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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

IA 59/2017 with T.P. No. 42/NCLT/AHM/2017
T.P. No. 42/NCLT/AHM/2017 (New)
Gujarat High Court C.P No. 295/2016 with C.A. No. 121/2016(old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.10.2017

Name of the Company: Chaitri Construction Pvt Ltd.

Section of the Companies Act: Section 391-394 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. NAVIN PAHWA MS. NATASHA SUTARIA	SR. ADV. ADV.		
2.				

ORDER

Learned Senior Advocate Mr. Navin Pahwa with Learned Advocate Ms. Natasha Sutaria present for Petitioner.

Common Order pronounced in open court. Vide separate sheets.

27.10.17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 27th day of October, 2017.

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

TP No.42/NCLT/AHM/2017

With

IA No.59/NCLT/AHM/2017

And

TP No.43/NCLT/AHM/2017

With

IA No.78/NCLT/AHM/2017

In the matter of :-

Leo Coats (India) Private Limited,
A company having its registered
office at Motikhavdi Gram Panchayat,
R.S. No.136, Plot 30 to 35,
Nr. Arjun Hotel, Sikka Patiya,
Motikhavdi,
Jamnagar – 361140. ... Petitioner of TP No. 43 of 2017
(Demerged Company)

And

Chaitri Construction Private Limited,
A company having its registered
office at Motikhavdi Gram Panchayat,
R.S. No.136, Plot 30 to 35,
Nr. Arjun Hotel, Sikka Patiya,
Motikhavdi,
Jamnagar – 361140. ... Petitioner of TP No. 42 of 2017
(Resulting/Transferee Company)

Order delivered on 27th October, 2017

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

Appearance:

Mr. Navin Pahwa, Senior Advocate, with Ms. Natasha Sutaria, Advocate, for the Petitioner Companies.

COMMON ORDER

1. These petitions under Sections 230-232 of the Companies Act, 2013 have been filed seeking sanction of a proposed Scheme of Arrangement ("Scheme" for short) in the nature of demerger of

Investment Undertaking of Leo Coats (India) Private Limited into Chaitri Construction Private Limited. The Scheme as originally envisaged was a Scheme of Arrangement in the nature of demerger and transfer of investment undertaking of Leo Coats (India) Private Limited to Chaitri Construction Private Limited along with Amalgamation of Orbit Trading Company Private Limited with Chaitri Construction Private Limited under Sections 391-394 read with Sections 100-104 of The Companies Act, 1956. However, Part-III of the Scheme which pertained to the proposal of Amalgamation of Orbit Trading Company Private Limited with Chaitri Construction Private Limited is proposed to be omitted by the parties to the Scheme.

2. The petitioner of TP No.42/NCLT/AHM/2017 i.e. Chaitri Construction Private Limited, the Resulting Company, had filed Company Application No.121 of 2016 before the Hon'ble High Court of Gujarat seeking dispensation of meetings of equity shareholders and preference shareholders on the ground that consent letters were given by all the equity shareholders and preference shareholders. It was stated before the Honourable High Court that this being the Resulting Company, the meeting of creditors was not required to be held. By order dated 4.4.2016, the Hon'ble High Court directed dispensation of meeting of equity shareholders and preference shareholders in view of their consent letters. The petitioner subsequently filed OJMCA No.79 of 2017 in Company Application No.121 of 2016 before Hon'ble High Court seeking modification to the extent of directing addition of the words "this being the Resulting/ Transferee Company, it is ordered that the meeting of the creditors is not required to be held", after Para 4 in the order dated 4.4.2016 made

by the Hon'ble High Court in Company Application No.121 of 2016. By an order dated 20.4.2017, the Hon'ble High Court allowed OJMCA No.79 of 2017 and modified the order dated 4.4.2016 passed in Company Application No.121/2016 to the extent of adding the words as prayed in the Application after Para 4 of the order dated 4.4.2016.

