


**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 17.07.2019**

1. **CP (CAA) No. 52/NCLT/AHM/2019 in CA(CAA) 02 of 2019
Surcot Trading Pvt. Ltd.**
2. **CP (CAA) No. 30/NCLT/AHM/2019 in CA(CAA) 03 of 2019
Stanrose Mafatlal Investments & Finance Ltd.**

Section of the Companies Act: Section 230-232 of the Companies Act, 2013


<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	CS MANOJ HURLAT	PCS	For petitioner Co.	
2.				


COMMON ORDER

The Petitioner is represented through their respective Learned PCS.

The case is fixed for pronouncement of order.

The Common Order is pronounced in the open court, vide separate sheet.


**MANORAMA KUMARI
MEMBER (JUDICIAL)**


**HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)**

Dated this the 17th day of July, 2019.

vs

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CP (CAA) No. 52/NCLT/AHM/2019 in
CA (CAA) No. 2/NCLT / AHM/2019
AND
CP (CAA) No. 30/NCLT/AHM/2019 in
CA (CAA) No. 3/NCLT / AHM/2019

In the matter of:

Surcot Trading Private Limited,

A Company registered under the
provisions of the Companies Act,
and having its registered office at
914, Alishan Awas,
Diwali Baugathwa Gate,
Surat – 395001
Gujarat

..... Petitioner Transferor Company No. 1

with

Stanrose Mafatlal Investment and Finance Limited

A Company registered under the
provisions of the Companies Act, 1956
and having its registered office at
6th Floor,
Popular House,
Ashram Road,
Ahmedabad – 380009
Gujara

..... Petitioner Transferee Company


Order delivered on 17th July, 2019

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

Appearance: PCS Manoj Hurkat, for the Petitioner Companies

COMMON ORDER

1. The instant petitions are filed by the Petitioner Companies for sanctioning of the Composite Scheme of Arrangement in the nature of Amalgamation of Surcot Trading Private Limited, the Petitioner Transferor Company, (Transferor Company Number 1) and Umiya Real Estate Private Limited (Transferor Company Number 2) with Stanrose Mafatlal Investments and Finance Limited, the Petitioner Transferee Company.





2. It is stated that Transferor Company No. 2 has a registered office at Chennai and the said Transferor Company has filed proceedings before NCLT, Chennai.
3. It Is stated that Petitioner Transferee Company is a listed public company and the shares of the Petitioner Transferee Company are listed on BSE Limited. Hence, in terms of Regulation 37 of the SEBI (LODR) Regulations, 2015 read with SEBI Circular No. CFD/DIL3/CIR/2017/21 dated 10th March, 2017, the Petitioner Transferee Company has obtained No Adverse observation letter bearing Number DCS/AMAL/SD/R37/1331/2018-19 dated 14th November, 2018 from BSE Limited and placed on record along with the application being CA (CAA) No. 3/NCLT/AHM/2019.
4. It is stated that Board of directors of the Petitioner Companies, at their respective board meetings held on 13th March, 2018 resolved that subject to the requisite approvals of the Equity Shareholders, Creditors and subject to such directions and sanctions of the National Company Law Tribunal, Ahmedabad, as may be required in law, and subject to such consents and permissions of the Central Government and other authorities as may be necessary to be obtained and if so directed by the NCLT, the Scheme of Arrangement in the nature of Amalgamation was unanimously approved by the Board of Directors. The copies of the Board Resolutions dated 13th March, 2018 for approval of the Scheme are annexed with the respective petitions and marked as **Annexure "D"**. Copy of the Scheme of Arrangement in the nature of Amalgamation as approved by the Board of Directors is annexed with the respective petitions and marked as **Annexure "E"**.
5. It is submitted by the Petitioner Companies that for the determination of valuation of assets and liabilities of each of the Companies involved in the Scheme of Arrangement for Amalgamation and for recommendation of the fair share exchange ratio, the Petitioner Companies have obtained a Valuation Report from Manubhai & Shah LLP, Statutory Auditors of the Petitioner Transferee Company. Copy of the Valuation Report is annexed with the respective petitions and marked as **Annexure "F"**.
6. It is further submitted by the Petitioner Companies that for validation of the fairness of the share exchange ratio for the proposed Amalgamation,



the Petitioner Companies have also obtained Fairness opinion from M/s. VIVRO Financial Services Private Limited, an Independent Merchant Banker registered with SEBI. Copy of the Fairness Opinion dated 13th March, 2018 as provided by M/s. VIVRO Financial Services Private Limited, an Independent Merchant Banker is annexed with the respective petitions and are marked as **Annexure "G"**.

