

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSP NO 450 OF 2017

IN  
CSA NO 242 OF 2017

Talwalkars Better Value Fitness Limited.....Petitioner/Demerged Company  
AND

Talwalkars Lifestyles Limited.....Petitioner/Resulting Company  
In the matter of the Companies Act, 2013

And

In the matter of Section 230 to Section 232 of the  
Companies Act, 2013

And

In the matter of Scheme of Arrangement between  
Talwalkars Better Value Fitness Limited ("The Demerged  
Company") and Talwalkars Lifestyles Limited ("The  
Resulting Company") and their respective Shareholders

Order delivered on 21<sup>st</sup> December 2017  
Coram:

Hon'ble M.K Shrawat , Member (J)

Hon'ble V .Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co  
Mr. S. Ramakantha, Joint Director in the office of Regional  
Director  
Mr Parvez Naikwadi Asst. ROC

Per: **V .Nallasenapathy, Member (T)**

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232, of the Companies Act, 2013, to the Scheme of Arrangement between Talwalkars Better Value Fitness Limited ("The Demerged Company") and Talwalkars Lifestyles Limited ("The Resulting Company") and their respective Shareholders .
3. The Demerged Company is engaged in the business of owning, managing and franchising gymnasia, fitness centers and health clubs. The First Petitioner Company also renders different types of healthcare and beauty services including

- diet, nutrition-based, weight-loss programs like Reduce, Nuform, yoga, physiotherapy, Zumba, Zorba, and other allied lifestyle and wellness activities etc. The Resulting is engaged in the business of owning, managing and franchising gymnasia, fitness centers and health clubs.
4. The Counsel for Petitioners submit that the rationale for the Scheme is that in order to achieve better management and to have clear focus on business operations, the management of Demerged Company has decided to demerge Gym Business, thereby transferring Gym Business of Talwalkars Better Value Fitness Limited to Talwalkars Lifestyles Limited, in the interests of maximizing overall shareholder value.
  5. The Petitioner Companies have approved the said Scheme by passing the board resolutions which are annexed to the respective Company Scheme Petitions.
  6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Scheme Application and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.
  7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
  8. The Regional Director has filed a Report 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:
    - IV. The observations of the Regional directors on the proposed Scheme to be considered by the Hon'ble NCLT are as under-
      - (a) *As per Clause 2.2 "Definitions" of the Scheme "The Appointed Date" means 1<sup>st</sup> April, 2016 or such other date as may be approved by the Tribunal. In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013, it should be specific and terms as 1<sup>st</sup> April, 2016, only.*
      - (b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. These Companies reported that they has served vide their letter*



*dated 3<sup>rd</sup> May, 2017 copy of Scheme Application along with relevant orders etc., to IT Department. Further, this office has also issued remainder letter dated 11/09/2017 to the concerned Income Tax authorities;*

- (c) The Tax Implication, if any arising out of the Scheme is subject to final decision of the Income Tax Authorities. The approval of the Scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the Tax Return filed by the both of the Companies after giving effect to the Scheme. The decision of the Income Tax Authority is binding on these companies.*
- (d) Regarding Para 14 of the Scheme, Change of name of the Resulting Company to the Demerged Company has no merit, since the demerged Company is in existence. Further no justification is furnished for change of name.*
- (e) As the Resulting Company is further required to list its shares with Bombay Stock Exchange, the Hon'ble NCLT directs to the both Petitioner Companies to comply with the terms & conditions laid down by the said Authority in its letter dt. 08-02-2017 and thereafter, if any.*
- (f) As the approval given in Observation Letter No. NSEL/List/103434 dated 08-02-2017 by the National Stock Exchange of India Limited (NSE) has been expired on 07-08-2017, the Petitioner may be directed to get again approval, before sanction of this Scheme.*
- (g) As regards Para No. 10.1.2 and 10.2.3 of the Scheme, the Petitioner Companies shall be restricted to use of Security Premium Account because the same can only be utilized for specific purposes as mentioned in Section 52 of the Companies Act, 2013 therefore, Reconstructions Account cannot be allowed to make adjustment through/against Security Premium Account.*
- (h) The Petitioner Companies shall be restricted to transfer/credit of any surplus amount remains in Reconstruction Expense Account to General Reserve Account and the said amount should be credited into Reserves, which created out Capital profits like "Capital Reserve Account" etc. being Capital Profit.*
- (i) As regards Clause 6 of the Scheme, it is submitted that:-*
  - 1) The Resulting Company proposes to increase its Authorized Share Capital to Rs. 30.00 Crores. Since the Scheme is not for merger or amalgamation, the said Company is not entitle to either claim for set off as provider under Section 232(3)(i) or can claim any concession of fees. Hence the Resulting Company shall pay requisite fees as per Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 and applicable Stamp duty for increase in its Authorized Share Capital from Rs. 1,00,00/- to Rs. 30,00,00,000/- upon the Scheme becoming effective.*



