

66

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 299 OF 2017  
**COLOR PLUS FASHIONS LIMITED**

..... Petitioner / the Demerged Company  
AND

TRANSFERRED COMPANY SCHEME PETITION NO. 300 OF 2017  
**RAYMOND APPAREL LIMITED**

..... Petitioner / the Resulting Company

In the matter of the Companies Act, 1956 and  
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 Scheme of Arrangement  
between Color Plus Fashions Limited ('the  
Demerged Company') AND Raymond Apparel  
Limited ('the Resulting Company ') AND their  
respective shareholders

**CALLED FOR HEARING**

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

Mr. Ramesh Golap, Assistant Director in the Office of Regional Director

**CORAM: Shri B.S.V. Prakash Kumar, Member (Judicial)**

**Shri V. Nallasenapathy, Member (Technical)**

**DATE: 28<sup>th</sup> June, 2017**

**MINUTES OF ORDER**

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement between Color Plus

Fashions Limited ('the Demerged Company') AND Raymond Apparel Limited ('the Resulting Company ') AND their respective shareholders.

3. Learned Counsel for the Petitioner states that the Petitioner in Company Scheme Petition No. 299 of 2017 is engaged in the business of selling readymade garments and Petitioner in Company Scheme Petition No. 300 of 2017 is presently engaged in the business of some of the most highly regarded apparel brands in India including leading menswear brands Park Avenue, Parx and Raymond Premium Apparel.
4. The rationale for the scheme is that the Demerger would benefit the companies and its stake holders on account of following reasons:
  - Consolidate the Demerged Undertaking of CPFL into RAL;
  - Pooling of financial resource would reduce the leverage cost and facilitate growth of the demerged undertaking;
  - It will provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the Demerger will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capabilities and experience of both the companies;
  - It will ease and increase operational and management efficiency; integrate business functions; eliminate duplication and rationalization of administrative expenses;
  - Greater size, scale, integration and greater financial strength and flexibility for RAL;
  - The consolidated entity will benefit from improved organizational capability and leadership, arising from the combination of people from the CPFL who have the diverse skills, talent and vast experience to compete successfully in increasingly competitive environment;
  - Continue CPFL as a separate legal entity would enable the group to potentially utilize CPFL in the long run without going through the long drawn process of incorporation of company; and
  - Avoiding duplication of / reducing cost of administration, overheads, sourcing, distribution, selling and marketing costs.
5. Learned Counsel for the Petitioner states that the Demerged Company is wholly owned subsidiary of the Resulting Company and after the Scheme

being sanctioned, no new shares are required to be issued to the members of the Demerged Company by the Resulting Company.

6. The Demerged Company and Resulting Company have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petition.
7. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petition have been filed in consonance with the orders passed in the Company Scheme Application No. 155 and 156 of 2017.
8. The learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in this Court. Moreover, the Petitioner Companies undertake 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 is accepted.
9. The Regional Director has filed his report on 27<sup>th</sup> June, 2017, *inter alia*, stating therein that save and except as stated in paragraph IV of the said report, 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:-

- (a) *As per clause 1.2 Part A Definitions and Share Capital of the Scheme, "The Appointed Date" means 1st April, 2016 or such other date as may be approved by the High Court of Judicature at Bombay or National Company Law Tribunal (NCLT) or such other competent authority. 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.*
- (b) *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 5<sup>th</sup> May, 2017 has served a copy of company petition No.*

*155 & 156/2017 along with relevant orders etc., Further this office has also issued reminder letter dated 26.05.2017 to the concerned Income Tax authorities.*

- (c) 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.*
- (d) In view of Observation of ROC Mumbai, Hon'ble Tribunal may kindly direct the Companies involved in the scheme to file solvency certificate with the Registrar of Companies, Mumbai u/s 233(1)(c) read with section 233(12) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.*

10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(a) of his report is concerned, the Petitioner Companies submits that the Appointed Date shall be 1st April, 2016.
11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) and (c) of his report is concerned, the Petitioner Company 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.
12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, the Counsel for the Petitioner states that Petitioner has filed the Scheme under Section 230 – 232 of the Companies Act, 2013. The requirement of filing solvency certificate is applicable to the Scheme filed under Section 233 of the Companies Act, 2013 and does not applies to Schemes filed under Sections 230 to 232 which is complete code by itself.

13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 10 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 299 and 300 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause 1 of Company Petition No. 299 of 2017 and prayer clause (a) of Company Petition No. 300 of 2017 respectively.
16. Petitioners 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 physical copy, within 30 days from the date of issuance of the order by the Registry.
17. 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, as applicable.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the order.
19. All authorities concerned to act on a certified 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)