

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

C.P.(CAA)/72/MB-I/2021

Connected with

C.A.(CAA)/2202/MB-I/2019

In the matter of

Companies Act, 2013

AND

In the matter of

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

In the matter of

Scheme of Arrangement and Amalgamation of SAMCO COMMODITIES LIMITED, the Transferor Company with SAMCO SECURITIES LIMITED, the Transferee Company.

SAMCO COMMODITIES LIMITED

CIN: U74900MH2013PLC23958

... Petitioner Company No. 1

SAMCO SECURITIES LIMITED

CIN: U67120MH2004PLC146183

... Petitioner Company No. 2

Order delivered on: 03.02.2023

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Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (via videoconferencing):

For the Petitioners : Adv. Yahya Batatawala a/w
Adv Mr. Aniruth Purusothaman
and Adv. Ahmed M
Chunawala.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. The Bench is conveyed by videoconference today i.e., 20.01.2023.
2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Arrangement and Amalgamation of SAMCO COMMODITIES LIMITED, the Transferor Company with SAMCO SECURITIES LIMITED, the Transferee Company.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 4th May, 2019 which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 2202 of 2019 of the Hon'ble Tribunal.
6. 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 National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.
7. The Learned Counsel for the Petitioner Companies states that the Petitioner Company No. 1 is presently engaged in the business activities of commodities broking, sub brokers, market makers, arbitrageurs, and/ or hedgers and members and participate in trading, settlement and other activities of commodity exchange/ s) facilities permitted under the law of India and that the Petitioner Company No. 2 is presently carrying on the business activities of the stock broking as a member of any recognized stock exchange in India to act as share transfer agent, custodians, advisers and depositary participants and other ancillary activities.

8. The rationale for the Scheme of Amalgamation of the Petitioner Companies is in the interest of the stakeholders of these companies and shall result in the following benefits:
- a. The primary objective behind the merging of the Samco Securities Limited and Samco Commodities Limited is to be integration of broking activities in Equity markets and Commodity Derivatives Markets under single entity i.e. the transferee company (Samco Securities Limited) which is allowed after the gazette notification issued by the Security Exchange Board of India dated September 21, 2017.
 - b. Merging of Samco Commodities Limited with Samco Securities Limited is to reap the benefits of economies of scale as both the companies are engaged in business operations of similar line of products i.e. Broking activities in Stock Market and Commodity Derivatives Market.
 - c. The clients will be able to utilize their capital more efficiently as with single ledger, they can take positions in both Stocks and Commodities market at the same time, which earlier was not possible due to different entities of Stocks and Commodities.
 - d. By merging both equity and commodity accounts the client will have access to a unified trading account for both asset classes using a single account.
 - e. Greater size, scale integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value.

- f. The synergies that exist between the two entities in terms of products and resources can be put to the best advantage of all stakeholders.
- g. The amalgamated entity will have operational business synergies which would enable leveraging the existing customer network of Samco Commodities Limited and servicing/marketing setup for better penetration on a pan India level leading to increased competitive strength and efficiencies.
- h. The amalgamation will result in increased financial strength and flexibility and enhance the ability of the amalgamated entity to undertake to Broking in Stock Markets and Commodity Derivatives Markets on a pan India basis, thereby contributing to enhancement of future business potential.
- i. Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, improved procurement and the elimination of duplication.
- j. The amalgamated entity will benefit from improved organizational capability and leadership arising from combination of people who have the diverse skills, to compete successfully in an increasingly competitive industry.
- k. The amalgamated entity would enable transfer/leverage of knowledge between the various functional teams for improving productivity, MIS, cost reduction and inventory management initiatives.
- l. General and administrative cost reduction and productivity gains by pooling of financial, managerial and technical

resources, personnel capabilities, skills, expertise and technologies of the Parties.

9. The Regional Director has filed his Report dated 12th May, 2021 inter-alia making the following observations in paragraphs IV (a) to (h) which are reproduced hereunder:

Para	Observation by the Regional Director	Undertaking of the Petitioner Company/Rejoinder
IV(a)	In compliance of AS-14 (IND AS-103), the Petitioner Companies 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.	So far as the observation in paragraph IV(a) of the Report of the Regional Director is concerned, the Learned Counsel for Petitioner Companies submits that the Petitioner Companies undertakes that in addition to compliance of AS-14 (IND AS-103), the Petitioner Companies 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.
IV(b)	As per Definition of the Scheme,	So far as the observation in paragraph IV(b) of the Report

