

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSA NO. 139 OF 2017

Under Section Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of Chemical Terminal Trombay Limited (“**Petitioner Company**” or the “**Transferor Company**”) and The Tata Power Company Limited (“**Transferee Company**”) and their respective shareholders and creditors.

Chemical Terminal Trombay Limited **Petitioner Company/Transferor Company**
The Tata Power Company Limited **Transferee Company**

Judgement/Order delivered on July 27, 2017

Coram:

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

Hon’ble V Nallasenapathy, Member (T)

For the Applicant Company: Mr. Rohan Rajadhyaksha i/b AZB & Partners

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

ORDER

1. Heard the learned counsel for the parties. No objector has come before this Tribunal to oppose the Scheme and nor any party has controverted any averments made in the Petition to the Scheme of Amalgamation of Chemical Terminal Trombay Limited (“**Petitioner Company**” or the “**Transferor Company**”) and The Tata Power Company Limited (“**Transferee Company**”) and their respective shareholders and creditors (“**Scheme**”).
2. The sanction of the Hon’ble Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 read with Rule 15(1) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of Companies Act, 2013, to the Scheme of Amalgamation of the Transferor

Company / Petitioner Company and the Transferee Company and their respective shareholders and creditors.

3. The Learned Counsel for the Petitioner Company states that, the Transferor Company / Petitioner Company is *inter alia* engaged in the business of providing bulk storage facility of liquid chemicals and petroleum products apart from coal handling operations, fly ash disposal management services and generation of electricity by renewable energy resources.
4. The Petitioner Company is a wholly owned subsidiary of the Transferee Company. The consolidation of the Petitioner Company into the Transferee Company pursuant to the Scheme would lead to a more efficient utilization of capital and create a consolidated base for future growth of the amalgamated entity. The proposed amalgamation will result in administrative and operational rationalization, organizational efficiencies, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of various resources. It will prevent cost duplication that can erode financial efficiencies of the holding structure and the resultant operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure to all creditors including the creditors of the Transferor Company, facilitate resource mobilization and achieve better cash flows. The synergies created by the amalgamation would increase operational efficiency and integrate business functions. The proposed amalgamation will reduce managerial overlaps, which are necessarily involved in running multiple entities.
5. Learned counsel for the Petitioner Company further states that the Board of Directors of the Transferor Company /Petitioner Company and the Transferee Company approved the said Scheme by passing a board resolution both dated November 13, 2014, which are annexed to the Company Scheme Petition No. 920 of 2015 filed with the Hon'ble Bombay High Court on December 22, 2015.
6. Learned counsel for the Petitioner Company further states that the petition has been filed in consonance with the order dated October 16, 2015 passed by the Hon'ble Bombay High Court in the Company Summons for Direction No. 786 of 2015.
7. The Hon'ble Bombay High Court vide its order dated October 16, 2015 had directed that the filing of separate Company Summons for Direction and Company Scheme Petition under Section 391 and 394 of the Companies Act, 1956 by the Transferee Company be dispensed with, in view of the following: (i) the Petitioner Company is a wholly owned subsidiary of the Transferee Company; (ii) that after the Scheme being sanctioned, no new shares were to be issued by the Transferee Company to the equity shareholders; (iii) the entire share capital of the Petitioner Company would stand cancelled; (iv) the rights

of the creditors of the Transferee Company are not likely to be affected, and (v) observations made in *Mahaamba Investment Ltd. v. IDI Limited* (2001) 105 Comp Cas 16 Bom.

8. The Learned Counsel for the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of the Hon'ble Bombay High Court and the National Company Law Tribunal ("NCLT"), Mumbai bench. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and Companies Act, 2013 and the Rules made there under, whichever is applicable. The said undertaking given by the Petitioner Company is accepted.
9. The Official Liquidator filed his report on April 10, 2017 *inter alia*, stating that the affairs of the Transferor Company / Petitioner Company have been conducted in proper manner and that the Transferor Company / Petitioner Company may be ordered to be dissolved by this Hon'ble Tribunal.
10. The Regional Director has filed his report on or around June 19, 2017 and has stated that save and except as stated in Paragraph IV (a) to (f) 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:-

