

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

C.P (CAA)/2754/MB/2018

IN

C.A (CAA)/ 182/MB 2018

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between Mink Tradecom Private Limited and Man Made Fibres Private Limited, Resham Resha Private Limited, S M ShetiSeva Private Limited and Khandwala Enterprise Private Limited and their respective Shareholders.

(i) Man Made Fibres Private Limited, a private limited company incorporated under the provisions of the Companies Act, 1956 under the corporate identity number U17120MH1961PTC011933 and having its registered office at 3-D, Sindhu House, Nana Bhai Lane, Flora Fountain, Fort, Mumbai-400 001**Petitioner/Demerged Company 1**

(ii) Resham Resha Private Limited, a private limited company incorporated under the provisions of the Companies Act, 1956 under the corporate identity number U17120MH1968PTC014036 and having its registered office at 6-C, Sindhu

House, Nanabhai Lane, Flora Fountain, Fort,
Mumbai- 400 001 in the state of Maharashtra;

....Petitioner/Demerged Company 2

(iii) S M Sheti Seva Private Limited, a private limited company incorporated under the provisions of the Companies Act, 1956 under the corporate identity number U15100MH1975PTC018191 and having its registered office at 5-C, Sindhu House, Nanabhai Lane, Flora Fountain, Fort, Mumbai- 400 001; **Petitioner/Demerged Company 3.**

Order delivered on: 30th August, 2018.

Coram:

Hon'ble **Bhaskara Pantula Mohan**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co.

For the Regional Director: Mr. S Ramakantha, Joint Director

Per: V. Nallasenapathy, Member (T)

Order

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Composite Scheme of Arrangement between Man Made Fibres Private Limited, Resham Resha Private Limited, S M Sheti Seva Private Limited and Khandwala Enterprise Private Limited and their respective Shareholders in the form of demerger, transfer and vesting of the Demerged Undertakings i.e. Investment Division engaged in dealings with shares and securities which are very liquid of the three Demerged Companies viz. Man Made Fibers Private Limited, Resham

Resha Private Limited, S M ShetiSeva Private Limited to Khandwala Enterprise Private Limited, the Resulting Company and merger by absorption of Mink Tradecom Private Limited with Khandwala Enterprise Private Limited ('Scheme').

3. Learned Counsel for the Petitioners states that, the "De-merged Company-1" is engaged, inter alia, in businesses of Investments in listed and unlisted shares/securities as well as Real Estate, The De-merged Company-2 is engaged, inter alia, in businesses of Investments in listed and unlisted shares/securities as well as Real Estate. The De-merged Company-3 is engaged, inter alia, in businesses of Investments in listed and unlisted shares/securities as well as Real Estate.
4. Learned Counsel for the Petitioners further states that the scheme envisages demerger, transfer and vesting of the Demerged Undertakings i.e. Investment Division engaged in dealings with shares and securities which are very liquid of the three Demerged Companies viz. Man Made Fibers Private Limited, Resham Resha Private Limited, S M ShetiSeva Private Limited to Khandwala Enterprise Private Limited, the Resulting Company and the arrangement shall have the following benefits:
(i) segregation of the specific investment activities of the Demerged Companies into the Resulting Company; (ii) unlocking of value for the shareholders of the Demerged Companies; (iii) allowing the management of the Resulting Company to pursue independent growth strategies in different line of activity; (iv) augmenting the infrastructural capability of the Resulting Company to effectively meet future challenges in the businesses; (v) Achieve cost optimisation and specialisation for sustained growth; and (vi) enhancing operational efficiencies, ensuring synergies through pooling of the financial, managerial, and technical resources,

personnel capabilities, skills, expertise and technologies by merging the businesses of the Transferor Company into Transferee Company.

5. The Petitioners have approved the said Scheme of Arrangement by passing respective Board Resolutions which are annexed to the respective Company Petitions.
6. The Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 182 of 2018 of the Hon'ble Tribunal.
7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioners undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
8. The Regional Director, Western Region, Mumbai has filed his Report dated 3rd August, 2018, stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said report, the Regional Director has stated that :-
 - (a) *The Petitioner under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Arrangement. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
 - (b) *In addition to compliance of (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
 - (c) *The Hon'ble NCLT may kindly direct to the Petitioner to file and undertaking to the extent that the Scheme enclosed to the*

Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.

- (d) *Petitioner companies have not submitted a copy of the admitted petition along with its minutes of order. In this regard, the Petitioner has to undertake to submit the same for the record of Regional Director.*
- (e) *The Registered Office of the Transferee/ Resulting Company and Transferor Company are situated in the State of Gujarat, i.e. outside of the jurisdiction of NCLT of this Tribunal and falls within the jurisdiction of NCLT of Ahmedabad. Accordingly, similar approval be obtained by the Transferee/ Resulting Company and Transferor Company from Hon'ble NCLT at Ahmedabad.*
- (f) *As regards Para No.18 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for Setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.*

9. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Petitioners through its Counsel submit that in accordance with Section 230 (5) of the Companies Act, 2013 and Order passed by the Hon'ble Tribunal on March 19th June, 2018 the Petitioners have served notices to all such relevant authorities:- concerned Income Tax Authorities within whose jurisdiction the Petitioners assessments are made (ii) the Central Government through the office of Regional Director, Western region, Mumbai and (iii) Registrar of Companies, Mumbai.
10. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report are concerned, Petitioners Companies through their Counsel undertakes that in addition to compliance of AS-14 (IND AS-103), the Petitioners Companies shall pass such Accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc., to the extent applicable.

11. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned; Petitioners through its Counsel clarify that the Scheme enclosed to the Company Scheme Application and the Scheme enclosed to the Company Petition are one and the same and there is no discrepancy or deviation.
12. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned; Petitioners through its Counsel submit that it has filed a copy of the admitted petition along with its Minutes of Order with the Office of the Regional Director, Western Region, Mumbai, on 10th August, 2018.
13. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of the report is concerned, the Petitioners through its Counsel submit that Transferee / Resulting Company and the Transferor Company, which are situated in the State of Gujarat, i.e outside the jurisdiction of NCLT of this Tribunal and falls within jurisdiction of NCLT of Ahmedabad, has filed joint petition with NCLT Ahmedabad vide Petition number C.P. (CAA) No. 91 of 2018 connected with C.A (CAA) No. 61 of 2018 and the same is admitted by NCLT Ahmedabad vide its order dated 31st July, 2018. Final hearing of the said petition is fixed on 24th August, 2018.
14. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) the Petitioner Companies through its Counsel undertakes that the Authorized Share Capital of the Transferor Company shall be merged with that of the Transferee Company in terms of paragraph 18 of the Scheme in accordance with the provision of Section 232(3)(i) of the Companies Act, 2013.
15. The observations made by the Regional Director have been explained by the Petitioners in Para 9 to 14 above. The clarifications and undertakings given by the Petitioners are accepted.

16. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
17. Since all the requisite statutory compliances have been fulfilled, the Company Petition Nos. 2754 filed by the Petitioner Companies is made absolute in terms of prayer clauses (a) of the petition.
18. Petitioners are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the order from the Registry.
19. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 days from the date of receipt of the order.
20. Petitioners Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai.
21. Costs to be paid within four weeks from the date of the receipt of the order.
22. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

SD/-

V. Nallasenapathy
Member (T)

SD/-

Bhaskara Pantula Mohan
Member (T)