

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

T.P.NO. 238/2017 & 239/2017

IN

CoP.NO. 159/2016 & 237/2016

DATED: WEDNESDAY THE 28th DAY OF JUNE 2017

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

**IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956 AND OTHER
RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONG WITH THE
COMPANIES ACT, 1956**

AND

**IN THE MATTER OF SECTION 230 TO 232 OF THE COMPANIES ACT, 2013 AND
OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONGWITH**

THE COMPANIES ACT, 1956

AND IN THE MATTER OF

SCHEME OF ARRANGEMENT

MD RETAIL INDIA PRIVATE LIMITED

WITH

SOCH APPARELS PRIVATE LIMITED

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

T.P.NO. 238/2017&239/2017 IN CoP.NO. 159/2016 & 237/2016

1. MD Retail India Private Limited,
No.14, Bachammal Road,
Cox Town, Bengaluru-560 005 - PETITIONER/ DEMERGED COMPANY

2. Soch Apparels Private Limited,
No.14, Bachammal Road,
Cox Town, Bengaluru-560 005 - PETITIONER/RESULTING COMPANY

PARTIES PRESENT: 1. Mr.C.K. Nandakumar
No.67/3/A-1, Ground Floor,
4th Cross, Lavelle Road,
Bengaluru 560001
Advocates for the Petitioner Company
2. Ms.M.R.Sinchana, Standing Counsel
Advocate for the Regional Director
3. Mr. Vasant Kumar, Assistant,
Representative for Official Liquidator

Heard on: 14.02.2017, 31.03.2017, 1.06.2017 & 15.06.2017

C O M M O N O R D E R

Originally these Company Petitions were filed before the Hon'ble High Court of Karnataka and they were numbered as Co.P. No.159/2016 & Co.P. No.237/2016. Subsequently as per Notification No. GSR.1119 (E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said cases were transferred to this Tribunal and renumbered as T.P No. 238/2017 & T.P No. 239/2017.

These Company Petitions were filed on behalf of the Petitioner Companies under Section 391-394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, praying to order for sanctioning the Scheme of Arrangement of the Transferor Company with the Transferee Company and shall be binding upon all the Shareholders and Creditors of the Petitioner Companies.

The averments made in the Company Petitions are briefly described hereunder:-

The Petitioner Companies seeks an order for sanctioning the Scheme of Amalgamation of **MD RETAIL INDIA PRIVATE LIMITED** (Transferor Company) with **SOCH APPARELS PRIVATE LIMITED** (Transferee Company). The Scheme of Arrangement is shown as **Annexure M**.

The Transferor Company was initially incorporated as MD RETAIL LLP on 28th February, 2011. On 8th April, 2015, it was converted into a Private Limited Company under the name, **MD RETAIL INDIA PRIVATE LIMITED** and obtained Certificate of Incorporation vide bearing CIN No.-U52399KA2015PTC079715. The Registered office of the Transferor Company is situated at MD Retail India Private Limited, No.14, Bachammal Road, Cox Town, Bengaluru-560 005.

The Transferor Company's objects as set out in its Memorandum of Association inter alia, as follows:

1. To carry on the retail business in men's, women's and children clothing and wearing apparel of every kind, nature and description including but not limited to Shirts, T-shirts, Pyjama suits, blouse, vests, inner wears, inner garments, Suits Foundation Garments, apparel of every kind for ladies not limited to dresses, sarees, salwar kameez, chudidars, frocks, tops, midis, maternity belts, knee caps, panties, nighties and/or fashionable item of garment as the time may invent.



2. To manufacture, buy, sell, export and deal in wearing apparels and ready-made garments made of all kinds of cotton, linen silk, rayon, nylon, hemp, flax, celluloid fibers, metallic fiber glass, fibers, polymers and other fibers or fibrous substances or preparation, natural or otherwise including leather.
3. To carry on all or any of the business of dealers and exporters, wholesale and retail dealers of and in hosiery goods of every kind, nature and description for men, women and children including vests, underwear, socks, stockings, sweaters, laces and so on and of all or anything which is used as hosiery goods.

The Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Transferor Company shown as **Annexure C, D & E in T.P.-238/17.**

The latest authorized share capital of the Transferor Company is Rs.3,00,00,000/- divided into 30,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.2,51,00,000/- divided into 25,10,000 Equity Shares of Rs.10/- each fully paid up. The Copy of Audited Balance Sheet as on 31st March, 2015 and Unaudited Balance sheet of the Transferor Company as on 31st March, 2016 shown as **Annexure- F & G in T.P.-238/17.**

The Transferee Company was incorporated on 7th July, 2015 as the Private Limited Company under the name, **SOCH APPARELS PRIVATE LIMITED** and obtained Certificate of Incorporation vide bearing CIN No.-U52599KA2015PTC081440. The Registered office of the Transferor Company is situated at No.38, Ground Floor, 1st Main Road, Lower Palace Orchards, Bengaluru- 560 003.

The Transferee Company's objects as set out in its Memorandum of Association inter alia, as follows:

1. To carry on the retail business in men's, women's and children clothing and wearing apparel of every kind, nature and description including but not limited to Shirts, T-shirts, Pyjama suits, blouse, vests, inner wears, inner garments, Suits Foundation Garments, apparel of every kind for ladies not limited to dresses, sarees, salwar kameezes, chudidars, frocks, tops, midis, maternity belts, knee caps, panties, nighties and/or fashionable item of garment as the time may invent.
2. To carry on the business as manufacturers, retailers, importer, exporter wholesalers and to deal in all kinds of proprietary products, hair, skin, nail, nail and other beauty preparations, deodorants, baby products, petroleum and mineral oil products, and all kind of perfumery and other compounds, preparations and materials and products, bath products, cotton swabs, hair dyes pigments and all such cosmetic products and accessories capable of being used in connection with such manner or business.

3. To manufacture, buy, sell, export and deal in wearing apparels and ready-made garments made of all kinds of cotton, linen silk, rayon, nylon, hemp, flax, celluloid fibers, metallic fiber glass, fibers, synthetic polymers and other fibers or fibrous substances or preparation, natural or otherwise including leather.



The Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Transferee Company shown as **Annexure H, J & K in T.P.-238/17**.

The latest authorized share capital of the Transferor Company is Rs.3,50,00,000/- divided into 35,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.8,00,000/- divided into 80,000 Equity Shares of Rs.10/- each fully paid up. The Copy of Audited Balance Sheet as on 31st March, 2015 is shown as **Annexure L in T.P.238/17**.

The Directors of the Transferor Company and the Transferee Company have approved the proposed Arrangement as embodied in the Scheme of Arrangement and are of the opinion that the proposed scheme is in the interest of all the concerned and that the rights of the unsecured creditors, if any, would not be prejudicially affected by the proposed scheme. The assets of the Transferor Company are sufficient to satisfy any claims of the unsecured creditors. The proposed Scheme of Arrangement will serve to strengthen the Transferor Company and will therefore be in the interest of the creditors of the Transferor Company. The scheme of Arrangement does not involve any compromise with the creditors of the Transferor Company and will not in any manner affect their rights as a class.

The Board of Directors of the Transferor Company and Transferee Company at their respective Board Meetings held on 11th March, 2016 finalized and settled the Scheme of Arrangement. The copies of Board Resolutions are shown as **Annexure-A & L1 in T.P.-238/17**.

It is averred in the Company Petition that the Shareholders of the Transferor Company cumulatively holding 99.6% of the fully paid-up and issued Equity Shares of the Transferor Company are also the holders of 100% of the fully paid-up Equity Shares of the Transferee Company.



The Transferor and Transferee Companies had filed C.A.No.129/16 & C.A.No.617/16 before the Hon'ble High Court of Karnataka to dispense with the convening of meetings of Shareholders, Secured & Unsecured Creditors of the respective Companies. The Hon'ble High Court of Karnataka vide separate Orders dated 29th June, 2016 & 16th September, 2016 allowed the Application and dispensed with the convening of meetings of the Shareholders, Secured & Unsecured Creditors. The Copies of the Order of Hon'ble High Court in C.A.No.129/16 & C.A.No.617/16 are shown as **Annexure-N & Annexure-E in T.P.-238/17 & T.P.-239/17** respectively.

That the Transferor Company and the Transferee Company had filed the Petition bearing Co.P No.159/2016 and Co.P.No.237/2016 respectively before the Hon'ble High Court for sanctioning the scheme of Amalgamation on 8th July, 2016 & 7th October, 2016.

