

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

Company Petition CP(CAA) No.749/KB/2017

IN THE MATTER OF:

The Companies Act, 2013 – Section 230(6) read with  
Section 232(3) ;

-And-

IN THE MATTER OF:

Biswanath Hosiery Mills Limited, a company incorporated  
under the Companies Act, 1956 and being a Company  
within the meaning of the Companies Act, 2013, having its  
registered Office at 39, Kali Krishna Tagore Street, Kolkata –  
700 007 in the State of West Bengal ;

And

Damask Textiles Private Limited, a company incorporated  
under the Companies Act, 1956 and being a Company  
within the meaning of the Companies Act, 2013, having its  
registered Office at 39, Kali Krishna Tagore Street, Kolkata –  
700 007 in the State of West Bengal ;

1. Biswanath Hosiery Mills Limited
2. Damask Textiles Private Limited

Date of pronouncement of the Order : 06-02-2018

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

For the Petitioners:

Mr. DN Sharma, Advocate

Mr. Aniket Agarwal, Advocate

Per Jinan K. R. Member(Judicial)

ORDER

The object of this petition is to obtain sanction of this Tribunal to the Scheme of Arrangement between Biswanath Hosiery Mills Limited(BHML) and Damask Textiles Private Limited(DTPL) and their respective shareholders under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, whereby and where under it is proposed to reorganise and reconstruct the said companies by demerging the trading business(Demerged Undertaking) of BHML to DTPL in the manner and on the terms and conditions stated in the Scheme of Arrangement, a copy whereof is annexed with the Petition and marked "A".

It is submitted in the petition that BHML is a well established concern engaged in the business of (a) trading in cloth and hosiery goods, including under the Lyra and GenX brands owned by it, and (b) holding and letting out real estate.

In addition, BHML also earns royalty income from licensing of several popular brands owned by it, dividend income from investments in shares and securities and interest income from the loans and advances given by it to various parties.

Such trading business of BHML, including the said GenX brand which is used in designer vests, sportswear and casual inners and Lyra brand which is used in women wear, having differing needs, financials and considerations and factors applicable to them than the other business and brands of BHML.

The said businesses including the brands, have good potential for funding and development as independent businesses.

In the circumstances and as part of an overall restructuring plan, it is considered desirable and expedient to reorganise and reconstruct BHML and DTPL by demerging the said trading business (Demerged Undertaking) of BHML to DTPL in the manner and on the terms and conditions stated in the Scheme of Arrangement.

The remaining business of BHML will continue to be owned, managed and run by BHML.

It has been stated in the Petition that the said businesses of BHML will stand realigned appropriately in two companies pursuant to the demerger. Such demerger will enable the said trading business and remaining business to be pursued and carried on more conveniently and advantageously with greater focus and attention through

such two separate companies, i.e., DTPL and BHML, each having their own management team and administrative set up. The business considerations and factors applicable to the said businesses will be addressed more effectively and adequately by the respective Companies.

It has also been stated in the Petition that the Scheme will enable independent evaluation of the said businesses through such two separate companies. The same will facilitate running and operation of the said businesses and growth and development plans thereof to be funded independently and unlock the shareholders value.

The Scheme will have beneficial results for the said Companies, their shareholders and all concerned.

The Board of Directors of BHML and DTPL at their respective meetings held on 03-08-2017, by resolutions passed unanimously, approved of the Scheme of Arrangement between the Petitioner Companies.

The true copies of the said Board resolutions are annexed with the Petition and collectively marked "H".

It is submitted in the Petition that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 or Sections 210 to 227 of the Companies Act, 2013 against the Petitioner Companies.

The Auditors of the Petitioners have confirmed that the accounting treatment in the Scheme of Arrangement is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

The Certificates issued by the Auditors of the Petitioners are annexed with the Petition and collectively marked "M".

It is also submitted that no one will be prejudiced if the proposed Scheme of Arrangement is sanctioned and the sanction of the Scheme of Arrangement will benefit and is in the interest of the said Companies, their shareholders, creditors, employees and all concerned.

By an Order dated 23-11-2017, in the Company Application CA(CAA) No. 486/KB/2017, filed before this Tribunal, meetings of the shareholders and the Creditors of the Petitioner Companies were dispensed with, in view of the written consents given by all the shareholders and the Creditors of the Petitioner Companies.

In terms of the said Order dated 23-11-2017 of this Tribunal, the notice, the Scheme of Arrangement and the Explanatory Statement and all other annexures thereto had been served upon the Statutory Authorities including the Regional Director, Ministry of Corporate Affairs, Eastern Region, Kolkata, the Registrar of Companies, West Bengal, Income Tax Department, Chief Commissioner of Income Tax and Assessing

Officers having jurisdiction over the petitioners and the Official Liquidator, by post as well as by e-mail.

It is stated in the Petition that no objection or representation has been made by the Statutory Authorities till date.

An affidavit of compliance was duly filed on 14-12-2017 by the Petitioners in respect of the said service.

After such due compliance, the petitioners have made the instant petition bearing No. CP(CAA) No.749/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Arrangement and for orders facilitating and giving effect to the same.

Heard the arguments of the Ld. Counsel for the petitioner Companies.

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.

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

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.

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.

Let the advertisement of the hearing of this petition be published once in the English daily, "Business Standard" and in the Bengali daily, "Aajkal", 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.

The Petition is fixed for hearing on 09-03-2018.

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

*Sd*

(Jinan K. R.)  
Member(Judicial)

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