

**THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH,
AT NEW DELHI**

COMPANY PETITION NO. (CAA)-21 (PB) 2019

Under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the matter of:

Scheme of Amalgamation

of

Annex Dealtrade Private Limited

Transferor Company No.1

And

Downhill Dealcom Private Limited

Transferor Company No.2

And

Viksit Trexim Private Limited

Transferor Company No.3

With

Nimbus India Limited

Transferee Company

Judgment delivered on: 09.08.2019

CORAM:

Dr. DEEPTI MUKESH, Hon'ble Member (J)

Mr. S. K. MOHAPATRA, Hon'ble Member (T)

For Petitioners : Mr. P. Nagesh, Advocate
: Mr. Suman Kumar Jha, Advocate
: Mr. Afnaan Siddiqui, Advocate
For Income Tax : Ms. Lakshmi Gurung, St. Counsel
: Mr. Shubham Pandey, Advocate
For Official Liquidator : Mr. Amish Tondon, CP
For Regional Director : Ms. Sonam Sharma, CP



ORDER

S. K. Mohapatra, Member

1. This Joint petition has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of all the three transferor companies into the Transferee Company. The copy of the Scheme has been placed on record.
2. The "Transferor Company no.1", Annex Dealtrade Private Limited was incorporated on 12.04.2010 as a private limited company under the provisions of Companies Act 1956, having its registered office situated at 501A, Narain Manzil, 23 Barakhamba Road, New Delhi-110001.
3. The "Transferor Company no.2", Downhill Dealcom Private Limited was incorporated on 19.04.2010 as a private limited company under the provisions of Companies



Act 1956, having its registered office situated at 501A, Narain Manzil, 23 Barakhamba Road, New Delhi-110001.

4. The "Transferor Company no.3", Viksit Trexim Private Limited was incorporated on 26.06.1992 as a private limited company under the provisions of Companies Act 1956, having its registered office situated at 501A, Narain Manzil, 23 Barakhamba Road, New Delhi-110001.
5. The "Transferee Company", Nimbus India Limited was incorporated on 14.12.1994 under the companies Act, 1956, having its registered office situated at 1001-1006, 10th floor, Narain Manzil, 23 Barakhamba Road, New Delhi-110001..
6. It is seen from the records that the First Motion application seeking dispensation from convening the meetings of Shareholders and Creditors of petitioner companies was filed before this Bench vide CA (CAA) No. 09 (PB) 2019 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders, Secured Creditors and unsecured creditors of all the petitioner companies were



dispensed with, vide order dated 21.01.2019 passed by this Bench.

7. On 13.03.2019 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Jansatta' Hindi Delhi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.
8. It is seen from the records that the Petitioners have filed an affidavit dated 18.04.2019 affirming compliance of the order passed by the Tribunal dated 13.03.2019. A perusal of the affidavit discloses that the petitioners have affected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 13.04.2019 as well as in 'Jansatta' Hindi edition again on 13.04.2019 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region, official liquidator and Income



Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been placed on record.

9. The Regional Director has filed its report on 24.05.2019 and submitted that the transferee company should comply with provisions of Section 232(3)(B)(i) and 233(11) r/w (12) of the Companies Act, 2013.
10. The Income Tax Department has filed its report with respect to all the Petitioner companies. The Department has submitted its no objection with respect to Petitioner Company no. 1, Petitioner Company no. 3, and Petitioner Company no. 4. However, with respect to Petitioner Company no. 2 it is submitted that the assessment proceeding under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2012-13 is pending.
11. The transferee company in response to the aforementioned observations of the Regional Director and Income Tax Department has filed an additional affidavit dated 04.07.2019 and submitted as follows:

3. “ *It is pertinent to mention that the Registrar of companies, NCT of Delhi and*



Haryana in its report submitted before Regional Directors (Northern Region) made observation that the Petitioner Companies shall comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 and same was reproduced by Regional Director (Northern Region) in Para 9 of its report submitted before this Hon'ble Tribunal. In this regard it is submitted that the Transferee Company do hereby undertake to comply with the provisions of Section 232 (3) (i) of Companies Act, 2013, thereby setting off fee, if any paid by the Transferor Companies on authorized Capital prior to merger with fee payable by the Transferee Company on its authorized capital subsequent to the approval of Scheme of Amalgamation.

4. *That the Transferee Company hereby undertakes that pursuant to approval of Scheme of Amalgamation by this Hon'ble*



Tribunal, the Transferee Company will pay the stamp duty as may be applicable consequent upon the transfer of assets from Transferor Companies to Transferee Company pursuant to the Amalgamation.

