

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

CSP 527/230-232/NCLT/MB/MAH/2017

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Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Rosetta Textiles Private Limited

.....Petitioner in CSP 532/2017
(1st Transferor Company)

M/s. Shree Mahabir Cotton Fabrics Private
Limited

.....Petitioner in CSP 529/2017
(2nd Transferor Company)

M/s. Essay Menswear Private Limited

.....Petitioner in CSP 527/2017
(3rd Transferor Company)

M/s. A & L APPARELS PRIVATE LIMITED

.....Petitioner in CSP 528/2017
(Transferee Company)

Order delivered on : 28.11.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Rajesh Shah, Advocate i/b. Rajesh Shah & Co. – Advocates for the Petitioners.

For the Regional Director :

Mr. Ramesh Gholap – Dy. Registrar (WR).

Per : Bhaskara Pantula Mohan, Member (J)

COMMON ORDER

1. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of M/s. Rosetta Textiles Private Limited (1st



Transferor Company) and M/s. Shree Mahabir Cotton Fabrics Private Limited (2nd Transferor Company) and M/s. Essay Menswear Private Limited (3rd Transferor Company) with M/s. A & L Apparels Private Limited (Transferee Company) and their respective shareholders.

2. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The 1st Transferor Company at present is in the business of manufactures, retailers, processors, spinners, weavers, knitters, ginners, pressers, packers, doublers, balers, buyers, balers, buyers, exporters, importers, stockists, dealers, traders, commission agents and fabricators in all kind of cotton, jute, flex, hemp, silk, raw silk, artificial silk, wool, rayon, nylon, terylene polyester, rexine, synthetic yarn, synthetic fibre, staplefibre and any other natural, synthetic or manmade fibre.
4. The 2nd Transferor Company at present is in the business of manufacture, produce, weave, process, dye, print, wash, purify, calendar, bleach, import, export and otherwise deal in textiles, cotton, silk rayon, manmade, fabrics.
5. The Third Transferor Company at present is in the business of manufacturers, importers and exporters, wholesale and retail dealers of and in men's women's and children's clothing and wearing apparel of every kind, nature and description including shirts, bushshirts, pyjama suits, suits, pants, workmen's clothes.
6. The Transferee Company at present is in the business of importing, exporting, distributing, trading, buying, selling, spinning, doubling, twisting, texurising, crimping, converting, calendaring, testing, sizing, weaving, knitting, bleaching, processing, dyeing, ginning, cutting, scouring, winding, mercerizing, combing, printing, finishing or retailing, supplying, indenting, packing.
7. The merger will lead to synergies of operations and more particularly that the amalgamation will enable the transferee company to consolidate the businesses and lead to synergies in operations and create a stronger financial base and it would be advantageous to combine the activities and operations of all companies into a single



Company for synergistic linkages and the benefit of combined financial resources and this will be reflected in the profitability of the Transferee Company and that the amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the transferor companies and the transferee company.

8. The Authorised Share Capital of the 1st Transferor Company is ₹ 1,30,00,000 comprising of 13,00,000 equity shares of ₹ 10/- each whereas the Issued, subscribed and paid up capital is ₹ 50,00,000/- comprising of 5,00,000 equity shares of ₹ 10/- each.
9. The Authorised Share Capital of the 2nd Transferor Company is ₹ 49,00,000 comprising of 49,000 equity shares of ₹ 100/- each and the Issued, subscribed and paid up capital is ₹ 49,00,000/- comprising of 49,000 equity shares of ₹ 100/- each.
10. The Authorised Share Capital of the 3rd Transferor Company is ₹ 10,00,000 comprising of 10,000 equity shares of ₹ 100/- each and the Issued, subscribed and paid up capital is ₹ 6,50,000/- comprising of 6,500 equity shares of ₹ 100/- each.
11. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferee Company is ₹ 25,00,000 comprising of 2,50,000 equity shares of ₹ 10/- each.
12. Upon the Scheme becoming effective and upon amalgamation of the Transferor Company into the Transferee Company in terms of this Scheme, the entire equity share capital of the Transferor Company shall stand automatically cancelled and there will not be any issue and allotment of equity shares in the Transferee Company.
13. The averments made in the Petition and the submissions made by the Learned Advocate for the Petitioners are:
 - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.



b) The Regional Director has filed his Report dated 5th October, 2017, stating therein that save and except as stated in paragraph IV (a) to (f), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

(a) In addition to compliance of AS-14 corresponding (Ind AS-103) the Transferee Company 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.

