

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 62 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 718 OF 2016
(HIGH COURT TRANSFERRED PETITION).

TACHE JEWELRY PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013;

AND

IN THE MATTER of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of TCG JEWELRY PRIVATE LIMITED, the Transferor Company

WITH

TACHE JEWELRY PRIVATE LIMITED, the Transferee Company.

Called for hearing

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

Mr. Pola Raghunath, Deputy Registrar of Companies

Mr. Santosh Dalvi, representing from the office of Official Liquidator.

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director.

Coram: SH. M.K Shrawat, Hon'ble Member (J)
SH. V. Nallasenapathy, Hon'ble Member (T)

Date: 13th April, 2017

MINUTES OF THE 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 TCG JEWELRY PRIVATE LIMITED, the Transferor Company with TACHE JEWELRY PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of TCG JEWELRY PRIVATE LIMITED, the Transferor Company with TACHE JEWELRY 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 Petitioner states that the Petition have been filed in consonance with the order passed in their Company Summons for Direction No. 718 of 2016 of the Hon'ble Bombay High Court.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Company have complied with all requirements as per directions of the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Company 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 Petitioner states that the Transferor Company to carry on the business of manufacturing and trading of Jewelry and currently there are no business activities in the Company, except other income and the Transferee Company presently carrying on business of manufacturing and export of studded jewellery. As per the opinion of the management both the Companies are under same Management and enabling both the Companies to consolidate their business operations and provide significant impetus to their growth and the reduction of overheads and other expenses facilitate administrative convenience and ensure optimum utilization of available services and resources and that the Amalgamation will lead to the benefits of the economies of scale and it increase in net worth of Transferee Company, which will facilitate effective and better mobilization of financial resources.

7. The Regional Director has filed a Report on 30th day of March, 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 Court 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 company have not submitted the proof of serving notice upon the Income Tax Authorities for comment. This directorate has also*

issued a reminder letter to the Income Tax Department Authorities vide letter dated 29.03.2016.

- 3. According to the Shareholders List provided by the Transferor Company, there is foreign/ non-residential shareholder (M/s Sea Gem Pvt Ltd. Holding 21,41,761 shares) in the transferor Company. No notice has been served to RBI.*
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 Amalgamation 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 Companies has submitted to this Hon'ble Tribunal the proof of service by filing a further Affidavit dated 11th April, 2017.
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 Company submits that this Company Petition was filed under Section 391 to 394 read with Section 100 to 103 of Companies Act, 1956. The Petitioner Company further, submits that, Foreign investment in the petitioner company falls under Automatic Route as laid down in the FDI policy and do not require any specific or prior approval from Reserve Bank of India (RBI) for the same. However, the Petitioner Company undertakes to comply with all the requirements of provisions of Foreign Exchange Management Act, 1999 upon allotment of shares including filing of necessary Form FCGPR as per Notification No. FEMA 20/2000-RB dated

May 3, 2000 along with necessary documents within 30 days from the date of allotment of shares.

11. The observations made by the Regional Director have been explained by the Petitioner Company in Para 8 to 10 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 62 of 2017 is made absolute in terms of prayers clause (a) to (d).
14. Petitioner is 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.
15. The Petitioner Company to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any within 60 days from the date of receipt of the certified copy of order.
16. The Petitioner Company to pay costs of Rs.25,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the Order.
17. The Registered Office of the Transferor Company is situated in the State of Gujarat and the similar petition was filed with Hon'ble High Court of

Gujarat and the same has been sanctioned by the Hon'ble High Court of Gujarat vide their order dated 14th October, 2016.

18. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-
V. Nallasenapathy, Member (T)

Sd/- 13/07/17
M. K Shrawat, Member (J)