

Companies(Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, 'Rules') for the sanction of Scheme of Amalgamation (for brevity 'Scheme') of Shivam Portfolio Management Private Limited (Transferor Company) with Madhav Udyog Private Limited (Transferee Company). The joint petition is maintainable in terms of Rule 3(2) of the Rules. Both the companies are profit making companies as submitted by the learned counsel for the petitioners. It is further submitted that management of both the companies is common.

2. Petitioner-Companies filed first motion petition CA (CAA) No. 14/Chd/Pb/2017 before this Tribunal for seeking dispensation of meetings of equity shareholders, secured and unsecured creditors of both the Petitioner Companies. The meeting of the shareholders of both the companies was dispensed with and there being no secured and unsecured creditors of these companies, there was nothing to call and convene their meeting. Copy of the order dated 22.09.2017 passed in the First Motion Petition is at Annexure A-16. The first motion application was allowed giving liberty to the petitioner companies to file second motion petition with the direction that the applicant companies through their authorised representatives shall file specific affidavit with the second motion petition stating therein about the sectoral regulators in respect of the respective company with a further direction to make a specific prayer in the second motion petition for sending notices to the Central Government, Registrar of Companies, Income Tax Authorities and the Official Liquidator by disclosing the PAN numbers of both the companies in the title of

the second motion petition so as to provide the proper opportunity to the Income Tax Authorities to respond.

3. When the matter was listed on 10.10.2017 following order was passed:-

“The matter be listed for hearing on 29.11.2017. Notice of the hearing be advertised in the Dailies ‘Indian Express’ (English) and ‘Akali Patrika’ (Punjabi), both Punjab Editions not less than 10 days before the date fixed for hearing. Notice of this petition be also issued to the Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, Registrar of Companies, Punjab & Chandigarh, Commissioner(s) of Income Tax where the petitioner companies are assessed by describing their PAN numbers, the Official Liquidator by Speed Post and the petitioner shall file compliance affidavit alongwith copies of the newspaper publications, postal receipts and track reports at least two days before the date fixed. Notices be sent by attaching copy of petition alongwith entire paper book, the Scheme, explanatory statement and the disclosures as required by Rule 6 of the Rules. The company shall supply copy of the proposed Scheme to any member or creditor of the company, if any, free of charge, within one day from the date when such request is made. Notice be also got published in the Official Gazette of the Official Liquidator.

Learned counsel for petitioners states that affidavits of authorized representatives of the petitioner-companies have been attached stating that there is no other sectoral regulator in respect of petitioner-companies.

Compliance affidavits of the authorized representatives of the petitioner-companies be filed at least two days before the date fixed stating the objections, if any, received by the companies to the proposed Scheme after the publication of the notice in the newspapers aforesaid. The Registry is directed to make a report two days before the date fixed as to whether any representation/objection has been received in this Tribunal against the proposed Scheme from any quarter.”

4. Learned counsel for the petitioners submits that petitioner-companies filed an affidavit of compliance of the authorized representative of the companies dated 24.11.2017 alongwith copies of the newspaper publications dated 27.10.2017 in Indian Express (English) and 28.10.2017 in Akali Patrika (Punjabi) attached as Annexure A-1 (colly). Copy of notices sent to Registrar of Companies, Punjab and Chandigarh; Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; Official Liquidator, Chandigarh; Assistant Commissioner of Income Tax, Patiala and Commissioner of Income Tax, Patiala and the postal receipts and track reports are attached as Annexure A-2.

5. In the affidavits of the authorized representatives of the petitioner-companies, it has been stated that no objections to the Scheme have been received by the petitioner –companies and/or the caveat from any person or authority/department. The Registry also reported on 28.11.2017 that no objections have been received from any quarter to the proposed Scheme.

6. The main objects, authorized and paid up share capital and rationale of the Scheme have been discussed in detail in the order disposing of the First Motion Petition on 22.09.2017.

7. It is stated in the Scheme that all proceedings of whatsoever nature (Legal and others, including, any suits, applications, petitions, appeals, arbitrations, execution proceedings, revision, writ petitions, if any) by or against the Amalgamating Company shall not abate, be discontinued or be in any way prejudicially affected by reason of Amalgamation or anything contained in this Scheme but the said proceedings, shall, till the Effective Date be continued,

prosecuted and enforced by or against the Amalgamating Company, as if this Scheme had not been made. It is further clarified that till the effective date, if any amount, penalty, fine, cost, fee claim, compounding fee, tax, claim recovery etc. is directed to be paid or become liable to be paid or payable by the Amalgamating Company under the orders, directions, or otherwise, of any statutory authority, Court or Tribunal, including but not limited to Reserve Bank of India or Income Tax Department, then the same shall be paid by the Amalgamating Company, whereas, if such amount, claim etc. becomes payable after the effective date relating to Amalgamating Company, the same shall be paid by the Amalgamated Company.

