

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 178 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the Companies Act,
2013;

AND

In the matter of Scheme of Arrangement between V. M. Salgaocar and Brother Private Limited having CIN U35111GA1965PTC000048 (the Demerged Company) with VMSalgaocar Corporation Private Limited having CIN U26921GA1991PTC001168 (the Resulting Company) and their respective Shareholders and Creditors

V. M. Salgaocar and Brother Private Limited, a Company }
incorporated under the provisions of Companies Act, 1956 }
having its registered office at "Salgaocar House", Off Dr. }
Francisco Luis Gomes Road, Vasco da Gama, Goa – 403802 }
CIN U35111GA1965PTC000048 }

..... Applicant Company

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Applicant Company

CORAM: B.S.V. PrakashKumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

DATE: 23rd February, 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicant Company submits that the present Scheme is a Scheme of Arrangement between V. M. Salgaocar and Brother Private Limited

(‘the Demerged Company’ or ‘the Applicant Company’) and VMSalgaocar Corporation Private Limited (‘the Resulting Company’) their respective shareholders (hereinafter referred to as ‘the Scheme’). The Scheme *inter-alia* provides for demerger of the Hotels and Hospitality Business Undertaking of the Applicant Company into the Resulting Company.

2. The learned Counsel for the Petitioner further submits that the Scheme has been drawn up to give effect to and implement the Family Settlement and Arrangement entered into between members of Shivanand V Salgaocar Family and Dattaraj V Salgaocar Family as recorded in the Consent Terms filed with the Hon’ble Bombay High Court in Suit No. 719 of 2013 (Order dated 06.12.2016).
3. The meeting of the Equity Shareholders of the Applicant Company be convened and held at Salgaocar House, Vasco da Gama, Goa – 403802 on Monday, the 10th day of April, 2017 at 10.30 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s), the Scheme of Arrangement between V. M. Salgaocar and Brother Private Limited and VMSalgaocar Corporation Private Limited and their respective shareholders and creditors.
4. That at least 30 clear days before the said Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post / Hand Delivery or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

5. That at least 30 clear days before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602, A Wing, Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
6. That the Notice of the Meeting shall be advertised in two local newspapers viz. 'The Goan' in English and 'Gomantak' in Marathi, both circulated in Goa, not less than 30 days before the date fixed for the meeting.
7. That Mr. Shivanand V. Salgaocar, Managing Director of the Applicant Company, and failing him, Mr. A. E. Barreto, Director and Company Secretary of the Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders to be held at Salgaocar House, Vasco da Gama, Goa – 403802 on Monday, the 10th day of April, 2017 at 10.30 a.m. or any adjournment or adjournments thereof.
8. That Mr. Francisco Dias, Practicing Company Secretary and failing him Mr. G. S. Shenoy, Practicing Company Secretary is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Company to be held at Salgaocar House, Vasco da Gama, Goa – 403802 on Monday, the 10th day of April, 2017 at 10.30 a.m. or any adjournment or adjournments thereof and his remuneration is fixed as Rs. 25,000/-.
9. That the Chairman appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies

Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

10. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at "Salgaocar House", Off Dr. Francisco Luis Gomes Road, Vasco da Gama, Goa – 403802 not later than 48 hours before the aforesaid meeting.
12. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books/ register of the Applicant Company and where the entries in the books / register are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
13. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
14. That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the meeting.
15. The Counsel for the Applicant Company submits that there are no Secured Creditors in the Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise. The Counsel for the Applicant Company further submits that since the Scheme is an arrangement between the Applicant

Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Applicant Company to issue notice to all its Unsecured Creditors as on 31st December 2016 of the value of Rs 1,00,000/- and above representing 99.48% of the value of unsecured trade creditors with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

16. That the Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) to the Central Government through the office of Regional Director, Western region, Mumbai, and (iii) Registrar of Companies, as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with the direction that they may submit their representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The Applicant Company to file affidavit of service of the notices issued to the Equity Shareholders and notices to the Unsecured Creditors not less than seven days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (Technical)