- 2) Allotment of shares can be allowed only on increase in the Authorised Share Capital as per law.
- (j) Upon Scheme coming into effect, the Transferee Company is required to issue Equity Shares to NRI Shareholders of the Transferor Company, it is subject to the compliance of Section 55 of the Companies Act, 2013 the FEMA Regulations/RBI Guidelines.
- (k) As regards Para No. 9.3 of the Scheme, the Hon'ble Tribunal may kindly direct the Company in view of provisions of proviso to Section 66(3) of the Companies Act, 2013 to submit Certificate from the Statutory Auditors of the Company to submit a Certificate to the effect by the Company's Auditors that "The Accounting Treatment proposed by the company for such reduction is in conformity with the Accounting Standards specified in Section 133 or any other provisions of the Companies Act, 2013".
- (l) Since the Listed Company is effecting reduction of share capital, the Hon'ble NCLT may pass appropriate order/orders as deem fit to add in its name as the last words "and reduced" and also to direct to make compliances of directions if any issued in accordance with the provisions of Section 66(3) & (4) of the Companies Act, 2013.
9. In so far as observation made in paragraph IV(a) of the Report of Regional Director is concerned, the Petitioners through their Counsel confirm that the Appointed Date under the Scheme will be 1<sup>st</sup> April 2016.
10. In so far as observation made in paragraph IV(b) & (c) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. In so far as observation made in paragraph IV(d) of the Report of Regional Director is concerned, the Petitioners through their Counsel undertakes that they will not change the name of the Petitioner Companies as contemplated under clause 14 of the scheme and shall follow separate procedure in accordance with law.
12. In so far as observation made in paragraph IV(e) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes that all conditions stipulated in dt. 08-02-2017 of BSE Limited and National Stock Exchange of India will be complied with.
13. In so far as observation made in paragraph IV(f) of the Report of Regional Director is concerned, the Counsel for the Petitioners clarify that the

Petitioners have filed Company Scheme Application before this Tribunal on or about 1<sup>st</sup> March 2017 ie. within 6 months from the date of NOC being granted by National Stock Exchange of India. Therefore no approval is required. Further in compliance of provisions of section 230(5) of the Companies Act, 2013, the Demerged Company has give notice to BSE Limited and National Stock Exchange of India Limited and no representation has been received from the stock exchange .

14. In so far as observation made in paragraph IV(g) of the Report of Regional Director is concerned , the Counsel for Petitioners submit that Section 52 of the Companies Act, 2013 provides that the Securities Premium Account may be applied for purpose other than those stated in Section 52(2) as if the Securities Premium Account were paid-up share capital of the company. The Counsel states that Section 66 permits a company to reduce its capital, subject to approval of the Shareholders by a Special Resolution, in any manner. Accordingly, the Securities Premium Account can be applied for any purpose subject to the compliance of Section 52 read with Section 66 of the Companies Act, 2013.
15. In so far as observation made in paragraph IV(h) of the Report of Regional Director is concerned, the Petitioner Companies through the auditors of the Petitioner Companies have certified that the accounting treatment in the scheme is in compliance of Section 133 of the Companies Act, 2013. Also the Petitioner Companies through their Counsel Undertakes that the Balance remaining in the Reconstruction Account in so far relates to Capital Profits will be credited to Capital Reserve Account
16. In so far as observation made in paragraph IV(i) of the Report of Regional Director is concerned, the Resulting Company through their Counsel undertakes that the Resulting Company will pay requisite fees as per Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 and applicable Stamp duty for increase in its Authorized Share Capital from Rs. 1,00,000/- to Rs. 30,00,00,000/- upon the Scheme becoming effective and that the allotment of shares will be done only after increase in Authorized Share Capital
17. In so far as observation made in paragraph IV(j) of the Report of Regional Director is concerned , the Petitioners through their Counsel undertakes that all applicable compliance will be made under FEMA/RBI for issue and allotment of shares to NRI Shareholders.
18. In so far as observation made in paragraph IV(k) of the Report of Regional Director is concerned, the Counsel for Petitioners clarify that reduction is



being done as integral part of the Scheme and the auditors of the Petitioner Companies have certified that the accounting treatment as set out in clause 10 of the scheme is in compliance of Section 133 of the Companies Act, 2013. Copy of the certificate issued by the statutory auditors of the First and Second Petitioner Company to the effect that the accounting treatment specified in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 is annexed as Annexure – H to the Petition.

19. In so far as observation made in paragraph IV(l) of the Report of Regional Director is concerned, the Petitioners through their Counsel undertakes that necessary compliance of provisions of Section 66(3) & (4) of the Companies Act, 2013 to the extent necessary.
20. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 19 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
21. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
22. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 993 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the Petition.
23. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director or 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, on the same within 60 days from the date of receipt of the order.
24. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with e-form INC 28 in addition to the physical copy, within 30 days from the date of receipt of the order.
25. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of receipt of the Order.
26. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

27. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

**Sd/-**

V. Nallasenapathy, Member (T)

Date: 21.12.2017

**Sd/-**

M.K. Shrawat, Member (J)