<p>“Appointed Date” means 1st of April 2019 or such other date as the NCLT, Mumbai or Regional Director or other competent authority may otherwise direct/fix.</p> <p>“Effective Date” or “coming into effect of this Scheme” means the date on which the Certified copies of Regional Director order(s) vesting the assets, properties, liabilities, rights, duties, obligations and the like of the Transferor Company in the Transferee Company are filed with the appropriate Registrar of Companies</p> <p>Petitioner Company shall undertake to modify the scheme to the extent of the Definition of Appointed date and effective date, Petitioner Company shall mention that the scheme will be effective after approval from Hon’ble NCLT, Mumbai Bench.</p>	<p>of the Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Appointed Date is 1st April, 2019.</p> <p>The Counsel further submits that the Petitioner Companies will comply with the requirements as to Appointed Date and requirements as clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>
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	<p>Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
IV(c)	<p>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.</p>	<p>So far as the observation in paragraph IV(c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the setting off of fees paid by the Transferor Company on its authorised share capital shall be in accordance with the provisions of section 232(3)(1) of the Companies Act, 2013.</p>
IV(d)	<p>As per Clause 13 of the Scheme. Any excess/deficit being the difference, if any, between the</p>	<p>So far as the observation in paragraph IV(d) of the Report of the Regional Director is concerned, the Learned</p>

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	<p>value of net assets of the business transferred from the Transferor Company and the amount credited to Share capital shall be adjusted in the Goodwill Account of the Transferee Company.</p> <p>In this regards, Petitioner Companies have to undertake that the surplus shall be credited to Capital Reserve Account arising out of amalgamation and deficits shall be debited to Goodwill Account.</p> <p>Further Petitioner Companies have to undertake that reserves shall not be available for distribution of dividend.</p>	<p>Counsel for the Petitioner Companies submits that since this is a scheme of merger and amalgamation and as part of scheme, investment undertaking of the transferor company is transferred to Transferee Company and deficit arising out of such transferee shall be debited to Profit and Loss account and surplus shall be credited to capital reserve account as per generally accepted accounting principles.</p>
IV(e)	<p>ROC, Mumbai Report dated 09.03.2021 has interalia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaint is pending against Petitioner Companies.</p>	<p>So far as the observation in paragraph IV (e)(1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Second Petitioner Company hereby undertakes that the</p>

<p>Further mentioned that:</p> <ol style="list-style-type: none">1. Authorised share capital and paid-up share capital of Transferee Company does not match with the scheme.2. The Transferee Company is NBFC Company, hence NOC from RBI is required.3. The Company has clearly states that the details of assets and liabilities to be transferred to Demerged Company. <p>ROC, Mumbai in his report has inadvertently mentioned that the Scheme is of a demerger, whereas it is not a demerger. Hon'ble Tribunal may consider the ROC's report accordingly and decide the matter on merits</p>	<p>Share capital and paid-up capital of the Transferee Company had increased as on 31st March, 2020. Therefore, it is not matching with the scheme which was filed in the year of 2019. So far as the observation in paragraph IV (e)(2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company hereby states that the RoC, Mumbai in his report has inadvertently mentioned that the Scheme is of a demerger and Transferee Company is NBFC company, whereas it is not a demerger and NBFC Company hence, no NOC from the RBI required. So far as the observation in paragraph IV (e)(3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits</p>
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		that the details of the assets and liabilities to be transferred was submitted to the office of Regional Director.
IV(f)	The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or arrangement. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s);	So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel hereby confirm that notices have been served to the concerned authorities which are likely to be affected by Amalgamation
IV(g)	The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme	So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that the Scheme enclosed to Company

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	enclosed to the Company Petition are one & same and there is no discrepancy or deviation	Application & Company Petition, are one and same and there is no discrepancy / any change / changes are made.
IV(h)	<p>As per clause 12 of the Scheme, Petitioner Companies proposes to Change of objects of the Transferee Company;</p> <p>Upon the Scheme coming into effect, without any further act or deed and without following the procedure laid down under Sections 13, 14 and other applicable provisions, if any, of the Companies Act, 2013, the Main Objects of the Transferor Company as mentioned herein below shall stand inserted in Clause III (A) i.e. Main Objects of the Memorandum of Association of the Transferee Company after the existing sub-clause 2</p> <p>The Petitioner Company to undertake to comply with applicable provisions of the</p>	<p>So far as the observation in paragraph IV (h) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies undertakes to comply with applicable provisions of the Companies Act, 2013 read with Rules</p>

	Companies Act, 2013 read with Rules.	
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10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The Representative of the RD has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have no objection to the Scheme.
11. The Official Liquidator has filed his report on 22nd January, 2021 in the Company Scheme Petition No. 72 of 2021, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved by this Tribunal.
12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 72 of 2021 is made absolute in terms of prayer clauses (a) of the said Company Scheme Petition.
14. The First Petitioner Company be dissolved without winding up.

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15. Petitioners are directed to file 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 within 30 days from the date of receipt of the Order from the Registry.
16. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant 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. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
18. The Appointed Date is 1st April, 2019.
19. Ordered Accordingly.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

03.02.2023

SAM

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)