

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Petition TP No.141/2017
Arising out of C.P. No. 835 of 2016

IN THE MATTER OF:

An Application under Section 391(2) and 394 of the
Companies Act, 1956 ;

-And-

IN THE MATTER OF:

Nezone Traders Private Limited, a company
incorporated under the provisions of the Companies Act,
1956 and having its Registered Office at 216, AJC Bose
Road, Suite 2B, Kolkata – 700 017 within the aforesaid
jurisdiction ;

.. Demerged Company

And

Eye Sense Herbals Private Limited, a company
incorporated under the provisions of the Companies Act,
1956 and having its registered Office at 216, AJC Bose
Road, Kolkata – 700 017 within the aforesaid
jurisdiction ;

.. Resulting Company

Sd

Sd

And

1. Nezone Traders Private Limited
2. Eye Sense Herbals Private Limited

... Petitioners

Date of pronouncement of the Order : 22-02-2018

Coram : Mr. V.P. Singh, Member(Judicial)
Mr. Jinan K. R., Member(Judicial)

For the Petitioners:

Mr. J Patnaik, Pr. CS

Ms. Tia Inla, Deputy Director, C/o. Regional Director(Eastern Region),
Ministry of Corporate Affairs

Per Jinan K.R. Member(Judicial)

ORDER

1. The object of this petition is to obtain sanction of this Tribunal to the Scheme of Arrangement between Nezone Traders Private Limited, Eye Sense Herbals Private Limited and their respective members for the Demerger of the Demerged Company into the Resulting Company, a copy of which is annexed with the Petition and marked as Annexure "A".

Sd

Sd

2. By the said Scheme of Arrangement, all the rights, claim and interest whatsoever of the Demerged Company and their entire undertakings together with all the assets and liabilities relating thereto as a going concern is proposed to be transferred to and be vested in the Resulting Company on the terms and conditions and in the manner fully stated in the Scheme of Arrangement.

3. It has been stated in the Petition that the Scheme of Arrangement would ensure higher retained earning leading to enhanced intrinsic value of shareholding to the investors.

4. The corporate restructuring resulting from the Scheme of Arrangement will integrate all the activities leading to increased opportunities in all the areas of business.

5. The Demerged Company would have stronger fundamentals which enhance its credit rating and resource raising the ability in the financial markets.

6. It has also been stated in the Petition that the proposed segregation will allow a focussed strategy in operations, which would be in the best interest of the Demerged Company, its shareholders, creditors and all the persons connected with Nezone Traders Private Limited.

The Scheme of Arrangement will have beneficial results for all the Applicant Companies concerned, their shareholders, employees and concerned. The Board of Directors of the Resulting Company and the Demerged Company have already, in their respective Board meetings, by resolution passed unanimously, approved the Scheme of Demerger.

8. The Petitioner Companies had filed a Company Application No.605 of 2016 before the Hon'ble High Court at Calcutta praying for dispensing with the holding of meeting of the shareholders of the Petitioner Company No.1 and 2 in view of the written consent given by al the equity shareholders of the Petitioner Companies to the Scheme of Demerger and have also consented to waive the holding and convening of the meeting of the shareholders.

9. The Hon'ble High Court, Calcutta was pleased to pass an order dated 22-08-2016 in the Company Application No. 605 of 2016, for dispensing with the meeting of the shareholders of the Petitioner Companies.

10. A copy of he said Order is annexed with the Petition and marked as Annexure "P".

11. It has been stated in the Petition that the assets of the Petitioner Companies are sufficient to meet all its liabilities and the Scheme of Arrangement will not adversely affect the rights of any of the creditors of he Petitioner Company in any manner whatsoever.

12. The Petitioner Companies made due provisions for payment of all the liabilities as and when the same will fall due.

13. It has been also stated in the Petition that there are no proceedings pending under the provisions of Sections 206 to 229, as made applicable from April 01, 2014 of the Companies Act, 2013 against any of the Petitioner Companies.

14. The petitioners had made the petition bearing CP No. 835/2016 dated 26-08-2016 before the Hon'ble High Court, Calcutta, which has since been transferred to this Tribunal having numbered as TP No. 141/2017, among other things, seeking final sanction to the Scheme of Arrangement and for orders facilitating and giving effect to the same.

15. Further, vide affidavit dated 31-01-2018 filed by the Petitioner Companies, it has been stated that the Petitioner Companies have no creditors as on 30-10-2017.

16. The original certificates as obtained from the Auditors of the respective Petitioner Companies are annexed with the Petition and marked Annexure "X".

17. It has also been stated in the said affidavit dated 31-01-2018 that after publication on 19-09-2016 in English in Business Standard and in Bengali in

Dainik Bartaman, the Petitioner Companies have not received any objection or complaint from anywhere till date with regard to the Scheme of Arrangement.

18. In view of the fact that there are no creditors of the Petitioner Companies as on 30-10-2017, as stated in the affidavit dated 31-01-2018, the Petitioner Companies have prayed for dispensation of convening and holding of separate meetings of the Creditors of the Petitioner Companies by this Tribunal.

19. Heard the arguments of the Ld. Pr. CS for the petitioner Companies.

20. In view of the fact that there are no creditors of the Petitioner Companies as on 30-10-2017, as stated in the affidavit dated 31-01-2018 by the Petitioners, convening and holding of separate meetings of the Creditors of the Petitioner Companies, does not arise.

21. Let notice be served as per requirements of sub section (5) of section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Arrangement on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the Registrar of Companies, West Bengal and the concerned Assessing Officer along with the Chief Commissioner of Income Tax with PAN numbers of the Petitioner Companies, by hand delivery through personal messenger or by Speed post, E-Mail, both, and also on the Official Liquidator attached to the High Court, Calcutta, having jurisdiction over the Petitioner Companies.

Sd

Sd

The Petitioner Companies shall file an affidavit, along with the copy of the notice within 7 days regarding service of the notice.

22. The petitioner Companies shall send notice through e-mail also and file copies of the mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the petitioners and their advocates, if no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement.

23. Such notices shall be sent under section 230(5) of the companies act, 2013 in Form no. CAA.3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

24. Let the advertisement of the hearing of this petition be published once in the English daily, "The Business Standard" and in the Bengali daily, "Bartaman", stating the PAN numbers of all the petitioner companies, at least 10 days before the date fixed for hearing in Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

25. The Petition is fixed for hearing on 09-04-2018.

26. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

Sd

(V.P. Singh)
Member(Judicial)

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(Jinan K.R.)
Member(Judicial)

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