

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

CA (CAA)-10(ND)/2018

IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013

In the matter of:

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

AND

**In the matter of Scheme of Amalgamation
OF**

Vinayak Products Private Limited
(Transferor Company /Applicant)

WITH

Vinayak Jewels (India) Private Limited
(Transferee Company/Applicant)

And

Their Respective Shareholders and Creditors



MEMO OF PARTIES

Vinayak Products Private Limited

Company Registered under Companies Act 1956

Having its registered office at:

612, Bees Dukan, Adarsh Nagar

Jaipur.

..... TRANSFEROR COMPANY/ APPLICANT

Vinayak Jewels (India) Private Limited

Company Registered under Companies Act 1956

Having its registered office at:

H-58(A) & BH-59, H-60, H-61 SEZ-II,

Jems and Jewellery Zone,

RIICO Stapura, Jaipur.

.....TRANSFeree COMPANY/APPLICANT

For the Applicants: Mr. Sandeep Taneja, Advocate
Mr. Kartikeya Sharma, Advocate



ORDER

Delivered on: 30.01.2018

1. This is an application which is filed by the petitioner companies herein, Vinayak Products Private Limited (for brevity "Transferor Company"), with Vinayak Jewels (India) Private Limited (for brevity "Transferee Company") under sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants. The said Scheme is also annexed as "Annexure- 8" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident inter alia from the reliefs sought for in the Application, namely:

- (a) Appropriate directions may kindly be issued for dispensing with the requirement of convening the meetings of equity shareholders, secured and unsecured creditors of the Transferor Company and Transferee Company;



(b) Any other order which may be deemed appropriate in the facts and circumstances of the case may also be passed in favour of the applicant companies.

2. An affidavit in support of the above application sworn for and on behalf of the Transferor Company and Transferee Company by one Mr. Nikhil Jain has been filed, being the Director of both the Companies. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Arrangements) Rules 2016 and it is also represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi.
3. In relation to Vinayak Products Private Limited being the Transferor Company, in the Scheme marked as Annexure - 8, it is represented that it is having 4 Equity Shareholders and all of them have given their consents by way of affidavit. It is



further represented by the counsel for Applicants that the Transferor Company has only 1 (one) Unsecured Creditor, who has also given his consent by way of affidavit. It is further represented by the counsel for Applicants that the Transferor Company has no Secured Creditor as on 14.12.2017. In relation to the shareholders and unsecured creditor of the Transferor Company, it seeks dispensation from convening and holding of the meetings in view of consent by way of affidavits having been obtained and the same has been placed on record.

4. In relation to Vinayak Jewels (India) Private Limited being Transferee Company in the Scheme marked as Annexure - 8, Learned Counsel represents that company is having 3 Equity Shareholders and all of them have given their respective consents by way of affidavit. It is further represented by the counsel for Applicants that the Transferee Company has only 1 (one) Unsecured creditor, who has also given its consent by way of affidavit. It is further represented by the counsel for Applicants that the Transferee Company has 2 Secured Creditor as on 14.12.2017 and all of them have given their respective consents by way of affidavit. In relation to the shareholders, Secured and unsecured creditors of the Transferee Company, it seeks dispensation from convening and holding of the meetings for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of



consent by way of affidavit having been obtained all of which also been placed on record.

5. In relation to the territorial jurisdiction, Ld. Counsel for the applicant companies submit that the subject matter of the joint application is within the jurisdiction of this bench.
6. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant companies.
7. From the certificate of incorporation filed, it is evident that Transferor Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 4th January 1994 with Registrar of Companies, Jaipur, Rajasthan under the name and style of "Ganpati Power Equipments Private Limited". Later on the Transferor Company changed its name to "Vinayak Products Private Limited" and such alternation having been recorded in the fresh Certificate of Incorporation is annexed with this application. The Corporate Identity Number of the Transferor Company registered with the Registrar of Companies, Rajasthan, Jaipur is



U36100RJ1994PTC007921. The copy of Certificate of Registration has been placed on record.

8. The Authorized Share Capital of the Transferor Company is Rs. 35,00,000/- (Rupees Thirty Five Lacs Only) divided into 35,000 (Thirty Five Thousand) Equity Shares of Rs.100/- (Rupees Hundred only) each. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company is Rs. 31,00,000/- (Rupees Thirty One Lac Only) divided into 31,000 (Thirty One Thousand) Equity Shares of Rs. 100/- (Rupees Hundred only) each.
9. From the certificate of incorporation filed, it is evident that the Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 27th November 2008 vide CIN: U36911RJ2008PTC027839 with Registrar of Companies, Rajasthan, Jaipur under the name and style of "Vinayak Jewels (India) Private Limited".
10. The Authorized Share Capital of the Transferee Company is Rs. 25,00,000/- (Rupees Twenty Five Lac Only) divided into 2,50,000 (Two Lac Fifty Thousand) Equity Shares of Rs.10/- (Rupee Ten only) each. The Issued, Subscribed and Paid-Up Share Capital of the Transferee Company is Rs. 25,00,000/- (Rupees Twenty



Five Lac Only) divided into 2,50,000 (Two Lac Fifty Thousand) Equity Shares of Rs.10/- (Rupee Ten only) each.

11. Both the applicants have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their last available audited financial statements for the year ended 31.03.2017.
12. The Board of Directors of the Applicant companies vide meeting held on 11.12.2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereon have been placed on record by the companies.
13. The appointed date as specified in the Scheme is 1st April, 2017 subject to the directions of this Tribunal.
14. That the Applicant Companies have complied with the proviso to Section 230 (7) and Section 232 (3) by filing the certificate of the Company's Auditor in relation to compliance with the Accounting Standards under section 133 of the Companies Act, 2013.



15. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the Equity Shareholders, Secured and Unsecured Creditors, or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

A) In relation to the Transferor Company:

(i) With respect to Equity shareholders:

Since it is represented by the Transferor Company there are 4 Equity shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditor:

Since it is represented by the Transferor Company that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.



(iii) With respect to Unsecured Creditor:

Since it is represented by the Transferor Company that there is only 1 Unsecured Creditor in the company whose consent have been obtained and is placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

B) In relation to Transferee Company:

(i) With respect to Equity shareholders:

Since it is represented by the Transferee Company that there are 3 Equity shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

(ii.) With respect to Secured Creditors:

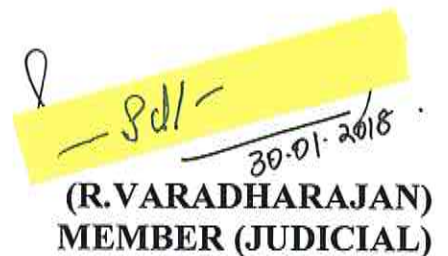
Since it is represented by the Transferee Company that there are 2 Secured Creditors in the company whose consent have been obtained and placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.



(iii) With respect to Unsecured Creditor:

Since it is represented by the Transferee Company that there is only 1 Unsecured Creditor in the company whose consent have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

The application stands allowed on the aforesaid terms. Let the petition for approval of the scheme of Amalgamation be filed within a period of seven days from the date of this order.


30.01.2018
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta/M