- (a) *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.*
- (b) *Regarding Clause 18 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against General Reserves of the Transferee Company.*
- (c) *As per Clause 1.2 of the Definitions. "The "Appointed Date" means 1st April, 2014 or such other date directed by or stipulated by the High Court. In this regard, it is submitted that the Transferee Company is seeking approval which will have retrospective effect. The gap between the date of audited balance sheet and the appointed date should be reasonable and nearer to the time of final hearing of the petition and this requirement is statutory. Further, it is pertinent to mention that ROC Mumbai has observed that the company has already filed Balance Sheet and Annual Report up to 2016 and Balance Sheet and Annual Report for the financial year 2016-17 is shortly due. It is also observed that the*

company may be asked to change the Appointed Date from 01.01.2014 to 01.04.2017. However, this Hon'ble Tribunal may kindly fix the appointed date as deem fit.

- (d) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 7th March, 2017 & 15th March, 2017 has served a company scheme application 139/2017 along with relevant orders etc., further this Directorate has also issued a reminder 26.05.2017, to IT Department.*
- (e) *The tax implication if any arising out of scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court/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.*
- (f) *That in view of observations made by the Registrar of Companies, Mumbai, the Hon'ble Tribunal may kindly direct the Company to submit certificate from auditor of the Company in terms of proviso to Section 232(3) of the Companies Act, 2013.*

11. As far as the observations made in in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme to comply with applicable Accounting Standards such as AS-5 (IND AS-8) etc.

12. As far as the observations made in in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Company submits that the said treatment of reserves as suggested by the Regional Director would be appropriate as per Accounting Standard-14 which was applicable to Appointed Date April 1, 2014. However, the Appointed Date of April 1, 2017 as suggested by the Regional Director in paragraph IV (c) of the Report is now accepted by the Petitioner Company. The latest accounting standards in this regard i.e. those prescribed under section 133 of the Companies Act, 2013 will need to be complied with. In view of this, the latest accounting standard that would be applicable would be Indian Accounting Standard (Ind AS) 103 on business combinations. This standard has also been recommended by the Regional Director in paragraph IV(a) of its Report. Appendix C of this standard *inter alia* states that difference, if any, between the amount recorded as share capital issued plus any additional consideration in the form of cash or other assets and the amount of share capital of the transferor shall be transferred to capital reserve and should be presented separately from other capital reserves with

disclosure of its nature and purpose in the notes. . The Petitioner Company undertakes that it shall comply with accounting standard (Ind AS) 103. Accordingly, this undertaking is accepted by the Petitioner Company.

13. As far as the observations made in in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Company undertakes to change the Appointed Date mentioned in the scheme from April 1, 2014 to April 1, 2017.
14. As far as the observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Company submits that the Petitioner Company has duly served notices to the Income Tax authorities with respect to the Scheme of Amalgamation for their comments and till date, the Petitioner Company has not received any comments/ representations from the Income Tax authorities.
15. As far as the observations made in in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Company submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax implications, if any, arising out of the Scheme.
16. As far as the observations made in in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Company has complied with the same by submitting to this Tribunal a certificate from its statutory auditor by way of an affidavit filed on July 24, 2017 to the effect that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under section 133 in terms of proviso to Section 232(3) of the Companies Act, 2013.
17. The observations made by the Regional Director have been explained by the Petitioner Company in Paragraph 11 to 16 above. The clarifications and undertakings given by the Petitioner Company are accepted.
18. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
19. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No. 139 of 2017 is made absolute in terms of prayers Clause 36(a) and (b).
20. The Petitioner Company is directed to file a copy of this order and the Scheme of Amalgamation duly certified by the Deputy Registrar, NCLT, Mumbai Bench, with the concerned Superintendent of Stamps, within 60 days from the date of the receipt of order, for the purpose of adjudication of stamp duty payable, if any, on the same.

21. The Petitioner Company is directed to file a copy of order along with the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copy as per the relevant provisions of the Companies Act, 2013 within 30 days from the date of the receipt of order.
22. The Petitioner Company to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.
23. All concerned regulatory authorities to act on a copy of this order along with the Scheme of Amalgamation duly certified/ authenticated by the Deputy Director, NCLT, Mumbai bench.

Sd/-

**V Nallasenapathy, Member
(Technical)**

Sd/-

**B.S.V. Prakash Kumar, Member
(Judicial)**