

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT MUMBAI

COMPANY SCHEME PETITION NO 405 OF 2017
IN
COMPANY SCHEME APPLICATION NO 171 OF 2017

Newcon Interiors Private Limited...Petitioner/Transferor Company

(High Court transferred Company Summons for Direction (L)
No. 999 of 2016)

AND

COMPANY SCHEME PETITION NO 407 OF 2017

IN

COMPANY SCHEME APPLICATION NO 172 OF 2017

Satya Buildmart Private Limited.....Petitioner/Transferee Company

(High Court transferred Company Summons for Direction (L) No.
1000 of 2016)

AND

IN THE MATTER of the Companies Act 2013 (and the
erstwhile Companies Act, 1956 (1 of 1956);

AND

IN THE MATTER of Section 230 -232 of the Companies Act 2013
(and erstwhile section 391 to 394 of the Companies Act, 1956);

AND

In the matter of Scheme of Amalgamation of Newcon Interiors
Private Limited having CIN U74994MH2008PTC281505 ('the
Transferor company or 'NCIPL') and Satya Buildmart Private
Limited having CIN U70109MH2011PTC266487 ('the
Transferee company or 'SBPL')

Called for Notice of Admission:

Mr Manish Ajay Malpani, Advocate for the Applicants.

Coram: B.S.V Prakash Kumar Hon'ble Member (J) and

V Nallasenapathy Hon'ble Member (T).

Date: 27TH JULY, 2017

Per: V Nallasenapathy Hon'ble Member (T).

ORDER

1. Heard the learned counsel for Petitioner Companies. No objector has come before the court to oppose the Petitions and nor any party has controverted any averments made in the Petitions.
2. The sanction of this Tribunal is sought under sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation between Newcon Interiors Private Limited (" the Transferor Company or " NCIPL") with Satya Buildmart Private Limited (" the Transferee Company or " SBPL") and their respective shareholders.
3. The Counsel for the Petitioner Companies submit that Newcon Interiors Private Limited deals in the business of interior decorators, jobbers, brokers, concessionaires, and dealers in all kinds of furnitures, fixtures, carpets, linoleums and that Satya Buildmart Private Limited is in the business of real estates, contructions, colonizers and civil and constructional contractors.
4. The Counsel for the Petitioner Companies submit that the rationale for the scheme is that the Transferor and the Transferee companies are closely held family owned companies belonging to the same business group and under the same management. The objectives/ benefits of the Amalgamation are to create a single business entity which will in turn help them to manage their businesses more efficiently and effectively and rationalize administrative expenses;
 - (a) to make use of same management control leading to better co-ordination of the business activities;

- (b) to utilize their resources optimally and reduce the cost by more focused operational efforts;
- (c) to easily avail the finances required for their expansion and projects;
- (d) to improve asset base by consolidating the immovable assets of all the companies;
- (e) to better negotiate the lending terms and conditions with the banks, financial institutions;
- (f) to derive the benefit of synergies; and
- (g) To standardize and simply the business process.

5. The Counsel for the Petitioner Companies submits that the board of Directors of the Transferor Company and the Transferee Company approved the said Scheme of Amalgamation by passing necessary Board Resolution which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.

6. The learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court/ Tribunal and the necessary affidavits of Compliance has been filed in the Court/ Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.

7. The Official Liquidator has filed his report on 2nd May, 2017 stating that the affairs of the Petitioner /Transferor Company

have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.

8. The Regional Director has filed his report dated 15th May, 2017 stating therein that, save and except as stated below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph IV of the said Report, it is stated that:

(a) In addition to the 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) As per Definitions 2.1(b) of the scheme, "The Appointed Date" means 1st April, 2016 or such other date as Hon'ble Court may direct or approve. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2016.

(c) Regarding Clause 13 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 Profit & Loss Account of the Transferee Company;

(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 18th March, 2017 has served a copy company Petition No 171 & 172 / 2017 along with the relevant orders etc to IT Department. Further, this Directorate has also issued a reminder letter dated 12.5.2017.

- (e) 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 Company.
- (f) In view of the observation raised by the ROC, Mumbai mentioned at para 11 as above Hon'ble NCLT may pass appropriate order/orders as deem fit.

"11. Status of ROC Report:-

ROC Mumbai vide report / letter No ROC/JTA (HD/266487/230/712 dated 23.3.2017, has mentioned that No complaint, No prosecution, No Technical Scrutiny. Further, at para 29 he has mentioned that " in terms of Rule 6(3)(ix)(c) of the Compromise Rule, 2016 the Auditor of the company to issue Certificate to the effect that Accounting Treatment, if any, purpose in the Scheme is in conformity with the Accounting Standard prescribed

u/s 133 of the Companies Act, 2013.” And may be decided on its merits.

Save and except as stated in para IV (a) to (f) it appears that the scheme is not prejudicial to the interest of shareholders and public.

Under these circumstances the Regional Director prays this Hon'ble Tribunal may kindly be pleased to :

- a. Take this report on record ;
- b. Consider the observations made at Sr.no.IV (a) to (f) mentioned above;
and
- c. Pass such other order or orders as deemed fit and proper in the facts and circumstances of the case.

9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes that it 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.

10. In so far as observations made in paragraph IV (b) of the report of the Regional Director is concerned, as per the Definitions 2.1 (b) of the scheme “The Appointed Date” means 1st April, 2016 or such other date as the Hon'ble Court may direct or approve. In this regard, it is submitted in terms of provisions of section 232 (6) of the Companies Act,2013 it should be 1st April, 2016

11. In so far as observations made in paragraph IV (c) of the report of the Regional Director is concerned, the Petitioner Company through its counsel undertakes that the surplus if any arising out of the scheme shall be credited to the capital reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against the Profit & Loss Account of the Transferee Company.

12. In so far as observations made in paragraph IV (d) and (e) of the report of the Regional Director is concerned, the petitioner companies through its counsel submits that the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the scheme will be met and answered in accordance with law.

13. In so far as observations made in paragraph IV (f) of the report of the Regional Director is concerned, the Petitioner Companies have submitted Certificate by the statutory auditors of the Companies stating the accounting standards prescribed under the scheme of Amalgamation is in conformity with the accounting standards prescribed by the Central Government under section 133 of the Companies Act 2013.

14. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

15. From the material record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to the public policy.
16. Since all the requisite statutory compliances have been fulfilled. Company Scheme Petition No 405 and 407 of 2017 filed by the respective Petitioner Companies are made absolute in terms of prayer clause 16(1) & 16(2) of CSP No 405 & 407 of 2017 of the respective Petition.
17. Petitioner Companies are directed to file a copy of this order and the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-FORM INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company 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 receipt of the order.
19. The Petitioner Companies to pay a costs of Rs 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.
20. Costs to be paid within four weeks from today.
21. All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the

Deputy Director National Company Law Tribunal,
Mumbai Bench.

22. Any person interested shall be at the liberty to apply to
the tribunal in the above matter for any direction that
may be necessary.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

B.S.V Prakash Kumār, Member (J)