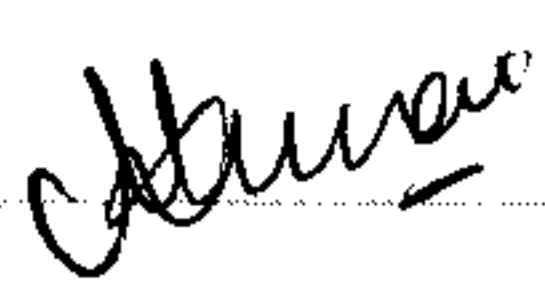
7. The Petitioner Companies have annexed with the respective petitions, certificate by their statutory auditors confirming that the accounting treatment of the proposed Scheme is in conformity of the Applicable Accounting Standards. Copy of the Certificate provided by M/s. Manubhai & Shah LLP, Statutory Auditors, confirming the proper accounting treatment is annexed with the respective petitions and marked as **Annexure "H"**.
8. It is stated by the Petitioner Companies that no proceedings or investigation are pending against any of the Companies under any of the provisions of the Companies Act, 1956/2013 and rules made thereunder. Further, there is no winding up petition pending against the Petitioner Companies under the provisions of the Companies Act, 1956/2013/Insolvency and Bankruptcy Code, 2016.
9. The Petitioner of CP (CAA) No. 52/NCLT/AHM/2019 i.e. Surcot Trading Private Limited, the Petitioner Transferor Company filed an application before this Tribunal being CA (CAA) No. 2/NCLT / AHM/2019 inter alia seeking directions of this Tribunal for dispensation from convening and holding meetings of Equity shareholders and Unsecured Creditors of the Petitioner Transferor Company. It was stated by the Petitioner Transferor Company that Petitioner Transferor Company has no Secured Creditors. By an order dated 28th February, 2019 in CA (CAA) No. 2 of 2019, this Tribunal directed dispensation of the meetings of Equity Shareholders and Unsecured Creditors of the Petitioner Transferor Company. This Tribunal further directed the Petitioner Transferor Company to issue notice in Form No. CAA-3 to (i) the Central Government (Through Regional Director, North Western Region, (ii) Registrar of Companies (iii) Income Tax authorities (iv) Official Liquidator, stating that representation, if any, to be made by them, be made, within a period of 30 days from the date of receipt of such Notice. In compliance with the aforesaid directions contained in the order dated

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[Signature]

28th February, 2019 of this Tribunal, the Petitioner Transferor Company served notice to the Central Government through Regional Director, North Western Region, Registrar of Companies, Income Tax authorities, Official Liquidator and filed affidavit dated 7th March, 2019 with this Tribunal evidencing the service of notice upon the aforesaid statutory authorities under Section 230(5) of the Act.

