

**In The National Company Law Tribunal
Kolkata Bench
Kolkata**

**T.P. No.153/2017
C.P.No.1054/2016 H.C.**

Coram: Shri V.P. Singh, Hon'ble Member (Judicial)

&

Shri Jinan K.R, Hon'ble Member (Judicial)

In the matter of :

An application under Sections 391(2) and 394 of the Companies Act, 1956 and presently under Sections 230-232 of the Companies Act, 2013.

And

In the matter of :

DESIRE SUPPLIERS PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956, and being a Company within the meaning of the Companies Act, 2013 having its Registered Office 39, Burtolla Street, Ground Floor, Kolkata 700 007; in the state of West Bengal within the aforesaid jurisdiction;

.....Petitioner No.1

And

KOHINOOR ENCLAVE PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its Registered Office at 39, Burtolla Street, Ground Floor, Kolkata 700 007; in the state of West Bengal within the aforesaid jurisdiction;

.....Petitioner No.2

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And

B.C. JAIN JEWELLERS (VIVEK) PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its Registered Office at Marble Arch, 236B, A.J.C. Bose Road, 1st Floor, Flat No.101, Kolkata 700 020, within the aforesaid jurisdiction.

.....Petitioner No.3

And

In the matter of :

- 1.DESIRE SUPPLIERS PRIVATE LIMITED
- 2.KOHINOOR ENCLAVE PRIVATE LIMITED
3. B.C. JAIN JEWELLERS (VIVEK) PRIVATE LIMITED

.....Applicants

Judgement / Order delivered on : 29 .11.2017

Counsels on Record :

Mr. Ravi Asopa, Advocate } For the Petitioners

Tiainla, Dy. Director
Office of the Regional Director (E.R.),
Ministry of Corporate Affairs

ORDER

Per Shri Jinan K.R. Member (Judicial)

The instant joint Petition filed under Sections 391(2) and 394 of the Companies Act, 1956 presently as per Sections 230-232 of the

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Companies Act, 2013 filed by the Petitioner Nos.1 to 3, namely:

1. DESIIRE SUPPLIERS PRIVATE LIMITED (Transferor Company)
2. KOHINOOR ENCLAVE PRIVATE LIMITED (Transferor Company)
3. B.C. JAIN JEWELLERS (VIVEK) PRIVATE LIMITED (Transferee Company)

1. This is a petition under Sections 391(2) and 394 of the Companies Act, 1956 presently as per Sections 230-232 of the Companies Act, 2013 praying for sanctioning the Scheme of Amalgamation proposed to be made between the Transferee Company, Transferor Company and their respective shareholders whereby and where under the entire undertaking of the Transferor Company with all assets and liabilities relating thereto as a going concern is proposed to be transferred to and vested in Transferee Company. The Scheme of Amalgamation is annexed with the petition as Annexure- "A".

2. It is stated in the petition that Desire Suppliers Private Limited is a Company incorporated on 14.05.2010 as a Private Limited Company to carry on the business of builders, contractors, developers, real estate agent and promoters etc.

The Transferor Company No.2 Kohinoor Enclave Private Limited was incorporated on 01.09.2009 as a Private Limited Company to carry on the business to acquire by purchase, lease, exchange, hire or otherwise develop or operate land, building and hereditaments of any tenure or description including agricultural land, mines, quarries etc. At present the Transferor Company No.2 is engaged in the business of trading in shares & securities.

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The Transferee Company B.C. Jain Jewellers (Vivek) Private Limited was incorporated on 29.07.2008 as a Private Limited Company to carry on in India or elsewhere the business of manufacture, produce, design, develop, modify, build, encourage combinations and uses, of apparel, ornaments, gems, jewelries etc. To store or keep in safe custody the jewellery, silver wares, diamonds, gems stones, bullions, precious metals, pearls and other valuables. At present the Transferee Company is engaged in the business of manufacturing and trading in ornaments and stones.

3. It is submitted in the petition that in the circumstances, the proposed scheme of Amalgamation will result in optimum growth and development of the business of companies concerned and exploitation of the potential there. It is further stated in the application that:

(a) There are common shareholders and common directors in the petitioner Companies. All the Companies belong to common group and common management.

(b) The proposed Scheme of Amalgamation will result in economies of scale, reduction in overheads and other expenses, reduction in administrative and procedural work, elimination of duplication of work resulting in internal economies and optimization of productivity.

