

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TCSP No. 202 of 2017
And
TCSP No. 203 of 2017
Along with
MA 358 OF 2017
And
MA 359 of 2017

Under Section 391 to 394 of CA, 1956 corresponding to Sections 230 to 232 of CA 2013

In the matter of Scheme of Arrangement between Momai Apparels Limited (Transferor Company) and Ashapura Intimates Fashion Limited (Transferee Company) and their respective shareholders and creditors

Momai Apparels Limited

Petitioner/Transferor Company

And

Ashapura Intimates Fashion Limited

Petitioner/Transferee Company

Judgment/Order delivered on 28th September , 2017

Coram:

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

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

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. Ramesh Golap, Assistant Director in the office of Regional
Director

Per: **B.S.V. Prakash Kumar, Member(J)**

Order

1. Heard the learned counsel for the Petitioner Companies.
2. Learned Counsel for the Petitioner Companies states that the Transferor Company had received an objection from Tex Corp Limited, the creditor of Transferor Company for an outstanding amount of Rs. 90,705/- on 6th June, 2017 and the same was filed with Hon'ble National Company Law Tribunal Mumbai bench. The counsel for the petition on instruction states that dues of the objecting creditor has been paid off and confirmation has been received from the said creditor.

3. The sanction of the Tribunal is sought under Sections 230 and 232 of the Companies Act, 2013, to the Scheme of Arrangement between Momai Apparels Limited ("Transferor Company") and Ashapura Intimates Fashion Limited ("Transferee Company") and their respective shareholders and creditors.
4. Learned Counsel for the Petitioner Companies states that the Transferor Company is primarily engaged in the business of manufacturing, processing, buying, selling, exporting and dealing in all types of garments including silk, art silk, cotton, synthetics, man-made fabrics textiles and clothes.
5. The rationale for the scheme is:
 - a. Backward intergration of business activities, thereby consolidation of business operations;
 - b. Greater integration and greater financial strength and flexibility for the amalgamated entity;
 - c. Improved competitive position of the combined entity in the market;
 - d. Greater efficiency in cash management, by cost reduction and unfettered access to cashflow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value;
 - e. Opportunity to leverage on brand, goodwill and combined assets, build a stronger sustainable business and enable optimal utilization of existing resources and provide an opportunity to fully leverage capabilities and experience of both the Companies;
 - f. Accessibility to broader markets and improved organizational capability and leadership arising from pooling of human capital that has diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry; and
 - g. Reduce regulatory compliance and multi-layer taxation of inter-se transaction.
6. The Transfror Company and the Transferee Company have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Companies.
7. Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble National Company Law Tribunal Mumbai bench and has filed necessary affidavits of compliance with the National Company Law Tribunal, Mumbai bench. Moreover, the Petitioner Companies through its Counsel

undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertaking given by the Petitioner Companies is accepted. The Counsel for the Petitioners submit that in view of provisions of section 232(3)(b) of the Companies Act, 2013 the Petitioner cannot hold shares in its own name or in the name of any Trust whether on its behalf or on behalf of any of its subsidiary or associate companies, therefore the Petitioners shall dispose of the shares in the open market in accordance with the applicable laws before giving effect to the scheme.

8. The Official Liquidator has filed a Report dated 6th of June, 2017 stating therein, that the affairs of the Transferor Company have not been conducted in a manner prejudicial to its members or to the public interest and that Tribunal may pass such other order or orders as deemed fit and proper.
9. The Regional Director has filed a Report dated 3rd of July, 2017 stating therein, that the Tribunal may take this report on record and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case post considering the observations made at paragraphs IV (a) to (g) mentioned in his report.

In paragraphs IV (a) to (g), of the said Report it is stated that:-

“..

- a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as (IND AS-8) etc.,*
- b) *Regarding clause 9.8 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against any Reserves of the Transafree Company.*
- c) *Regarding Clause 8.4 & 9.9 of the Scheme it is submitted that the proviso to Section 232(3)(b) of the Companies Act, 2013 becoming effective w.e.f. 15.12.16 the Transferee Company shall not hold any shares in its own name or in the name of any Trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished. Accordingly, all relevant clauses of the Scheme are to be deleted.*
- d) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 03.04.2017 has served a copy company petition No.202-203/2017 along with relevant orders etc. Further, this Directorate has also issued a reminder letter dated 26.05.2017, to IT department.*
- e) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme is by Hon'ble High*

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.