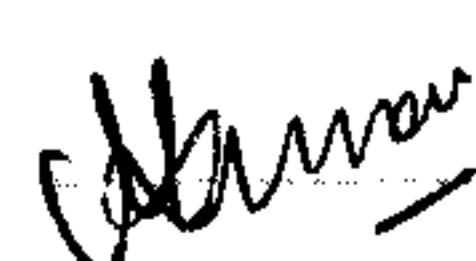
10. The Petitioner of CP (CAA) No. 30/NCLT/AHM/2019 i.e. Stanrose Mafatlal Investments and Finance Limited, the Petitioner Transferee Company filed an application before this Tribunal being CA (CAA) No. 3/NCLT / AHM/2019 inter alia seeking directions of this Tribunal for convening and holding meeting of Equity Shareholders of the Petitioner Transferee Company. By an order dated 16th January, 2019 in CA (CAA) No. 3 of 2019, this Tribunal directed for convening and holding of the meeting of Equity Shareholders on 22nd February, 2019. The Petitioner Transferee Company submitted that Petitioner Transferee Company has no creditors either secured or unsecured creditors. This Tribunal further directed the Petitioner Transferee Company to issue notices in Form No. CAA-3 to (i) Central Government (Through Regional Director, North Western Region, Ahmedabad), (ii) The Registrar of Companies, (iii) Income Tax authorities (iv) Reserve Bank of India (v) BSE Limited and (vi) Securities and Exchange Board of India stating that representation, if any, to be made, be made by them, within a period of 30 days from the date of receipt of such Notice.
11. In Compliance of the order 16th January, 2019 passed by this Tribunal, notice along with Explanatory Statement required pursuant to Section 102 of the Act read with Section 230-232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 along with Proxy form were sent to the Equity Shareholders of the Petitioner Transferee Company. The Notice convening the meeting was also published on 23rd January, 2019 in "Financial Express" in English language and Gujarati translation thereof in "Financial Express" Gujarati edition. The Chairman of the meeting filed affidavit dated 12th February, 2019 before this Tribunal evidencing service of Notice to the Equity Shareholders and publication of the notice of meeting of Equity Shareholders of the Petitioner Transferee Company. It is submitted that the Petitioner Transferee Company served Notices to the Central Government through Regional Director, North Western Region, Ahmedabad, Registrar of Companies, Income Tax





authorities, Reserve Bank of India, BSE Limited and Securities and Exchange Board of India. The Petitioner Transferee Company affidavit dated 4th March, 2019 before this Tribunal, evidencing the service of notice upon the aforesaid statutory authorities.

12. It is stated that aforesaid meeting of Equity Shareholders of Petitioner Transferee Company was duly convened and held on 22nd February, 2019 and the Chairman filed his report with regard to the result of the said meeting of the Equity Shareholders of the Petitioner Transferee Company vide affidavit dated 23rd February, 2019. On perusal of the same, it is noticed that the Scheme was approved by approx. 99% in number and approx. 100% in value, which is aggregating to requisite majority of the Equity shareholders who cast their votes.
13. Thereafter, Petitioner Companies filed CP (CAA) No. 52/NCLT/AHM/2019 and CP (CAA) No. 30/NCLT/AHM/2019, seeking sanction of the Scheme. This Tribunal by its orders dated 3rd May, 2019 admitted the aforesaid Company Petitions and directed issuance of Notice of hearing to the Central Government through Regional Director, North Western Region, Registrar of Companies, Income Tax authorities, Reserve Bank of India, BSE Limited and Securities and Exchange Board of India in case of Petitioner Transferee Company and to the Central Government through Regional Director, North Western Region, Registrar of Companies, Income Tax authorities, Official Liquidator in case of Petitioner Transferor Company. This Tribunal further directed both the Petitioner Companies to publish the notice of hearing of present company Petitions in "Financial Express" in English language and Gujarati translation thereof in "Financial Express" Gujarati edition not less than 10 days before the date of hearing of the present petitions.
14. Pursuant to the orders dated 3rd May, 2019 passed by this Tribunal, the Petitioner Transferee Company i.e. Stanrose Mafatlal Investments and Finance Limited published, notice of hearing of the present Petition in "Financial Express" in English language and Gujarati translation thereof in "Financial Express" Gujarati edition on 17th May, 2019. The Petitioner Transferee Company also served the Notice of hearing to The Central Government through Regional Director, North Western Region, Registrar of Companies, Income Tax authorities, Reserve Bank of India, BSE Limited and Securities and Exchange Board of India. The Petitioner



Transferee Company filed affidavit dated 20th June, 2019 before this Tribunal, evidencing the publication of notice of hearing of the petition and service of notice upon the aforesaid statutory authorities. Further, the Petitioner Transferor Company i.e. Surcot Trading Private Limited, also published the notice of hearing of the present Petition in "Financial Express" in English language and Gujarati translation thereof in "Financial Express" Gujarati edition on 17th May, 2019. The Petitioner Transferor Company also served notice of hearing upon the Central Government through Regional Director, North Western Region, Registrar of Companies, Income Tax authorities, Official Liquidator. The Petitioner Transferor Company filed affidavit dated 21st June, 2019 before this Tribunal, evidencing the publication of notice of hearing and service of notice upon the aforesaid statutory authorities.

