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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**PRINCIPAL BENCH**

**NEW DELHI**

**Company Petition No. (CAA)-112/PB/2018**

*Rajni* - 14/1/2019  
DD/DR/AR/Court Officer  
National Company Law Tribunal  
New Delhi

**Connected with**

**Company Application No. CA (CAA)31/PB/2018**

**Judgment dated: 08/01/2019**

**Coram:**

**CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR,**

**HON'BLE PRESIDENT**

**&**

**MR. S.K. MOHAPATRA,**

**MEMBER (TECHNICAL)**

**In the matter of:**

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

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**AMONGST**

*(Signature)*  
(CAA)-112/PB/2018



**CRESCITA ENTERPRISES PRIVATE LIMITED**

..... Petitioner Company No. 1 / Transferor Company

AND

**DCM LIMITED**

..... Petitioner Company No. 2 / Transferee Company


**For the Applicants: Mr. Rajeev Kumar & Mr Mahesh Aggarwal**

Advocates

**ORDER**

**M.M. KUMAR, PRESIDENT**

1. This Joint application 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. The copy of the Scheme has been placed on record.
2. A perusal of the petition discloses that initially the First Motion application seeking dispensation from convening the meeting of Shareholders and Creditors was filed before this Bench and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, this Tribunal vide its order dated 28.03.2018 issued directions to

  
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convene the meetings of shareholders, secured and unsecured creditors of the transferee company. On 17.09.2018 the Petitioners were directed to carry out publication in the newspapers English Daily 'Indian Express' (Delhi edition) as well as in Hindi Daily 'Jansatta' (Delhi edition). In addition thereto notices were directed to be served on 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.

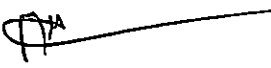
3. It is seen from the records that the Petitioners have filed an affidavit dated 26.10.2018 affirming compliance of the order passed by the Tribunal dated 17.09.2018. A perusal of the affidavit discloses that the petitioners have effected the newspaper publication as directed in English Daily 'Business Standard' (Delhi Edition) as well as in Hindi Daily 'Jansatta' (Delhi Edition) on 25.10.2018 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition were duly served on the Registrar of Companies, Regional Director, Northern Region and Income Tax Department in compliance of the order and in proof of the same acknowledgement by the respective offices have also been placed on record.

4. The Regional Director has filed its representation dated 20.11.2018 has observed that, firstly, an inquiry in respect of transferee company under



section 206 of Companies Act, 2013 is being conducted as the name of the said company has been figured under "Watch List" for frequent complaints. Second observation is that there is a complaint against the transferee company regarding non-payment of FDR which is under process.

5. In response of the aforesaid observations of the Regional Director, the petitioner companies filed their a rejoinder affidavit dated 30.11.2018 and submitted that firstly, the transferee company will remain in existence after merger and the Transferee Company has also undertaken that it will extend full co-operation to the RoC in any kind of technical scrutiny. Secondly, the transferee company has submitted that it does not reply to the letters of investors as may be received through the RoC to resolve their complaints as and when received. However, it has been undertaken by the transferee company that on receipt of any pending query or complaint of the investor from the RoC, it would be responded accordingly.
6. The Official Liquidator has filed a report on 27.11.2018 wherein it has been stated that he 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 the Applicant Companies do not appear to have

  
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been conducted in a manner prejudicial to the interest of its members, creditors or public interest.

7. A perusal of the status report filed by the Income Tax Department on 04.12.2018 shows that no demand is pending in respect of the Petitioner Companies.

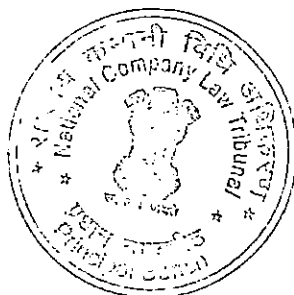
8. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 are pending against the Petitioner Companies.

9. Certificates of respective Statutory auditors of both 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.

10. 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



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Scheme. Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

11. 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.

While approving the Scheme as above, we further clarify that this order should not be construed as an order in any granting exemption from payment of stamp duty, taxes including income tax, GST etc or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

**12. THIS TRIBUNAL DO FURTHER ORDER(S):**

**(A) WITH RESPECT TO TRANSFEROR COMPANY AND TRANSFEREE COMPANY**

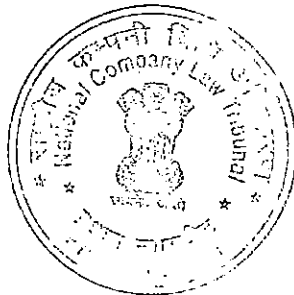
1. That the Transferor Company stands dissolved without being wound-up; and



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2. That all the property, rights and powers of all the Transferor Company, 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 vest in the Transferee Company for all the estates and interests of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and
3. That all the liabilities and duties of the Transferor Company be transferred without further act or deed, to 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 the Transferor Company be continued by or against the Transferee Company; and
5. That all the employees of the Transferor Company in service, if any, 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 conditions not



less favourable than those subsisting in concerned Transferor Company 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 Company for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Company shall place all documents relating to the Transferor Company 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.

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.

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*Raju* : 14/1/2019  
DD/DR/AR/Officer  
National Company Law Tribunal  
New Delhi

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*Sd/-*  
(M.M. KUMAR)  
PRESIDENT

08.01.2019

*Sd/-*  
(S.K. MOHAPATRA)  
MEMBER(T)

*Raju* : 14/1/2019 8  
व.वि.चं.राजू / V.V.B. RAJU  
उप पंजीयक / DEPUTY REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
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