

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-1**

C.P.87/MB/2019

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

AND

*In the matter of
Sections 232 r/w Section 230 and other
applicable provisions of the Companies
Act, 2013 and Rules framed there
under as in force from time to time;*

AND

*In the matter of
Scheme of Amalgamation*

**Regional Director, Western Region,
Ministry of Corporate Affairs,**

...Petitioner

Vs.

Stock Traders Private Limited

...Transferee Company

Order delivered on 29.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances (through)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-1**

C.P.87/MB/2019

For the Applicant (s) : Adv. Kunal Mehta i/b Gaword
Bayley & Co, Advocate

ORDER

1. Heard the Learned Counsel for the Petitioner as well as Counsel for Respondents. 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, except as otherwise stated or dealt with in the following paragraph.
2. The Company Petition reveals that the Stock Traders Private Limited Company (Transferee Company) preferred a scheme with the Petitioner, under Section 233 of the Companies Act, 2013 for amalgamation of one PRS Solutions Private Limited (Transferor Company) with Stock Traders Private Limited (Transferee Company).
3. The Regional Director ("Petitioner") submits that the Transferee Company ("Respondent Company") has filed an application u/s 233 of the Companies Act for scheme of Amalgamation. The Petitioner has filed this Company Petition before this Tribunal seeking direction from this Bench to consider the scheme filed u/s 232 r/w Section 230 of the Companies Act, 2013 r/w other relevant provisions of the Companies Act, 2013.
4. It is submitted that the Transferor Company is a wholly own subsidiary of the Transferee Company. In view of the fact that PRS Permacel Private Limited is managing its activities of its own, the business activities of the Transferor Company come to a halt except the routine

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-1**

C.P.87/MB/2019

administrative actions. Hence Transferor Company and Transferee decided that R1 be amalgamated with Transferor Company and filed an Application before the Petitioner for amalgamation under Section 233 of the Companies Act, 2013. The appointed date fixed under the Scheme is 1st April 2018.

5. This Tribunal vide order dated 05.02.2021 allowed the Application filed by the Petitioner Company and converted the Application into Section 232 r/w Section 230 of the Companies Act, 2013.
6. The Registrar of Companies (RoC), Mumbai vide its report dated 13.11.2018 given no objection for the scheme of amalgamation.
7. The Official Liquidator has filed its report dated 16.11.2018 and submits that declaration of solvency is not filed with this office, however, the same may be called for the RoC if filed with the concerned RoC in terms of Section 233(c) r/w Rule 25(2) by the Transferor and Transferee Company. However, it is noticed from the financial position of the transferor Company given in the scheme and as detailed above that, the transferor company is not a solvent company in view of not having any assets but having huge liabilities with accumulated losses/negative networth and hence cannot go for the scheme under Scheme 233 of the Companies Act, 2013, being a non-solvent company. Hence, as on appointed date the transferor Company is not capable of meeting its liabilities and accordingly their director(s) cannot declare solvency.
8. The Regional Director/Petitioner submits that the Transferor Company is not a solvent company and the scheme is not in the interest of creditors and public interest.

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-1**

C.P.87/MB/2019

9. The Authorized Representative of the Regional Director (WR), Mumbai appeared on the date of final hearing and submits that they have no objection for approval of the scheme.
10. Heard the submissions made by the Regional Director and the Ld. Counsel for the Transferor Company and Transferee Company.
11. We have considered the material available on record, we notice that it is a case of Amalgamation of a holding and subsidiary company. That the Transferor Company has an outstanding borrowing of Rs. 59.99 lakhs from Transferee Company as out of total liabilities of Rs. 129.58 lakhs Approx. The liability due to Transferee Company shall stand knocked off and the remaining liability shall become liability of Transferor Company which has the networth of Rs. 2,853.96 lakhs. A holding Company ordinarily supports its subsidiary Company and Amalgamation in the present case has to be considered in that perspective. Further, it being Amalgamation of forming subsidiary company no consideration is payable and entire share capital of Transferor Company shall stand cancelled and negative reserves of Transferor Company shall stand set off against the positive reserved of Transferee Company. We further note that consolidate networth shall be approximately Rs. 2723 lakhs. Accordingly, this Bench is of the considered view that the objection to the solvency is not correct and has no substance.

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-1**

C.P.87/MB/2019

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 considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
13. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
14. The Transferor Company be dissolved without winding up. The appointed date fixed under the Scheme is 1st April 2018.
15. Ordered Accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)