15. It is stated by the Petitioner Companies that pursuant to orders dated 3rd May, 2019 passed by this Tribunal and issuance of notice to aforesaid statutory authorities and on publication of the notice of hearing, no representation is received.
16. The Petitioner Companies further submitted that apropos to the order dated 16th January, 2019 and notice dated 4th March, 2019, Regional Director, North Western Region, filed its representation dated 18th March, 2019 making certain observations.
 - 16.1 In Para 2(c), RD has stated that as per clause 13.1 of the Scheme, the authorized share capital of the Transferor Companies amounting to Rs. 8,00,000/- will be added in the authorized share capital of the Petitioner Transferee Company and the Petitioner Transferee Company will be required to pay the difference of amount of fees which is payable on the enhanced authorized capital as on date and the total amount of fees which have already been paid by all the Petitioner Companies at the time of registration/increase in authorized capital, as the case may be and desired this Tribunal to direct the companies to undertake the compliance of Section 232(3)(i) of the Companies Act, 2013 and to pay fees accordingly.
 - 16.2 In Para 2(e), RD has stated that 9998 shares (99.98%) number of equity shares of the Transferor Company 2 and 66,155 equity shares (1.67%) of the Petitioner Transferee Company are held by Non-Resident Indians





of

and the Regional Director is not aware[^] as to whether the Petitioner Transferee Company has complied with the provisions of FEMA and RBI guidelines or not and desired this Tribunal to direct the Petitioner Transferee Company to ensure about the compliances of FEMA and RBI guidelines, in the matter, from time to time.

- 16.3 In Para 2(f), RD has stated that Petitioner Transferee Company is listed with BSE and the Petitioner Transferee Company has submitted with the office of RD, the copy of the letter dated 14.11.2018 issued by BSE to the Petitioner Transferee Company pursuant to SEBI circular No. CFD/DIL/3/CIR/2017/21 dated 10.03.2017 and desired this Tribunal to direct the Petitioner Transferee Company to place before the NCLT, the confirmation that Petitioner Transferee Company has complied with the same.
- 16.4 In Para 2(g) RD has stated that it is observed from the Balance Sheet of Surcot Trading Private Limited, the Petitioner Transferor Company, as at 31.03.2018 that the name of the company from whom inter corporate deposit have been taken is not clearly mentioned in notes to account attached therewith.
- 16.5 In Para 2(h) RD has observed that Petitioner Transferee Company is registered with RBI as NBFC and the Petitioner Transferee Company has not submitted the copy of NOC from the RBI and desired the Petitioner Transferee Company to ensure compliance of guidelines issued by RBI, from time to time, in the matter.
- 16.6 In Para 2(i), RD has stated that shares of the Transferor Companies have negative values. The Petitioner Transferee Company is taking over the net liabilities of the Transferor Companies which would be paid by the Petitioner Transferee Company after merger. The Petitioner Transferee Company is not getting any net assets from the Transferor Companies. Hence for the purpose of working out fair exchange ratio, no equity shares of the Petitioner Transferee Company to be issued and allotted for equity shares each held in the Transferor Companies and desired NCLT to direct the Petitioner Companies to place on record, all the relevant facts of the matter.
17. In response to the representation dated 18th March, 2019 made by the Regional Director, North Western Region, it is stated by the Petitioner Companies that the Petitioner Transferee Company has filed an affidavit

dated 20th June, 2019 giving its response to all the observations of the Regional Director.

