

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 513 OF 2017

AND

CSP NO. 515 OF 2017

Under Section 230-232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation
of JAYRAVI TEXTURISING PRIVATE
LIMITED, the Transferor Company with
NOVELTY AGENCIES PRIVATE LIMITED,
the Transferee Company.

JAYRAVI TEXTURISING PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

NOVELTY AGENCIES PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 3rd August, 2017

Coram:

Hon'ble Shri. B.S.V. Prakash Kumar, Member (J)

Hon'ble Shri. V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala
i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

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

ORDER:

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of JAYRAVI TEXTURISING PRIVATE LIMITED, the Transferor Company with NOVELTY AGENCIES PRIVATE LIMITED, the Transferee Company.

2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Amalgamation of JAYRAVI TEXTURISING PRIVATE LIMITED, the Transferor Company with NOVELTY AGENCIES PRIVATE LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in their Company Scheme Application Nos. 23 of 2017 and 24 of 2017 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of weaving, twisting, printing, processing, dyeing, bleaching, knitting, crimping, texturing of all kinds of man-made synthetic fabrics and yarns into final product and the Transferee Company has been carrying on the business as buyers, sellers, suppliers, growers, traders, merchants,

indentures brokers, agents, assemblers, stockiest of goods and commodities of any kinds to work as commission agents, brokers, contractors, processors order suppliers and dealing agents. As per the opinion of the management the Transferor Company and the Transferee Company are under the same management and the management is of the opinion that both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamated Company will have the benefit of the combined assets and cash flows of the two companies and the combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively and it will be conducive to better and more efficient and economical control and conduct of the Companies and with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and a larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.

7. The Regional Director has filed a Report on 24th day of June, 2017 stating therein, save and except as stated in paragraph IV, 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 Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:

- 1. 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 Tribunal 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.*
- 2. The Petitioner Companies have not submitted the proof of serving notice, upon the Income Tax Authorities for comments.*

In this regard, Petitioner Companies have to undertake to serve notice to the Income Tax Authorities and produce acknowledgement copy of service of notice before Regional Director and Hon’ble NCLT.

- 3. Petitioner companies not submitted minutes of order of the Hon’ble NCLT.*

In this regard petitioner companies undertake to submit Minutes of Order

- 4. Petitioner in the notice served to the shareholder in the Explanatory Statement point 9.3 has mentioned that 100% share capital of the transferor company being held by the transferee company there is no issue of share by the transferee company and no valuation report is required. Whereas the company in its reply at point no.5 (ii) inter alia mentioned that 524 number of shares will be issued to the equity shareholders of the transferor company for every 100 shares of the transferor company. And in clause 11 of the scheme has inter alia mentioned that upon this scheme becoming operative the equity shares of the transferor companies the transferee company without any deed or application issue and allot equity shares of the face value of Rs. 10/- each credited as fully paid up to he shareholders of the transferor company for every 100 equity shares of Rs. 10 each fully paid p held by the transferor company shareholders. The petitioner in their reply has inter alia mentioned that Valuation report of Chartered Accountant is enclosed whereas the same is not found.*

In this regard petitioner has to undertake to amend the scheme.

- 5. Certificate by Bagaria & Co. LLP, Chartered Accountants is submitted as required under section 133 of the Companies Act, 2013 which is Exhibit D. However there is no mention that the accounting treatment proposed in the Scheme is in accordance with the Accounting standards prescribed under section 133 read with the rules.*

In this regard Petitioner has to undertake to submit fresh certificate as required under section 133 of the Act, 2013.

6. *Petitioner in clause 11 has inter mentioned that the proposed issue of equity shares not be construed to result in change in dominant shareholding/ control of either the transferor company or the transferee company.*

In view of the above observation at point 4, the proviso in the clause become redundant. .

8. So far as the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law
9. So far as the observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company have served copy of notice upon the Income Tax Authorities for their comments and the same is filed by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal with the same.
10. So far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have submitted the minutes of the order. The same has been given by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal
11. So far as the observation in paragraph IV (4) and (6) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company submits that the transferor company is not a wholly owned subsidiary of the

transferee company. The Petitioner Company further submits that what they have stated in Reply in point 5(ii) is correct and that they will issue shares as per the Scheme and Valuation Report only. The same has been given by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal.

12. So far as the observation in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies has submitted to this Hon'ble Tribunal the Certificate from the Auditors stating that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013. The same has been given by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
14. The Official Liquidator has filed his report on ___ June, 2017 in the Company Scheme Petition No. 513 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 513 of 2017 is made absolute in terms of prayers clause (a) to (f) thereof and 515 of 2017 is made absolute in terms of prayer clauses (a) to (e) thereof .
17. Petitioners are directed to lodge a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013.
18. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified 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 within 60 days from the date of receipt of the order, if any.
19. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 513 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
20. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member(T)

Sd/-

B.S.V. Prakash Kumar, Member (J)