The Hon'ble High Court of Karnataka vide Order dated 11th November, 2016 in Co.P.No.159/16 & Co.P.No.237/16 directed to issue Notice to Regional Director and to have an advertisement of Notice of Petition be carried out in the "The Hindu", an English daily Newspaper and "Udaya Vani", a Kannada daily newspaper on or before 25th November, 2016 and also stating the next date of hearing of the present petitions was on 9th December, 2016. The Counsel for the Petitioner Companies has filed the **Memo dated. 25th November, 2016 in T.P.-238/17 & Memo dated. 2nd December, 2016 in T.P.-239/17** for having advertised the Notice of the Petition as directed by the Hon'ble High Court in the respective Company Petitions.


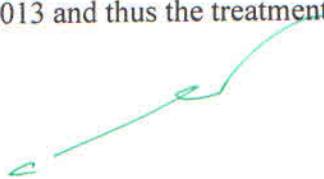
The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad represented by Registrar of Companies has filed Affidavits dated 20th February, 2017 making some observations in **T.P.- 238/17 & T.P. No.239/17** as follows:

- i) The Notice dated 13th December, 2016 was issued to the Income Tax Department giving 15 days' time to offer comments/ objections, if any. But no comments/ objections have been received so far from the Income Tax Department by Office of the Regional Director (South East Region) till 23rd January, 2017.

After these Petitions were transferred from the Hon'ble High Court of Karnataka then the Tribunal directed the Counsel for the Petitioner Companies that, whether Notice(s) to be issued to the authorities other than those to whom Notice(s) were already issued in pursuant to section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.

The Counsel for the Petitioner Companies has filed the **Affidavit dated 31st March, 2017 in T.P.-238/17 & Affidavit dated 31st May, 2017 in T.P.-239/17** of the authorised Signatory of the Petitioner Companies stating that Notice to Official Liquidator, Regional Director, South East Region, Hyderabad and the Registrar of Companies have already been served, and the Regional Director has already filed its report. Since the present scheme is a scheme for demerger and transfer of a unit of the Transferor Company to the Transferee Company, and the present scheme does not involve dissolution without winding up, no notice is required to be served on the Official Liquidator. The Petitioner Companies are Private Limited Companies and none of its shares/securities are listed on any Stock Exchange and, the Petitioner Companies are not non-banking finance company, and are therefore, not regulated by the Reserve Bank of India. The present scheme does not require any approval from the Competition Commission of India for the reasons that the thresholds prescribed for the approvals under the Competition Act, 2002 are not met in the present case. Therefore, no notices were required to be issued by the Petitioner Companies to these concerned authorities. Further, there are no other sectoral regulators or authorities regulating the Petitioner Companies.

The Counsel for the Petitioner Companies have also filed the Accounting Treatment Certificate **dated 30th May, 2017** issued by the Chartered Accountant, who certified in his Certificate stated that in the absence of any specific guidance on Demerger Accounting, the accounting treatment proposed in the scheme is as per the Generally Accepted Accounting Principles. Further, in relation to compliance with section 2(43) of the Companies Act, 2013, the management has represented that the difference between the value of Assets and Liabilities will be treated as Capital Reserve, in case of a Credit Balance. Hence, based on the management representation, he certified that the same will not amount to free reserve and hence if the reserve is taken as Capital Reserve, it would not be free reserve as per Section 2 (43) of the Companies Act, 2013 and thus the treatment would be as per the Generally Accepted Accounting Principles.



After hearing the Counsel for the Petitioner Companies and considering the material on record,

THIS TRIBUNAL DO FURTHER ORDER

While Approving the Scheme, we further clarify that this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law.

The Whole of the property, rights and powers of the of the Demerged Undertaking of the Transferor Company, be demerged without further act or deed into the Transferee/Resulting Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the state and interest of the Demerged Undertaking of the Transferor Company therein but subject nevertheless to all the charges now affecting the same; and



All the liabilities including taxes and charges, if any, and duties of the Demerged Undertaking of the Transferor Company be demerged without further act or deed into the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and

All the proceedings now pending by or against the Demerged Undertaking of the Transferor Company, if any, be continued by or against the Transferee Company; and

The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding.

The Demerged Undertaking of the Transferor Company and the Transferee Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Arrangement to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The Scheme shall be effective from the appointed date as mentioned in the scheme of Arrangement i.e. 1st April, 2016.



The Demerged Undertaking of the Transferor Company or its authorised signatory is directed that after the completion of the process of Arrangement to handover the possession of the Books of Accounts and other relevant documents of the Demerged Undertaking of the Transferor Company to the Transferee Company for the purpose of section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply this Tribunal in the above matter for any directions that may be necessary.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 28th DAY OF JUNE, 2017