- 17.1 In reply to Para 2(c) of RD's representation, the Petitioner Transferee Company has undertaken to carry out compliance of Section 232(3)(i) of the Companies Act, 2013 regarding payment of Fees (if any) on increase in authorized capital from Rs. 5 Crores to Rs. 5.08 Crores after deducting fees already paid by the Petitioner Transferor Company on authorized capital of Rs. 6 Lacs and fees paid by Transferor Company Number 2 on authorized capital of Rs. 2 Lacs.
- 17.2 In reply to Para 2(e) of RD's representation, the Petitioner Companies submits that there was no issue or transfer of shares and hence do not require any compliance under FEMA & RBI Regulations. However, the Petitioner Companies have affirmed that Petitioner Companies have complied with the FEMA and RBI guidelines and will continue to comply with the same in future too.
- 17.3 In reply to Para 2(f) of RD's representation, the Petitioner Transferee Company submits that Petitioner Transferee Company has complied with all the directions given by BSE Limited vide its letter dated 14th November, 2018
- 17.4 In reply to Para 2(g) of RD's representation, the Petitioner Companies submits that details regarding Inter Corporate Loan has been fully disclosed in the Scheme and in Notices to equity shareholders and notice to the statutory authorities and does not require any further disclosure.
- 17.5 In reply to Para 2(h) of RD's representation, the Petitioner Transferee Company submits that there is no fresh issue of shares or transfer of shares or there is no change in the management involved. In view of this, there is no requirement to obtain approval/NOC from Reserve Bank of India in connection with the Scheme. Moreover, the Petitioner Transferee Company has sent notice to RBI and there is no communication/representation from them.
- 17.6 In reply to Para 2(i) of RD's representation, the Petitioner Companies submit that as the net worth of both the Transferor companies is negative and in view of cancellation of Inter Corporate Deposits as per





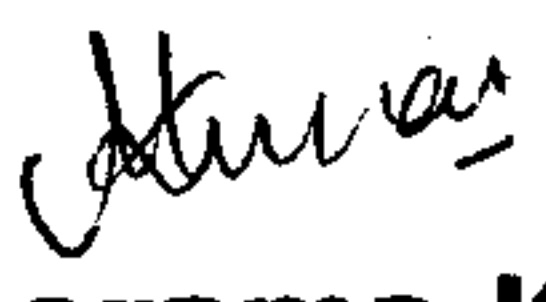
Para 11.1 of the Scheme and based on Valuation Report and Fair Value Report placed on record, there is no need to issue shares to the shareholders of both the Transferor Companies.


18. The Petitioner Transferor Company further submits that apropos to the order dated 16th January, 2019 and notice dated 7th March, 2019, the Official Liquidator, filed its representation dated 10th April, 2019 making certain observations. The observations of the Official Liquidator are general in nature except the Official Liquidator has sought directions from this Tribunal to the Petitioner Transferor Company that the Petitioner Transferor Company shall preserves its books of accounts, papers and records and shall not dispose of the same without prior permission of the Central Government as required under section 239 of the Companies Act, 2013 and the Petitioner Transferor Company submits through affidavit dated 21st June, 2019 before this Tribunal, that Petitioner Transferor Company shall comply with all the statutory compliances of all applicable laws and also on sanctioning of the present Scheme and shall not be absolved from any of its statutory liabilities, in any manner. In response to the representation dated 10th April, 2019 made by the Official Liquidator, Petitioner Transferor Company filed affidavit dated 21st June, 2019 and given its response to all the observations of the Official Liquidator.
19. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the proceedings, it appears that the requirements of the provisions of sections 230-232 of the Companies Act, 2013 are satisfied. We therefore accordingly allow the Company Petitions subject to the sanctioning of the Scheme by the Ld. NCLT Bench at Chennai in respect of the Transferor Company No. 2, namely Umiya Real Estate Private Limited. The Scheme which is at Annexure – “E” to the petitions is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies, their shareholders and all concerned under the Scheme.
20. Fees of Official Liquidator is quantified at Rs. 15000/- in CP (CAA) 52/NCLT/AHM/2019 in respect of Petitioner Transferor Company. The said fees shall be paid by the Petitioner Transferee Company.

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21. Further the fees of Regional Director is quantified at Rs. 25000/- in CP (CAA) No. 30/NCLT/AHM/2019 and Rs. 15000/- in CP (CAA) No. 52/NCLT/AHM/2019. The said fees shall be paid by the Petitioner Transferee Company.
22. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar to this Tribunal shall issue the authenticated copy of this order along with Scheme immediately.
23. The Petitioner Companies are further directed to lodge a copy of this order, the schedule of immovable assets of the Petitioner Transferor Company as on the date of this order and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.
24. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with INC 28 in addition to physical copy as per relevant provisions of the Act.
25. These Company Petitions are disposed of accordingly.


Ms. Manorama Kumari,
Member (Judicial)


Harihar Prakash Chaturvedi,
Member (Judicial)

LCT