

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO. 286 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 683 OF 2016
(HIGH COURT TRANSFERRED PETITION).

THEO WINDOWS PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 287 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 684 OF 2016
(HIGH COURT TRANSFERRED PETITION)

ALUMILITE ARCHITECTURALS PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of THEO WINDOWS PRIVATE LIMITED, the Transferor Company with ALUMILITE ARCHITECTURALS PRIVATE LIMITED, the Transferee Company and their respective Shareholders.

Called for hearing

Mr. Vivek Dilip Tambe i/b M/s. MST LEGAL, Advocate for the Petitioner.

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V. Nallasenapathy
Hon'ble Member (T)

Date: 28th June, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objector/Objections has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of THEO WINDOWS PRIVATE LIMITED, the Transferor Company with ALUMILITE ARCHITECTURALS PRIVATE LIMITED, the Transferee Company and their respective Shareholders.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of THEO WINDOWS PRIVATE LIMITED, the Transferor Company with ALUMILITE ARCHITECTURALS PRIVATE LIMITED, the Transferee Company and their respective Shareholders.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 683 of 2016 and 684 of 2016 of the Hon'ble Bombay High Court.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and National Company Law Tribunal,

- Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of manufacturing of, dealers in and exporters and importers of all grades, types, qualities, shapes, categories and description of aluminum and aluminum alloys and generally to deal in aluminum virgin, semi and or manufactured products such as aluminum extrusions, aluminum sheets, circles, ingots, foils, cables and wires, utensils, furniture, architectural aluminum products, hardware, tubes, pipes and any other marketable products of aluminum and their alloys and in connection therewith to acquire, work, construct, establish, operate and maintain factories, workshops and other works and to adopt all processes of manufacture such as extruding, moldings, shaping, fabricating, treating, anodizing, casting, painting, melting or other chemical mechanical, electrical or manual operations etc. As per the opinion of the management the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and that it would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the benefit of combined resources and that this Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and that the amalgamation of the Transferor

Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business and specifically the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies and that the merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each other's core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

7. The Regional Director has filed a Report on 16th day of May, 2017 stating therein, save and except as stated in paragraph IV, 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:-

"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

- 1. 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 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.*
- 2. Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

In this regard it is requested that Petitioner may be asked to submit the certificate to comply with the provisions of Section 232 (3) proviso of the Companies Act, 2013.

3. *It may be submitted that the Petitioner Companies have submitted the proof of serving notice dated 29.12.2016 upon the Income Tax Authorities for comments.*

This Directorate has also issued a reminder letter to the Income Tax Department dated 15.04.2017.

8. So far as the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
9. So far as the observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company has already filed with the Hon'ble Tribunal the certificate to comply with the provisions of Section 232 (3) proviso of the Companies Act, 2013.
10. So far as the observations in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the proof of serving notice dated 29.12.2016 upon the Income Tax Authorities for comments is a part of the Affidavit of Compliance already filed with the Hon'ble Tribunal for the Petitioner Companies.
11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 10 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
12. The Official Liquidator has filed his report on 7th June, 2017 in the Transferred Company Scheme Petition No. 286 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Hon'ble Tribunal.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

14. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 286 of 2017 is made absolute in terms of prayers clause (a) to (d) and 287 of 2017 is made absolute in terms of prayer clauses (a) to (d).
15. Petitioners are directed to lodge a copy of this order along with a copy of 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 1956 / 2013.
16. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
17. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 277 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
18. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

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

Sd/-

V. Nallasenapathy Member (T)