

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI**

TCSP NO. 9 OF 2017

And

TCSP NO. 8 OF 2017

In the matter of Scheme of Amalgamation of GEETAPURAM PORT SERVICE LIMITED, the First Transferor Company AND NORTH EAST NATURAL RESOURCES PRIVATE LIMITED, the Second Transferor Company WITH GONTERMANN-PEIPERS (INDIA) LIMITED, the Transferee Company

Geetapuram Port Service Limited  
Company

.....Petitioner / First Transferor

AND

North East Natural Resources Private Limited  
Company

.....Petitioner/Second Transferor

Judgment/Order: 24<sup>th</sup> August, 2017

Coram:

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

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s):

Mr. Hussain Dholkawala i/b Ganesh & Co.

Per: V. Nallasenapathy, Member (T)

**ORDER**

1. Heard the learned Counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Company Scheme Petitions.



2. The sanction of this Tribunal is sought under Sections 230 and 232 of the Companies Act, 2013 for the Composite Scheme of Arrangement between GEETAPURAM PORT SERVICE LIMITED, the First Transferor Company, NORTH EAST NATURAL RESOURCES PRIVATE LIMITED, the Second Transferor Company and GONTERMANN-PEIPERS (INDIA) LIMITED, the Transferee Company and their respective shareholders ("the Scheme").
3. A perusal of the Company Petitions discloses that initially the First Transferor and Second Transferor had filed the Company Petition before the Hon'ble Bombay High under the erstwhile Companies Act 1956. The said Petitions were numbered as Company Scheme Petition No.761 of 2015 for First Transferor Company and Company Scheme Petition No. 760 of 2015 for Second Transferor Company ("**said Petitions**"). The said Petitions were admitted at the Hon'ble Bombay High Court vide an order dated 16<sup>th</sup> October 2015. Learned Counsel appearing on behalf of the Petitioners further states that the Hon'ble Bombay High Court by said Order dated 16<sup>th</sup> October 2015 directed the Petitioners to serve the notice of hearing of the Petition on the Statutory Authorities i.e. Regional Director, Registrar of Companies, Income Tax Department and Official Liquidator and to publish notice of hearing of the Petitions in two local newspapers namely, "Free Press Journal" Mumbai Edition in English language and translation thereof in 'Navshakti', in Marathi language, both having circulation in Mumbai.
4. The Learned Counsel appearing for the Petitioners states that in compliance to the said Order dated 16<sup>th</sup> October 2015 the Petitioners served the notice of hearing of the Petition to the Regional Director western region, Registrar of Companies -Mumbai, concerned Income Tax Department and Official Liquidator and has also publish notice of hearing of the Petitions in two local newspapers namely, "Free Press Journal" Mumbai Edition in English language and translation thereof in 'Navshakti', in Marathi language, both having circulation in Mumbai which were appeared on 26<sup>th</sup> November 2015. The Learned Counsel appearing for the Petitioners further states that they have filed necessary affidavits of service dated 26<sup>th</sup> November 2015 in compliance to the said order dated 16<sup>th</sup> October 2015 before the Hon'ble Bombay High Court on 26<sup>th</sup> November 2015. Moreover, Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act 1956/2013 and Rules made thereunder whichever is applicable. The said undertaking is accepted.
5. Learned Counsel for the Petitioner Companies submits that this Scheme shall result in following benefits:
  - a. The Transferee Company proposes to expand, diversify into new business activities and restructure its existing business activities. To achieve the said objective, the Board of Directors of the Transferee Company has decided to venture into business of operating and



- administering port services and all activities thereto through amalgamation of First Transferor Company with itself, while continuing with its existing business.
- b. Further, the Second Transferor Company is a group company formed for the purposes of carrying out activities synergetic with the business of the First Transferor Company. The Second Transferor has not yet carried out any mining business. Its merger will, therefore, reduce the number of entities within the group formed for carrying out similar lines of business. This will lead to reduction of overheads, savings of costs and minimization of risk of legal non compliances.
  - c. Amalgamation of the Companies will result into new business activities, greater market presence and greater financial strength for the amalgamated entity, which would result in maximizing overall stakeholders' value.
  - d. Greater efficiency in cash management of the amalgamated entity, and access to cash flows generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth.
  - e. Improved organizational capacity and leadership, arising from the pooling of human resources who have the diverse skills, talent and vast experience to conduct business.
6. The Petitioner Companies has approved the Scheme by passing Board Resolutions, which are annexed as Exhibit 'G' to their respective aforesaid Company Scheme Petitions.
7. The Regional Director has filed a Report on April 2016 stating therein, save and except as stated in paragraph 6 it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said report the Regional Director has stated that:-
- a. *The Registered office of the Transferee Company is situated in the state of West Bengal. Hence, the present Scheme of Amalgamation between the Transferor Companies and Transferee Companies will be subject to the condition of obtaining similar approval from the Hon'ble High Court of Calcutta in respect of Transferee Company.*
  - b. *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to 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 Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
8. So far as the observations in Paragraph 6(a) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company had filed the Company Scheme Petition No.317 of 2015 with the Hon'ble Calcutta High Court for obtaining the approval for Scheme of Amalgamation between the Transferor Companies and Transferee



Company, the said Petition was subsequently transferred to National Company Law Tribunal, Kolkata Bench, where the matter is pending for approval of the Tribunal. The Scheme of Amalgamation shall require corresponding approval from the National Company Law Tribunal, Kolkata Bench.

9. So far as the observations in Paragraph 6(b) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies undertakes to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
10. From the material available on record, the Scheme appears to be fair and reasonable and is not in violation of any provision of law and is not in contrary to public policy. None concerned have come forward to oppose the scheme.
11. In my view, all requisite statutory compliances have been fulfilled. Hence, the Company Scheme Petition No. 8 and 9 of 2017 filed by the Petitioner Companies is made absolute in terms of prayer clause (a).
12. The Petitioner Companies to lodge a copy of this order and the scheme duly authenticated by the Deputy Director, 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 the receipt of the order.
13. Petitioner Companies are directed to file a certified 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 of the physical copy, within 30 days from the date of issuance of the order.
14. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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