8. As per the Scheme the appointed date is 01.04.2017. The petitioner-companies have also attached valuation report dated 07.07.2017 (Annexure A-12) prepared by Jatinder & Associates, Chartered Accountants to the effect that in case the Scheme is approved every shareholder/member of Shivam Portfolio Management Pvt. Ltd. (the Transferor Company) will get 2 (two) equity shares of ₹10/- each fully paid up in Madhav Udyog Private Ltd. (The Transferee Company) for every 3 (three) equity shares of ₹10/- each held by such shareholder/member in the Transferor Company.

9. The Scheme also takes care of the interest of employees for which a detailed reference was made in paragraph 15 of the order dated 22.09.2017. From the relevant clauses of the Scheme there seems to be no adverse impact on the service conditions of the employees of Transferor Company.

10. Annexure A-13 is the certificate dated 24.07.2017 of M/s Goyal Mahajan & Associates, Chartered Accountants, the auditors of both the petitioner-companies certifying that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

11. I have heard the learned counsel for the petitioners and Mr. O.P. Sharma, Official Liquidator representing the Regional Director, Northern Region; Registrar of Companies and the Official Liquidator and perused the records.

12. The Official Liquidator filed his report dated 27.11.2017; the Regional Director, Mr. S.B. Gautam filed his report by way of affidavit dated 23.11.2017 and the report of Registrar of Companies, Punjab and Chandigarh is dated 22.11.2017.

13. In his report, the Official Liquidator has stated that there are no pending cases against Transferor Company and no investigation/inspection was pending against the company under the provisions of the Companies Act, 1956/2013/SEBI/FEMA. Hence there are no adverse comments by the Official Liquidator.

14. The Regional Director, Northern Region, Ministry of Corporate Affairs in his report makes a reference to the report of the Registrar of Companies, Punjab and Chandigarh dated 22.11.2017. It is also stated that none of the petitioner-companies was investigated u/s 235/237 of the Companies Act, 1956/2013 or inspected u/s 209A/206 of the Companies Act,

1956/2013. The Regional Director further submitted that petitioner-companies may be directed to give an undertaking to pay the stamp duty as may be applicable consequent upon the transfer of assets due to the Amalgamation of assets.

15. The Regional Director in his report by way of affidavit in paragraph 13 has made the following statement:-

“I respectfully submit that as per the report of Registrar of Companies, Punjab & Chandigarh has been stated that there is proceeding u/s 235 to 251 of the Companies Act, 1956 and Sections 210 to 227 of the new Companies Act, 2013 pending against any of the company(s).”

It is apparent from aforesaid context that the Regional Director wanted to say that there is no such proceeding pending as is evident from the report of the Registrar of Companies on the basis of which this observation has been made.

16. With regard to the observation made by the Registrar of Companies, Punjab and Chandigarh, it is stated that Transferor & Transferee Companies are non NBFCs and the Companies have complied with the provisions of Section 383A/203 of the Act, 1956/2013 as well as both the companies have filed their statutory Balance sheets and Annual returns up to the year 2017. It is also stated that there is no proceeding under Sections 235 to 251 of the Companies Act, 1956 and Sections 200 to 227 of the Companies Act, 2013 pending against any of the petitioner-companies.

17. It has also been stated in para 27 of the petition that no investigation or proceedings under the Companies Act, 2013 or the Companies Act, 1956

and the rules made thereunder and/or the previous Company Law Board or any other law or the time being in force are pending against any of the petitioner companies.

18. In view of the above, there is no impediment in the sanction of the Scheme. The Scheme (Annexure A-1) is approved. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect of any permission /compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Company shall stand dissolved without undergoing the process of winding up resulting in increase in the share capital of the Transferee Company.

AND THIS TRIBUNAL DO FURTHER ORDER:

i) That all the property, rights and powers of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same; and

ii) That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the

Companies Act,2013, be transferred to and become the liabilities and duties of the Transferee Company; and

iii) That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and

iv) That the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'; and

v) That the Transferee Company do, without further application, allot to the existing members of the Transferor Company shares of Transferee Company to which they are entitled under the said Scheme of Arrangement: and

vi) That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and

viii) That the petitioner-companies do, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to the Transferor and

Transferee Companies shall be consolidated accordingly, as the case may be; and

ix) That the Transferee Company shall deposit an amount of ₹40,000/- (Rupees forty thousand only) with the Pay & Accounts Officer in respect of the Regional Director, Northern Region and in addition, the Transferee Company shall deposit an amount of ₹40,000/- (Rupees forty thousand only) in the NCLT Bar Association Fund, Chandigarh within a period of five weeks from the receipt of certified copy of this order; and

x) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

19. As per the above directions and Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 formal orders be issued on the petitioners on filing of the Schedule of Property i.e. (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company, by way of affidavit of the Transferor Company.

Sd/-

(Justice R.P. Nagrath)
Member (Judicial)

January 18, 2018
arora