5. That Transferor Company 3 and Transferee Company are Non-Banking Finance Company (NBFC). Both the companies had filed an application before the Reserve Bank of India (RBI), for seeking No objection to the Scheme of Arrangement for Amalgamation. The RBI vide its letter dated 5th May, 2019 had issued No Objection to the Scheme of amalgamation dated is annexed herewith.

6. That the Income Tax Department has filed its report with respect to all the Petitioner companies. In this regard it is submitted that Income Tax department has issued no objection in its reports with respect to Petitioner Company 1, Petitioner Company 3, and Petitioner Company 4. However, with



respect to Petitioner Company 2 Income Tax Department has issued observation stating that pendency of assessment proceeding under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2012-13.

Copy of reports issued by Income Tax Department with respect to all the Petitioner Companies is annexed herewith.

7. That the Transferee Company / Petitioner Company 4 hereby undertakes that any liability / demand arising out on adjudication of Assessment Proceeding pending before Income Tax Department under Section 148 of Income Tax Act, 1961 with respect to Transferor company 2 / Petitioner Company 2 shall be borne by Transferee Company on effectuation of Scheme of Amalgamation. It is further submitted that pursuant to Clause 7 of Part II of Scheme of Amalgamation Transferee Company undertakes to pay all pending



demand / liabilities against Transferor Companies on approval of Scheme of Amalgamation by Transferee Company.

8. *That none of the Petitioner Companies are Industrial Undertaking, hence benefit under Section 72A of Income Tax Act, 1961 cannot be claimed by Transferee Company. Further, Transferee Company hereby undertakes that it will not claim benefit under Section 72A of Income Tax Act, 1961 on effectuation of Scheme of Amalgamation.”*

12. In view of the undertaking of the petitioners the observations of Regional Director and Income Tax department are taken care of. However, in addition to the undertaking given by the petitioner companies it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. from the petitioner companies as provided in law.



13. The Official Liquidator has filed its report dated 24.05.2019 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of all the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.
14. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.
15. Certificates of respective Statutory auditors of all the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.



16. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

17. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three Judges Bench of Hon'ble Supreme Court held that:

“a company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process.”



18. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

19. It is submitted in the Scheme that the Transferee Company, without further application, act or deed, shall issue and allot to each of the shareholders of "Transferor Companies" shares in following proportion:

a. 5540 (Five thousand Five Hundred and Forty Equity Shares of Face Value of Rupees 10/- (Rupees Ten) each in Transferee Company for every 100 (One Hundred) Equity shares of face value of Rs. 10/- (Rupees Ten) each held by them in "Transferor Company 1" pursuant to this Scheme of Amalgamation.

b. 5559 (Five Thousand Five Hundred and fifty Nine) Equity Shares of Face Value of Rupees 10/- (Rupees Hundred) Equity Shares of Face Value of Rs. 10/- (Rupees Ten) each held



by them in "Transferor Company 2" pursuant to this Scheme of Amalgamation.

- c. *245 (Two Hundred Forty Five) Equity Shares of Face Value of Rupees 10/- (Rupees Ten) each in Transferee Company for every 100 (One Hundred) Equity shares of face value of Rs. 10/- (Rupees Ten) each held by them in "Transferor Company 3" pursuant to this Scheme of Amalgamation.*

20. The petitioner companies have filed an affidavit dated 18.04.2019 confirming that any objection has not been received against the Scheme from any party or from any person interested in the Scheme in any manner.

21. It has also been affirmed in the petition that Scheme is in the interest of all the transferor companies and the transferee company including their shareholders, creditors, employees and all concerned.

22. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region,



Ministry of Corporate Affairs and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme.

23. Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013.

24. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

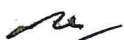
25. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

26. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any

permission/compliance with any other requirement which may be specifically required under any law.

27. **THIS TRIBUNAL DO FURTHER ORDER**

1. *That all the Transferor Companies shall stand dissolved without following the process of winding-up; and*
2. *That all the property, rights and powers of all the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company.*
3. *That all the liabilities and duties of all the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and*



4. *That all proceedings now pending by or against all the Transferor Companies, be continued by or against the transferee company; and*
5. *That all the employees of all the Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in concerned transferor companies on the said date.*
6. *That Petitioner companies shall within thirty days of the date of the 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 all the Transferor*



Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor companies registered with him on the file kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and

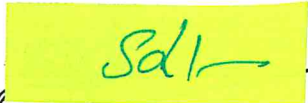
7. *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.



**(S. K. MOHAPATRA)
MEMBER (T)**



**(DR. DEEPTI MUKESH)
MEMBER (J)**