(b) As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to Income Tax Department for their comments. It appears that the company vide letter dated 30th March, 2017 has served a copy of company scheme application Nos. 9 to 12 /2017 along with relevant orders etc., further this directorate has also issued a reminder 26.06.2017, to IT Department.

(c) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

(d) As per Clause 1.2 of Definitions. "The Appointed Date" means the 1st February, 2016 or such other date as may be fixed by the Hon'ble Court. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st February 2016;

(e) Regarding Clause 10.4 of the Scheme it is submitted that "if necessary, the Transferee Company shall, before allotment as aforesaid of the equity shares in terms of the Scheme, increase its authorised capital" in this regard it is submitted that the transferee company to comply with the provisions of section 61 and 64 of the Companies Act, 2013.



(f) In view of the observations raised by the ROC, Mumbai mentioned at para 11 above Hon'ble NCLT may pass appropriate order/ orders as deem fit.

- c) Apropos the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes to do the compliance of AS-14 corresponding (IND AS – 103) accounting treatment, the Transferee Company will pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5/corresponding IND AS – 8 etc.
- d) Apropos the observation in paragraph IV (b) and (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes to comply with all applicable provisions of the Income-Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
- e) Apropos the observation in paragraph IV (d) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the Appointed Date will be 1st February, 2016 as mentioned in the Scheme.
- f) Apropos the observation in paragraph IV (e) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the Transferee Company shall, before allotment as aforesaid of the equity shares in terms of the Scheme, increase its authorised capital” in this regard it is submitted that the transferee company will comply with the provisions of section 61 and 64 of the Companies Act, 2013.
- g) Apropos the observation in paragraph IV (f) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the observations by the RoC have been dealt in the further Affidavit and the same is filed in the NCLT and RoC.
- h) It is further submitted that, no objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Amalgamation.



- i) The Official Liquidator has filed his report dated 15th June, 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
14. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Companies, **do Order that:**
- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Companies, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) Transferor Companies to be dissolved without winding up from the date of said Scheme becomes effective.
- d) In lieu of consideration of this Scheme, the Transferee Company shall issue and allot 1,117 fully paid-up Equity Shares of ₹ 10/- each for every 100 Equity Shares of ₹ 10/- each to the shareholders of the 1st Transferor Company.
- e) Further, in lieu of consideration of the Scheme, the Transferee Company shall issue and allot 112 fully paid-up Equity Shares of ₹ 10/- each for every 100 Equity Shares of ₹ 100/- each to the shareholders of the 2nd Transferor Company.
- f) Further in lieu of consideration of the Scheme, the Transferee Company shall issue and allot 1,776 fully paid-up Equity Shares of ₹ 10/- each for every 100 Equity Shares of ₹ 100/- each to a board of trustees (including the survivors or survivor of any of the trustees comprising such board of trustees) of the A & L Benefit Trust, established under the Trust Deed dated 30th March 2016, subject to



cancellation of shares which are held by the Transferee Company in the Transferor Company.

- g) The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, 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.
- h) Petitioner Companies are directed to file a certified 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 issuance of the order by the Registry, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- i) Each Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai.
- j) Transferor Companies (i.e. Petitioners in CSP 527/2017, CSP 529/2017, CSP 532/2017) to pay cost of ₹ 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
- k) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
- l) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- m) Any concerned Authority is at liberty to approach this Bench for any clarification/directions under this Scheme.
- n) The Scheme is sanctioned hereby on above terms and directions. Further, the appointed date of the Scheme is fixed as 1st February, 2016.



15. Ordered Accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 28.11.2017

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