

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NOS. 180/2017 AND 181/2017

In the matter of Companies Act, 2013
and to the Companies Act, 1956, as
applicable;

AND

In the matter of Sections 230 to 232 of
the Companies Act, 2013
(corresponding Sections 391 to 394 of
the Companies Act, 1956)

AND

In the matter of Scheme of
Amalgamation of Motimala Jewellers
Private Limited, the Transferor
Company with Motimala Trading
Private Limited, the Transferee
Company and their respective
shareholders and creditors.

Motimala Trading Private Limited

..... Transferee Company

And

Motimala Jewellers Private Limited

..... Transferor Company

Judgment/ Order delivered on 20th July, 2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

Called for the admission:

Ms. Labdhi Shah, Advocate for the Petitioner Company
Mr. Ramesh Gholap, Assistant Director in the office of the Regional Director.
Mr. Santosh Dalvi, Representative Official Liquidator

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard Counsel for the Parties. No objector has come before the Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.

2. Learned Advocate for the Petitioner Companies states that the Petitions have been filed to seek sanction to the Scheme of Amalgamation of Motimala Jewellers Private Limited with Motimala Trading Private Limited and their respective shareholders and creditors, pursuant to the provisions of Sections 230 to 232 of the Companies Act, 2013 or any re-enactment thereof.
3. The Learned Advocate for the Petitioner Companies states that the Transferee Company is *inter alia* engaged in the business and profession of:
 - a) *buying, selling, reselling, importing, exporting, transporting, storing, developing, promoting, marketing or supplying, trading, dealing in any manner whatsoever in all types of goods on retail as well as on wholesale basis in India or elsewhere ;*
 - b) *To carry on the business as exhibitors or various goods, services and merchandise and to undertake the necessary activities to promote sales of goods, services and merchandise manufactured/dealt with/provided by the Company ;*
 - c) *To act as brokers, trader, agent, C&F agent, shipper, commission agent, distributor, representatives, franchiser, consultant, collaborator, stockist, lionisers, job worker, export house of goods, merchandise and services of all grades, specification, descriptions, applications, modalities, fashions, including by-products, spares or accessories thereof on retail as well as on wholesale*
4. The Learned Advocate for the Petitioner Company says that the rationale and significant benefits of the Scheme are:
 - a) *The proposed Scheme would strengthen and consolidate the position of the Transferor and Transferee companies to develop and concentrate on the core competency.*
 - b) *Pursuant to the implementation of the Scheme, the Transferee Company will have a strong financial and operational structure and will be capable of resource mobilization and financial consolidation necessary to withstand the new competitive environment.*

- c) *The objects of the Transferor Company and the Transferee Company can be conveniently, advantageously and economically carried on by a single entity.*
 - d) *Greater leverage in operations planning and process optimization and enhanced flexibility in product slate.*
 - e) *The amalgamated company will have the benefit of synergy and stability of operations and would help to achieve economies of scale through efficient utilisation of resources and facilities as the companies concerned would be able to combine their resources, expand their activities, rationalize and streamline their management, business and finances as well as eliminate duplication of work to their common advantage. This in turn will enhance the share value for the benefit of the shareholders.*
 - f) *Considering the above, this Scheme will be beneficial to the companies concerned, their shareholders and all other concerned.*
 - g) *The proposed Scheme of Amalgamation of the Transferor and the Transferee Company is between the companies whose shareholding is closely held. Hence, the proposed Scheme of Amalgamation shall not prejudicially or adversely affect the interest of any person or the public at large.*
5. The Learned Advocate for the Petitioner Company states that the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petitions are filed in consonance with the order passed in Company Summons for Directions.
6. The Learned Advocate for the Petitioner Company has stated that the Petitioner Company has complied with all requirements as per the directions of the Hon'ble Bombay High Court and the Hon'ble Tribunal and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 or any re-enactment thereof and the Rules made thereunder. The said undertakings are accepted.

