

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

**TP No. 153/2017**

**Arising out of**

**CP No. 1054 of 2016**

**Arising out of**

**CA No. 714 of 2016**

In the matter of :

An application under Sections 391(2) and  
394 of the Companies Act, 1956 ;

AND

In the matter of :

DESIRE SUPPLIERS PRIVATE LIMITED, a  
company incorporated under the provisions  
of the Companies Act, 1956, having its  
registered Office at 39, Burtolla Street,  
Ground Floor, Kolkata – 700 007 within the  
aforesaid jurisdiction ;

AND

KOHINOOR ENCLAVE PRIVATE LIMITED, a  
company incorporated under the provisions  
of the Companies Act, 1956, having its  
registered Office at 39, Burtolla Street,

Ground Floor, Kolkata – 700 007 within the  
aforesaid jurisdiction ;

AND

B.C. JAIN JEWELLERS(VIVEK) PRIVATE  
LIMITED, a company incorporated under the  
provisions of the Companies Act, 1956,  
having its registered Office at Marble Arch,  
236B, AJC Bose Road, 1<sup>st</sup> Floor, Flat No.101,  
Kolkata – 700 020 within the aforesaid  
jurisdiction ;

1. DESIRE SUPPLIERS PRIVATE LIMITED
2. KOHINOOR ENCLAVE PRIVATE  
LIMITED
3. B.C. JAIN JEWELLERS(VIVEK)  
PRIVATE LIMITED

.... Petitioners

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

For the Applicants :

1. Mr. Ravi S Asopa, Advocate

Date of pronouncement of Order : 09-03-2018

Sd

O R D E R

1. The object of this Petition is to obtain the sanction of this Tribunal to the proposed Scheme of Amalgamation of DESIRE SUPPLIERS PRIVATE LIMITED, being the Petitioner No.1, the Transferor Company No.1, KOHINOOR ENCLAVE PRIVATE LIMITED, being the Petitioner No. 2, the Transferor Company No.2, with B.C. JAIN JEWELLERS(VIVEK) PRIVATE LIMITED, being the Petitioner No.3, the Transferee Company, whereby and where under the entire undertakings of the Transferor Company Nos. 1 and 2 together with all their properties, rights, claims and liabilities relating thereto, are proposed to be transferred to and vest on the Transferee Company on the terms and conditions as fully stated in the Scheme of Amalgamation, a copy whereof is annexed with the Petition and marked "A".
2. It has been stated in the Petition that there are common shareholders and common directors in the Petitioner Companies. All the companies belong to common group and common management.
3. In order to integrate the fields of activities of the Companies and for improving overall business efficiency, to streamline administration of the Companies and in the overall interest of future growth and diversification of the business of the Companies, the Scheme is proposed to amalgamate the Transferor Companies with the Transferee Company.
4. The Scheme of Amalgamation will be complimentary to the companies for their mutual benefit and interest.
5. It has been further stated that the proposed Scheme of Amalgamation will result in economies of scale, reduction in overheads and other expenses, reduction in administrative and procedural work, elimination of duplication of work, better and more productive and effective utilisation of the combined

resources of all the companies and will enable the amalgamated company to effect internal economies and optimize productivity.

6. The Scheme of Amalgamation will have beneficial results for the companies concerned, their shareholders, employees and all concerned.

7. The Board of Directors of the Transferor Companies and the Transferee Company, had at their respective meetings by resolutions passed unanimously, approved the said Scheme of Amalgamation.

8. It has also been stated in the Petition that the aggregate assets of all the Petitioner Companies are more than sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the Creditors of the Petitioner Companies in any manner whatsoever and due provisions have been made for payment of all the liabilities as and when the same fall due in usual course.

9. There are no proceedings pending under sections 235 to 251 of the Companies Act, 1956 against any of the Petitioner Companies.

10. It has been stated in the Petition that no one will be prejudiced if the Scheme of Amalgamation is sanctioned and the sanction of the said Scheme will benefit and will be in the interest of the said Companies, their shareholders, creditors, employees and all concerned.

11. By an Order made in the Company Application No.714 of 2016, on 26-09-2016, the Hon'ble High Court, Calcutta was pleased to dispense with the meetings of the equity shareholders of the Petitioner Companies since each and every equity shareholders of the Petitioner Companies had considered the proposed Scheme of Amalgamation and on such consideration had given their consent in writing agreeing to the Scheme of Amalgamation and further also

consented to waive the holding and convening of the meetings of the shareholders of the Petitioner Company concerned.

12. A server copy of the said Order dated 26-09-2016 of the Hon'ble High Court, Calcutta is annexed with the Petition and marked "H".

13. Vide the said Order dated 26-09-2016 of the Hon'ble High Court, Calcutta, the applicants were directed to file a petition under Sections 391(1) and 394 of the Companies Act in respect of the proposed Scheme of Amalgamation, within two weeks from date.

14. The petitioner companies, thereafter, filed the Company Petition No.1054 of 2016 before the Hon'ble High Court Calcutta.