(c) The said Scheme will enable the Companies concerned to rationalize and streamline their management, business and

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finances.

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

4. The aggregate assets of all the applicant Companies are more than sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of the applicant Companies in any manner whatsoever and the provisions have been made for payment of all liabilities as and when the same fall due in usual course.

5. By an order made in C.A. No.714 of 2016 on 26.09.2016 Hon'ble High Court of Calcutta dispensed with the meetings of the Equity Shareholders of the applicant Companies since each and every equity shareholders of the applicant companies had considered the proposed Scheme of Amalgamation and on such consideration had given their consent in writing agreeing to the said Scheme and further also consented to waive the holding and convening of the meeting of the shareholders of the applicant Company concerned. A copy of this order is annex and marked Annexure 'H'.

6. There are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956, against any of the applicant Companies.

7. At this stage, the petitioners are only seeking directions for dispensing of the meetings of all the Shareholders of the Applicant Companies as they have agreed in writing to the proposed Scheme of Amalgamation by way of affidavit and as they have unanimously and

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unequivocally approved the said proposed scheme in writing.

8. This Tribunal has perused the application of the Applicant Company and have also heard the oral submission of the Ld. Counsel appearing for the applicant.

9. It appears from the records that this Tribunal vide Order dated 16.11.2017 directed the petitioners to file Supplementary Affidavit annexing therewith copy of Permanent Account Number (PAN) of the petitioners. Mr. Bimal Chand Jain, director of the petitioners No.2 & 3 by way of Supplementary Affidavit submitted copy of PAN annexing therewith Xerox copies of PAN Cards which was filed on 20.11.2017.

Accordingly, the following orders are passed:

10.(i) (a) Meeting of Secured Creditors of the Applicant Company on 19th January 2018 at 12 noon at the registered office at 39 Burtolla Street, Ground Floor, Kolkata 700 007 subject to notice of meeting being issued.

(b) Meeting of Unsecured Creditors of the Applicant Company at 1.00 p.m. on 15th January 2018 at the registered office at 39 Burtolla Street, Ground Floor, Kolkata 700 007 subject to notice of meeting being issued.

(ii) The quorum for the meeting shall be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.

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- (iii) In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half a house, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, filed with registered office of Applicant Company at least 48 hours before the meetings. The Chairperson shall ensure that the proxy registers are properly maintained.
- (iv) Mr. Madhu Sudan Sarkar, Advocate (Mobile No.9748199580) shall be the Chairperson for all the meetings to be called under this order and the relevant law. He shall be paid consolidated sum of Rs.40,000/- for conducting the aforesaid meetings.
- (v) That individual notices of the said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier or through e-mail 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme of Amalgamation, copy of explanatory statement required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall be sent along with any other documents as may be prescribed under the Act.
- (vi) That the Applicant Company shall publish advertisement with a gap

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of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily "The Business Standard" Kolkata Edition and in Bengali "Aajkaal" Kolkata Edition stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Company.

(vii) Voting shall be allowed on the proposed Scheme by voting in person or by proxy. The Chairperson shall be responsible to report the result of the meeting within 4 weeks of the conclusion of the meeting with a vote on the proposed scheme.

(b)(viii) The Applicant Company shall individually send notice to Central Government, the Income Tax Authorities and Registrar of Companies of the Applicant Company, along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016, with PAN numbers of the Applicant Companies, through E-mail and by Speed Post, both, as also on the Official Liquidator having jurisdiction over the transferor and the transferee companies and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger or by registered Post or by Speed Post within seven days from the date of this order for filing

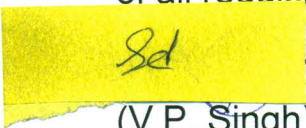
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their representation, if any, on the application within 30 days from the date of the notice;

- (ix) The Applicant Company shall furnish copy of the Scheme free of Charge within 1 day of any requisition for the Scheme made by every creditor or member of the Applicant Company entitled to attend the meetings as aforesaid.
- (x) The authorized representative of the Applicant Company shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.
- (xi) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013. The undertaking of the authorized representatives of the Applicant Companies to this effect is accordingly taken on record.

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


(V.P. Singh)
Member (Judicial)

List the matter on 01.02.2018 for hearing.


(Jinan K.R)
Member (Judicial)

Signed on 29th day of November 2017.

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