3. The petitioner of TP No.43/NCLT/AHM/2017 i.e. Leo Coats (India) Private Limited, the Demerged Company had filed Company Application No.122 of 2016 before the Hon'ble High Court of Gujarat seeking dispensation of meeting of equity shareholders and for direction to convene and hold meetings of secured creditors and unsecured creditors of the petitioner company. By order dated 4.4.2016, the Hon'ble High Court dispensed with meeting of equity shareholders and directed to convene and hold meetings of secured and unsecured creditors on 3.5.2016. The Hon'ble High Court also directed issuance of notice to creditors with regard to meeting and publication of advertisements. In pursuance to the order dated 4.4.2016, notices were issued to the creditors on 8.4.2016 and the advertisements were published in newspapers on 9.4.2016. As per the order, the meeting of unsecured creditors of the petitioner company was held on 3.5.2016 and the Chairman of the meeting filed necessary report. As per the chairman's report filed in respect of the meeting of Unsecured Creditors, the Scheme is approved unanimously. So far as the secured creditor of the petitioner company is concerned, as the Company had only one secured creditor viz. ICICI Bank and no one remained present in the meeting, the meeting was adjourned. In the meanwhile, the sole secured creditor gave its consent letter in approval of the Scheme.

4. Subsequently, the petitioner filed OJMCA No.75 of 2016 in Company Application No.122 of 2016 before the Hon'ble High Court seeking review and modification of the oral order dated 4.4.2016 passed in Company Application No.122 of 2016 to the extent of directions issued pertaining to the meeting of the secured creditors. By an order dated 1.7.2016, the Hon'ble High Court allowed OJMCA No.75 of 2016 and ordered omission of the directions contained in the order dated 4.4.2016 to the extent the directions pertained to the holding and convening the meeting of the secured creditors. By the same order, the Hon'ble High Court also ordered dispensation of the meeting of the secured creditors.

5. The petitioners, thereafter, filed Company Petitions No. 295 of 2017 and 296 of 2017 before the Hon'ble High Court seeking sanction of the Scheme. By separate orders dated 15.7.2016, the Hon'ble High Court directed to publish notice of hearing and to give notice to Regional Director and ROC. Accordingly, the petitioner published notice of hearing and gave notices to Regional Director and ROC. In response to the notice, Regional Director filed Common Report dated 24.11.2016 in Company Petition No.295 and 296 of 2016 before the Hon'ble High Court.

6. Thereafter, on 7.12.2016, the Ministry of Corporate Affairs issued Notification no. S.O. 3677(E), by which, Section 230 except sub-sections (11) and (12) and Section 231 to 233 came into force with effect from 15.12.2016.

7. The registered office of Orbit Trading Company Private Limited is situated within the State of Maharashtra and, accordingly, the said Company filed petition before the Honourable High Court of Bombay for sanction of the Scheme. The said petition ultimately came to be transferred to NCLT, Mumbai Bench and was registered as T.C.S.P. No.60/(MAH)/2017. Orbit Trading Company Private Limited filed an affidavit for withdrawal of Part-III of the Scheme and consequent withdrawal of the petition pending before NCLT. Part-III pertains to amalgamation of Orbit Trading Company Private Limited with Chaitri Construction Private Limited. By an order dated 31.1.2017, NCLT, Mumbai Bench permitted Orbit Trading Company Private Limited for withdrawal of the petition being T.C.S.P. No.60/(MAH)/2017.

8. In pursuance of notification dated 7.12.2016, Company Petition No.296 and 297 of 2016 were transferred to this Tribunal in view of Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016 and the same were renumbered as T.P. No. 42/NCLT/AHM/ 2017 (new) and T.P. No. 43/NCLT/AHM/ 2017 (new).

9. The petitioner of TP No.42/NCLT/AHM/2017 viz. Chaitri Construction Private Limited filed I.A. No. 59 of 2017 seeking modification of the Scheme to the extent of omitting Part-III thereof and other consequential modifications. The petitioner pointed out about the proceedings taken out by Orbit Trading Company Private Limited before NCLT, Mumbai and the order dated 31.1.2017 passed by NCLT, Mumbai Bench in T.C.S.P. No.60/(MAH)/2017 permitting Orbit Trading Company Private Limited withdrawal of the petition. By