15. Upon admission of the Company Petition No. 1054 of 2016, in compliance of the Order dated 28-11-2016, passed by the Hon'ble High Court, Calcutta, in the Company Petition No. 1054 of 2016, the Petitioner Companies had served the copy of the Petition on Central Government and made newspaper publication in in English daily "The Financial Express", Kolkata and in Bengal daily "Pratidin" on 13-12-2016.

16. The Affidavit of service and publication had been filed by the Petitioner Companies on 16-12-2016.

17. The Hon'ble High Court, Calcutta transferred the Company Petition No 1054 of 2016 Connected with Company Application C.A No 714 of 2016 to this Tribunal in view of Rule 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016.

18. This Tribunal vide its Order dated 29-11-2017, directed the Petitioner Companies to convene and hold the Secured and the Unsecured Creditors of the Petitioner Companies on 15-01-2018.

19. The Chairman of the aforesaid meetings submitted his report vide affidavit dated 16-01-2018 and stated that the meeting was attended by total 15 unsecured Creditors of the Petitioner Companies, who unanimously approved and agreed to the Scheme of Amalgamation.

20. The Chairman of the aforesaid meetings also stated in his said affidavit dated 16-01-2018 that as per the Auditor's certificate, there is no secured Creditor in the Petitioner Companies.

21. The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata vide his Affidavit dated 03-07-2017 had stated that on examination of the report of the Registrar of Companies, West Bengal, it appeared that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The Petitioner Companies are also updated in filing their statutory returns.

22. It had further been stated in the said Affidavit that on examination of the proposed Scheme of Amalgamation, it appeared that the proposed Scheme is not prejudicial to the interest of members/shareholders and/or public. The Central Government has, therefore, decided that the instant petition/Scheme need not be opposed.

23. It had also been stated by the Regional Director in his Affidavit dated 03-07-2017 that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the Scheme was forwarded to the Income Tax Department on 15-12-2016 with a request to forward their comments/observations/objections, if any, on the proposed Scheme of Amalgamation within 15 days, but no comments/observations/objections had been received from the said authority.

24. Further, the Official Liquidator attached to the Hon'ble High Court, Calcutta vide his Report dated 23-02-2018 has stated that after scrutiny of the report

dated 12-02-2018 submitted by the Chartered Accountant, appointed by the Official Liquidator, and after scrutiny of other relevant papers and records etc., the Official Liquidator is of the opinion that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its members or to public interest.

25. Heard the arguments of the Ld. Counsel for the petitioner Companies and perused the documents annexed to the petition.

26. In view of the facts stated above, the following orders in terms of prayers made in the petition, with modifications by this Tribunal, are passed :

- a) That the Scheme of Amalgamation mentioned in Paragraph 1 of the Petition, being Annexure - "A", is sanctioned so as to be binding with effect from 1st April, 2016, on the Transferor Companies and the Transferee Company, their shareholders and all concerned ;
- b) All the properties, rights and powers of the Transferor Companies, be transferred to and vest without further act or deed in the Transferee Company and accordingly, the same shall, pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies, but subject nevertheless to all charges now affecting the same ;
- c) All the debts, liabilities, duties and obligations of the Transferor Companies, be transferred without further act or deed to the Transferee Company and accordingly, the same shall, pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company ;
- d) All legal proceedings and/or suits and/or appeals now pending by or against the Transferor Companies, be continued by or against the Transferee Company ;

- e) Leave is granted to the Transferor Companies to file their Schedule of Assets, as stated in paragraph 12 of the Petition, within three weeks from the date of this order ;
- f) The Transferor Companies and the Transferee Company respectively, do, within 30 days after the date of this order, cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal for registration ;
- g) On the basis of the report as filed by the Official Liquidator, the Transferor Companies is dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies, West Bengal by the Transferor Companies, namely, Desire Suppliers Private Limited and Kohinoor Enclave Private Limited and the Transferee Company, namely, B.C. Jain Jewellers(Vivek) Private Limited ;
- h) The Registrar of Companies, West Bengal upon receiving such certified copy of this order is directed to place all documents relating to the Transferor Companies, namely, Desire Suppliers Private Limited and Kohinoor Enclave Private Limited and register with him, on the file kept by him in relation to the Transferee Company, namely, B.C. Jain Jewellers(Vivek) Private Limited and the files relating to the Transferor Companies and the Transferee Company shall be consolidated accordingly ;

27. Any person interested, shall be at liberty to apply to this Tribunal in the above matter for such directions as may be necessary.

28. In the event of the petitioners supplying the legible computerized print out of the scheme of Amalgamation and the schedule of assets in acceptable form to the department, the department will append such



computerized print out, upon verification to the certified copy of the order without insisting on a hand-written copy thereof.

29. Accordingly, T.P. No. 153/2017 arising out of Company Petition No 1054 of 2016, connected with Company Application No. 714 of 2016, stands disposed off.

30. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Sd

(Jinan K.R)  
Member ( Judicial)

GOUR\_STENO