7. Pursuant to transfer of the Company Scheme Petition to this Hon'ble Tribunal, The Official Liquidator has filed his report on 22nd March, 2017 in Transfer Company Scheme Petition Nos. 181 of 2017, *inter alia* stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the said Transferor Company may be ordered to be dissolved.
8. The Regional Director has filed an Affidavit dated 27th March, 2017 in Transfer Company Scheme Petition Nos. 180 of 2017 and 181 of 2017 *inter alia* stating therein that save and except as stated in paragraph IV (a) to (e) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders of the Petitioner Companies and public. In paragraph IV (a) to (e) of the said Affidavit it is stated that:

"IV

- 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 AS-5 (IND AS-8) etc.*
- b) As per Clause 1.1.2 of the scheme "The Appointed Date" means 1st April, 2015 or such other date as may be approved by the High Court. In this regard, it is submitted in terms of provisions of Section 232 (6) of the Companies Act, 2013 it should be 1st April, 2015;*

In this regard it is submitted that the Transferor Company is seeking approval which will have retrospective effect. The gap between the date of audited balance sheet and the appointed date should be reasonable and nearer to the time of final hearing of the petition and this requirement is statutory" it is pertinent to mention that all the companies to the Scheme, the balance sheet is available upto 31.03.2015. Further, the Balance Sheet as at 31.03.2016 is also due. Hence, the Appointed Date should be changed to nearer to the time of final hearing of the petition. Accordingly, this Hon'ble Tribunal may kindly direct the parties to the Scheme to file latest accounts as deems fit.
- c) Regarding Clause 6 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to the capital reserve*

and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against Profit and Loss Account of the Transferee Company;

- 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 4th November, 2016 has served a copy of the company petition No. 688 and 689/2016 to Tax Department. Further, this Directorate has also issued a reminder letter dated 23.03.2017 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 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."*

9. As regards objection set out in paragraph IV (a), of the Affidavit of the Regional Director is concerned, the Petitioner Companies through its Advocate undertakes to pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.
10. As regards objection set out in paragraph IV (b), of the Affidavit of the Regional Director is concerned, the Petitioner Companies through its Advocate submits that the Petitioner Companies has filed latest accounts as on March 31, 2016 with the Regional Director on 7/7/2017. The Scheme with the Appointed Date as 1st April, 2015 has been unanimously approved by all the shareholders of the Petitioner Company. The same has been approved keeping in mind all the commercial factors and in order to ensure that the Scheme is not prejudicial to the shareholders and the public. Therefore, 1st April, 2015 has been taken into consideration as the Appointed Date.
11. As regards objection set out in paragraph IV (c), of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate submits and undertakes that the surplus if any arising out of the scheme shall be credited to the capital reserve and deficit if any arising out of the same

shall be debited to Goodwill Account and will not be adjusted against Profit and Loss Account of the Transferee Company.

12. As regards objection set out in paragraphs IV (d) and (e), of the Affidavit of the Regional Director is concerned, the Petitioner Companies through its Advocate submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be answered in accordance with applicable law.
13. The observations made by the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai have been explained by the Petitioner Company in Paras 9 to 12 above. The clarifications and undertakings given hereinabove by the Petitioner Company are accepted.
14. The Counsel for the Petitioner Companies submits that, none of the secured and/or unsecured creditors have raised any objection to the Scheme.
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 requisite statutory compliance have been fulfilled, Transfer Company Scheme Petition Nos. 180 and 181 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a), sanctioning the Scheme.
17. The Petitioner Company to lodge a copy of this order along with a copy of the Scheme, duly authenticated by the Registrar, National Company Law Tribunal, Mumbai, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of the order.
18. The Petitioner Company is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-form 21/ INC 28 in addition to physical copy as per the provisions of Companies Act, 2013, within 30 days from the date of issuance of the order by the Registry.

19. All concerned authorities to act on a copy of this order along with the Scheme, duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

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