an order dated 24.4.2017, this Tribunal passed order in I.A. No.59/2017 and directed to publish a notice in the newspapers in which already publication has been made, informing the date of hearing and with specific mention that it is in continuation of public notice issued as per the order of the Hon'ble High Court dated 15.7.2016 and published in "Indian Express" dated 27.7.2016 and in "Sandesh" dated 27.7.2016. The petitioner was also directed to state in the public advertisement that hearing of I.A. No. 59 of 2017 for modification of Scheme shall also be heard with the main petition. The petitioner was further directed to serve a notice on the Regional Director, Registrar of Companies, and the Income Tax Authorities informing the date of hearing and making a mention that it was in continuation of the notice issued in pursuance of order of the Honourable High Court dated 15.7.2016, at least 10 days before the date of hearing. The I.A. was ordered to be listed with the main petition being T.P. no. 42/NCLT/AHM/ 2017 on 30.5.2017. The petitioner thereafter on 23.5.2017 filed I.A. No.147 of 2017 seeking extension to comply with the directions contained in the order dated 24.4.2017. By an order dated 30.5.2017, this Tribunal allowed I.A. no.147 of 2017 granting extension of time for compliance of the directions contained in the order dated 24.4.2017 and the matter was ordered to be listed along with pending I.As on 1.8.2017.

10. The petitioner of TP No.43/NCLT/AHM/2017 viz. Leo Coats (India) Private Limited also filed similar I.A. No. 78 of 2017 seeking modification of the Scheme to the extent of omitting Part-III thereof and other consequential modifications. This Tribunal made similar orders in I.A. No.78 of 2017 as are made in I.A. No.59 of 2017. This

petitioner also filed I.A. No.148 of 2017 seeking extension to comply with the directions contained in the order dated 24.4.2017, which came to be granted by order dated 30.5.2017.

11. In pursuance to order dated 24.4.2017 read with order dated 30.5.2017, both the petitioners served the notices to the authorities. The petitioners also served notices to the Equity Shareholders in case of T.P. No.43/2017 and to the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors in case of T.P. No.42/2017. The petitioners also published advertisement as per the orders.

12. In response to the notices served upon the Regional Director, the Regional Director filed a common representation in both the petitions on 21.8.2017 making certain observations. The petitioner filed affidavit dated 31.8.2017 in response to the representation of the Regional Director. In response to the observation made by the Regional Director in paragraph 2(c), it is stated by the petitioners that they have filed separate applications for modification of the Scheme and all the directions issued by this Tribunal were complied with. With regard to the observation regarding making provision for issue and allotment of shares in the resulting company, it is submitted that clause 9 (f) of the Scheme provides that the issue and allotment of equity shares in the Resulting Company shall be carried out as per the applicable provisions of the Act. With regard to the observation regarding filing of all pending returns, it is submitted by the petitioners that the petitioner companies undertake to file all pending

returns. With regard to the observation regarding raising of funds through securities premium account, it is submitted by the petitioners that the petitioner of T.P. No.43/2017 has raised funds through securities premium account in the year 2005-06, whereas petitioner of T.P. No.42/2017 has raised funds through securities premium account in the year 2006-07 and 2007-08, which is more than 10 years old. It is further submitted in the reply that there is no unaccounted money as alleged. It is further submitted in the reply affidavit that the petitioner companies have filed income tax returns for the relevant years and have also paid applicable tax. There has been no demand raised so far by the Income Tax Department. With regard to the observation about payment of securities transaction tax, it is submitted on behalf of the petitioner demerged company that the said company is not liable to pay STT inasmuch as the petitioner has earned the income through mutual fund and has paid tax on the capital gain income earned by it. With regard to the observation on related party transactions, the petitioners submitted that there have been no related party transactions during the period ending 31st March 2015 in the books of the petitioner of T.P. no.42/2017. There is, therefore, no disclosure. So far as petitioner of T.P. No.43/2017 is concerned, it is submitted that there is also no related party transaction during the period ending 31st March 2015 in the books, except payment of directors' remuneration, which has been separately reflected in the audited annual accounts. With regard to the observation regarding compliance of AS-15, it is submitted by the petitioners that the petitioner of T.P. No.42/2017 has made compliance of AS-15, whereas the petitioner of T.P. No.43/2017 undertakes to take all corrective actions for compliance of AS-15. The

petitioners have also produced certificate of Chartered Accountants dated 29.8.2017 certifying that the petitioner Demerged Company is not liable to pay STT, petitioner companies did not have any related party transactions and that the company has complied with AS-15. In light of the above, this Tribunal is of the view that the observations made by the Regional Director stand satisfied.