- f) As per clause 1.7(b) of the scheme "Appointed Date" means April 1, 2016 Or such other date as may be approved by the Hon'ble High Court of Judicature at Bombay;" In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be 1st April, 2016.*
- g) in view of the para 11 above it is not clear whether the company has fully satisfied the requirements of Bombay Stock Exchange Limited, National Stock Exchange of India and the requirements of SEBI for listed company. Accordingly, Hon'ble NCLT may pass appropriate order / order as deem fit."*

10. As far as the observations made in paragraph IV (a) of the RD Report is concerned, Petitioner Companies through its Counsel undertakes that in addition to compliance of AS-14 (IND AS-103) the Transferee Company shall also pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as (IND AS-8) etc as may be applicable.
11. As far as the observations made in paragraph IV (b) of the RD Report is concerned, the Transferee Company through its Counsel submits that the Transferee Company undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against any Reserves of the Transfree Company.
12. With reference to the observation set out in paragraphs IV (c) of the RD Report, the Petitioners through their Counsel undertakes that the Transferee Company shall not hold any shares in its own name or in the name of any Trust whether on its behalf or on behalf of any of its subsidiaries or associate companies and seeks leave to amend Scheme by deleting clause 8.4 and 9.9 of the Scheme. The said undertaking given by the Petitioner Companies are accepted.
13. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Transferee Company through their counsel undertakes that the Transferee Company shall comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
14. As far as the observations made in paragraph IV (e) of the RD Report is concerned, Petitioner Companies through its Counsel submits that the Petitioner Companies undertakes to comply with all applicable provisions of the Income

Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

15. As far as the observations made in paragraph IV (f) of the RD Report is concerned, Petitioner Companies through its Counsel clarifies that the Appointed date shall be 1st April 2016.
16. As far as the observations made in paragraph IV (g) of the RD Report is concerned, Petitioner Companies through its Counsel submits that as suggested by BSE Limited by their letters dated 28th April 2017, 17th May 2017, 23rd May 2017 and as per the undertaking given by the Transferee Company, the Petitioners seeks leave of this Tribunal to amend Scheme by adding the following as clause nos 17.1 (e) :-
"The Company shall seek approval of Scheme of Amalgamation by shareholders through special resolution passed through postal ballot and e-voting, after disclosure of all material fact in explanatory statement sent to the shareholders. Further, the Scheme shall be acted upon only if the votes cast by the public shareholders in favour of the proposal amount to atleast two times the number of votes cast by the public shareholders against it."
17. Amendment to the Scheme and all consequential amendments are allowed by inserting the above clause and deleting clause 8.4 & 9.9 of the Scheme .
18. The Counsel for the Petitioners submit that both Transferee Company and Transferor Company has complied with SEBI Circular No. CRI/CFD/CMD/16/2015 dated November 30, 2015 and have also approved the Scheme through postal ballot and E voting on 28th February 2017. M/s Jaiprakash R Singh and Associates, practicing Company Secretary Mumbai have submitted the report to the Company on February 28, 2017. The Chairman of the Company had declared the result on February 28, 2017 based on the report submitted by the Scrutinizer and the report were duly submitted to BSE Limited and National Stock Exchange Limited.
19. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 9 to 16 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
20. 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.

21. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 202 & 203 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions and this Order shall be effective from the date on which certified copies of the order sanctioning this scheme are filed with the Registrar of Companies, Mumbai, by the Transferor Company and the Transferee Company.
22. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of receipt of certified copy of this order by the Registry.
23. The Transferee Company to lodge certified 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, if any, on the same within 60 days from the date of receipt of certified copy of this order by the Registry.
24. The Petitioners in both the Companies to pay cost of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The petitioner in Transferor Company scheme petition no. 202 of 2017 to pay cost of Rs. 25,000/- to the official liquidator, High Court, Bombay.
25. Costs to be paid within four weeks from the date of receipt of order.
26. All authorities concerned to act on a certified copy of this order along with amended Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
27. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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