meetings of the Shareholders and Un-secured



Creditors of the Transferor's Companies No. 1 to 15 and of the Transferee Company.

8. Thereafter, the Second Stage Motion petition in respect of the sanction of the proposed company scheme of arrangement was moved before the Hon'ble High Court of Allahabad, wherein the Hon'ble High Court vide its order dated 14th March, 2016 was please to direct that notice of the Petition to be issued to the Regional Director, Northern Region; the Official Liquidator attached with the Court and to the Registrar of Companies, Uttar Pradesh & Uttarakhand. A further direction was issued to get published the notice in 'Financial Express' (English, Lucknow Edition) and "Dainik Aaj" (Hindi, Kanpur Edition).
9. The counsel representing the petitioner inform that in compliance with the directions issued therein the Hon'ble High Court's order dated 14th March, 2016 and an affidavit of service and proof of publication has been filed by the petitioners on 2nd May, 2016 by showing compliance regarding service of the petition effected on the Regional Director, Northern Region; the Official Liquidator attached with the Court and the Registrar of Companies, Uttar Pradesh & Uttarakhand and further regarding publication of notice of company petition in the aforesaid newspaper. In support thereof the copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.
10. It is informed that the reports/comments of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; the Registrar of Companies, Uttar Pradesh & Uttarakhand, Kanpur and of the Official Liquidator have been filed before the Hon'ble High Court of Allahabad/this Tribunal.



11. Pursuant to the notice issued, the Official Liquidator sought certain information from the Petitioner Companies. Based on such information supplied to the Ld. Official Liquidator, he filed his report stating such that he did not receive any complaint against the proposed Company Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor's Companies, which are subject matter of dissolution, do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest and has no objection to the dissolution of the Transferor's Companies without winding up.
12. In response to the notice issued in the petition, the Regional Director, Northern Region, Ministry of Corporate Affairs also filed his Affidavit/Report dated 4th May, 2016. The Regional Director submitted that the Petitioner Companies have pointed out that some of the petitioner companies are having some Foreign/NRI Shareholders. Therefore, the petitioner companies should be asked to comply with the applicable provisions of the FIPB/RBI.
13. In response thereto the petitioner companies have filed their Reply/Affidavits dated 16th May, 2016 on the aforesaid observations of the Learned Regional Director. Learned Counsel for the Petitioners clarified and submitted that in the Reply/Affidavit of the petitioner companies, *"they are duty bound to comply with all the applicable provisions of FIPB/RBI/FEMA and they wish to confirm and place on record that all the aforesaid investments are under automatic route and that none of the Petitioner Companies is required to obtain any approval from the FIPB/RBI under FEMA Regulations. Thus, they further confirmed and undertook that all the necessary compliance with*



regard to the Foreign/NRI shareholdings will be made by the concerned Companies”.

14. Further, this Tribunal by its order dated 27th June, 2017, pointed out some concerns with regard to the safeguard/protection of interest of Foreign Shareholders and Creditors of the Transferor's Companies and Transferee Company. In response to the aforesaid order, learned Counsel has filed an additional affidavit with this Tribunal by giving necessary clarifications and submissions. Further, copy of the additional affidavit was duly served to the Regional Director, Northern Region, Ministry of Corporate Affairs on 22nd August, 2017.

15. In response to the additional affidavit of the petitioners, the Regional Director(NR), Ministry of Corporate Affairs has filed his Representation/Affidavit, wherein he stated that none of the Petitioner Companies has any Foreign Creditors, which are duly certified by the Chartered Accountant. Further, all the foreign shareholders of all the Petitioner Transferor's and Transferee Companies, as the case may be, have given their written consent/NOC for the proposed Scheme of Arrangement. Hence, any concern with regard to the protection of the interest of the Foreign Shareholders and Creditors of the Petitioner Companies relating to the proposed Scheme of Arrangement has been satisfactorily answered and interest of foreign investors and creditors are well protected.



16. It has also been clarified and confirmed by way of affidavit that neither the Petitioner Companies nor their Legal Counsel received any objection/representation from any person against the Petition or the proposed

Scheme of Arrangement. Affidavit to this effect have been filed by the Petitioner Transferee Company, dated 13th November, 2017.

17. In view of the aforesaid clarifications and undertakings given by the petitioners and the points raised by the Regional Director stands replied. In view of the above stated clarifications/undertakings given by the petitioners, further the proposed Company Scheme did not receive any objection from any quarter against its sanction. Therefore, we do not find any impediment for sanction of the proposed Scheme of Arrangement.
18. Thus, In the light of the above stated factual position of the Companies and of the Proposed Company Scheme all the Statutory compliance either seems to have been complied with or, have been undertaken further to be complied with by Petitioner Companies as per their undertaking given in the Affidavit. Hence, the present Company Scheme seems to be reasonable and fair and in conformity with statutory provisions and the proposed company scheme deserves approval.
19. In view of the above, the present company petition is allowed in terms of its prayer clause. Consequently, the proposed Company Scheme of Arrangement/Amalgamation as annexed with the present Company Petition is hereby accorded sanction, and to be acted upon as per the terms and condition stipulated therein by the petitioner.
20. Consequent upon approval and sanction of the present Company Scheme, all the properties, rights and powers of the Transferor's Company shall be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of Act, be transferred to and vested in the Transferee Company for all intents and interest of the



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Transferor's Company therein but subject nevertheless to all charges now affecting the same.

21. All the liabilities of the Transferor's Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company.
22. Notwithstanding the above, while sanctioning the above Company Scheme, we make it clear that our order should not be meant in any way for granting exemption from payment of stamp duty, taxes. Statutory charges or other payment in accordance with law or to seek relaxation, compliance with any other requirement which may be specifically required under the law.
23. That Petitioner Companies shall within thirty days of the date of the receipt of a certified copy of this order to cause to be delivered to the Registrar of Companies for registration of the company scheme and the Transferor's Companies on delivery of such certified copy to the ROC shall deemed to be dissolved. The Registrar of Companies shall place all documents relating to the Transferor's Companies and registered with him on file kept by him in relation to the Transferee Company and files relating to the Petitioner Companies shall be consolidated accordingly.
24. Further, the petitioner transferor company is directed to make a payment of cost of Rs.3,000/- each (Rupees Three Thousand each) in favour of the Central Government payable to the Registrar of Companies, Kanpur within four weeks from the receipt of an authentic copy of this order.



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25. The Petitioner counsel to furnish a copy of draft order of sanction of the Scheme in the prescribed format under Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication to be made by the Registry of this Tribunal.
26. The authentic copy of this order as annexed with the present Company Scheme and duly authenticated by the Registry of this Tribunal to be acted upon by all the concerns.



Dated: 21.12.2017

Typed by:
Kavya Prakash Srivastava -
(Stenographer)

**H.P. Chaturvedi,
Member (Judicial)**