13. During the hearing of these petitions on 4th September, 2017, learned counsel appearing for the petitioners submitted that the petitioners would obtain and file consent letters of the shareholders and creditors about the deletion of Part-III of the Scheme. Accordingly, the petitioner Demerged Company has produced consent letter of sole secured creditor (viz. ICICI Bank), consent letters of about 100 unsecured creditors, which aggregate to 97% of value and consent letters of all the three equity shareholders for deletion of Part-III of the Scheme. The petitioner Demerged Company also produced separate certificates of Chartered Accountants in this regard dated 12/14.9.2017. The petitioner Resulting Company has taken consent letter of all the three Equity Shareholders and the sole Preference Shareholder for deletion of Part-III of the Scheme. The petitioner Resulting Company also obtained certificates of Chartered Accountant dated 12.9.2017 in respect of equity shareholders and preference shareholder, which are produced on record along with covering letter dated 15.9.2017. The petitioner demerged company has taken Certificate of Chartered Accountant dated 12.9.2017 which certifies that there are no outstanding liabilities in the nature of secured or unsecured creditor as on 31.8.2017.

14. Thereafter, this Tribunal, by order dated 18.9.2017, directed the petitioners to file resolutions of the Board of Directors in respect of the Corporate Shareholders and Corporate Creditors.

15. Heard Shri Navin Pahwa, Learned Senior Advocate for the petitioners with Ms. Natasha Sutaria, for M/s. Thakkar & Pahwa, Advocates, for the petitioner-companies.

16. It is submitted on behalf of petitioner companies that the observations of the Regional Director are appropriately responded to in the Reply filed by the petitioners. There are no representations received from the Income Tax Authority and/or any other authority. Pursuant to public notice also, no representations are received.

17. So far as the consent letters of the Creditors in case of Demerged Company is concerned, the petitioner has produced consent letters of Unsecured Creditors aggregating to 97% in value. It, however, appears that the petitioner Demerged Company has not been able to produce the Board Resolutions in respect of the Corporate Unsecured Creditors which are 5 (five) in number. It is submitted that despite efforts, the said unsecured creditors have not given their board resolutions. The consent letters are signed by the authorized signatories of the concerned corporate unsecured creditors. It is submitted by the Learned Counsel for the petitioners that the Scheme as such has already been approved by the Unsecured Creditors in a meeting directed to be held pursuant to the orders made by the Hon'ble High Court. The unsecured creditors of the petitioner

Demerged Company are also not directly concerned or affected by the omission of Part-III of the Scheme, which pertains to merger of Orbit Trading Company Private Limited with Chaitri Construction Private Limited. Even otherwise, there is a substantial compliance made by the Petitioner Demerged Company of the order dated 4.9.2017 read with order dated 18.9.2017. So far as the petitioner Resulting Company is concerned, it has produced the Board Resolutions in respect of the Corporate Shareholders. The said Company does not have any creditor as per the declaration made through the Certificate given by the Chartered Accountant.

18. Considering the entire facts and circumstances of the case and on perusal of the modified Scheme and the documents produced on record, it appears that the requirements of the provisions of Sections 230 and 232 of the Companies Act, 2013 are satisfied. The Scheme appears to be genuine and *bona fide* and in the interest of the shareholders and creditors.

19. In the result, both the petitions, I.A. No.59/2017 and I.A. No.78/2017 are allowed. The modified Scheme of Arrangement as proposed by the petitioners (after omitting Part-III thereof) is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, namely, Leo Coats (India) Private Limited and Chaitri Construction Private Limited, their shareholders, creditors and all concerned under the Scheme.

20. The 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 INC-28 in addition to physical copy as per relevant provisions of the Act.

21. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately.

22. These petitions are disposed of accordingly.

27.10.17

Signature.....
[Bikki Raveendra Babu, Member (J)]

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