

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME PETITION NO. 399 OF 2017

CONNECTED WITH

COMPANY SCHEME APPLICATION NO. 77 OF 2017

GJ FREEDOM FASHIONS LIMITED

....Petitioner/ the Demerged Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME PETITION NO. 402 OF 2017

CONNECTED WITH

COMPANY SCHEME APPLICATION NO. 78 OF 2017

GINI & JONY LIMITED

....Petitioner/ the Resulting Company

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

AND

In the matter of Sections 391 to 394 of the
Companies Act, 2013 and other relevant
provisions of the Companies Act, 2013 along
with the Companies Act, 1956.

AND

In the matter of Sections 230 to 232 of the
Companies Act, 2013 and other relevant
provisions of the Companies Act, 2013 along
with the Companies Act, 1956.

AND

In the matter of Scheme of Arrangement
between GJ FREEDOM FASHIONS LIMITED

(the Demerged Company) and GINI & JONY LIMITED (the Resulting Company).

Called for hearing

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

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

Date: 5th July, 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 Arrangement between GJ FREEDOM FASHIONS LIMITED (the Demerged Company) and GINI & JONY LIMITED (the Resulting 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 Arrangement between GJ FREEDOM FASHIONS LIMITED (the Demerged Company) and GINI & JONY LIMITED (the Resulting Company).
3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order

passed in their Company Summons for Direction Nos. 77 of 2017 and 78 of 2017 of the National Company Law Tribunal.

5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies 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 Petitioners states that the Demerged Company has been carrying business of buying, selling, importing, exporting, dealing in Kids Garments and accessories the Resulting Company has been engaged in business of manufacturers, importers, exporters, sellers, buyers and dealers of kids Garments & Accessories. As per the opinion of the management the arrangement would benefit the respective companies and other stake holders of respective companies on account of the following reasons which are that each of the activities carried out by GJFFL is distinct and are diverse in its business characteristics, risk profiles and require entirely different approaches and in order to ensure sustainable long-term growth, profitability, market share and continuous customer service it requires focused management attention, different skill sets and resources to meet competitive

environment and with this objective in mind and intent of realigning the business operations undertaken by GJFFL, it is proposed to transfer and vest the Retail Business Undertaking in the Resulting Company through the Scheme (as defined below), resulting in GJFFL (Residual) (as defined below) engaged in purely wholesale cash and carry business ("Proposed Demerger") and that the transfer and vesting of the Demerged Undertaking (as defined below) in the Resulting Company shall be in the larger interest of the shareholders, creditors of the Demerged Company and shall be in the interest of future growth of the Resulting Company and that the transfer and vesting shall achieve the following benefits for the Transferor Company and the Transferee Company and that the proposed demerger shall enable consolidation of manufacturing and retail business under one roof and that the Proposed Demerger will enable the better and more efficient management, control and running of the Business Undertaking and that the Proposed Demerger will enable both GJFFL and GJL to achieve and fulfill their objectives more efficiently and offer opportunities to the management of both the companies to vigorously pursue growth and expansion opportunities and that the Proposed Demerger will simplify the corporate structure of the Transferor Company as well as the Transferee Company and shall create a viable structure so as to attract fresh investment in the restructured entity and that the proposed demerger shall help in reduction of compliance cost and that the Proposed Demerger will enhance the creditworthiness of the transferee company & also the power to

negotiate better terms which would allow the Transferee Company to have greater borrowing power capacity, thus providing it with a competitive edge over others, especially in view of the increasing competition and that the Scheme shall be beneficial for the interest of the Companies, their shareholders, creditors and employees

7. The Regional Director has filed a Report on 18th day of May, 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. Certificate by the Company Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

In this regard it is requested that the Petitioner may be asked to submit the certificate to comply with the provisions to section 232(3) of the Companies Act, 2013.

- 3. It may be submitted that the Petitioner Companies have not submitted the proof of serving notice upon the Income Tax Authorities for comments.*

4. *Chartered Accountant in the recommendation of share exchange has valued shares of GJFFL as at 31.03.2016 of DCF method as Rs. 1.2628/- per shares for GJL Rs. 94.71. whereas in the scheme it is proposed for ration as 1:75.*

In this regard it is submitted that the Petitioner to undertake to provide the reason for deviation and follow the ratio mentioned by the Chartered Accountant.

8. So far as the observation in paragraph IV (a) 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. As far as the observation in paragraph IV (b) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the Petitioner Company have already submitted the certificate from auditor of the Company in terms of the proviso to section 232(3) of the Companies Act, 2013 with the Regional Director vide their letter dated 13th June, 2017 and by further Affidavit dated 29th June, 2017 and the National Company Law Tribunal, Mumbai Bench.
10. As far as the observation in paragraph IV (c) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the Petitioner Company have already submitted the *proof of serving notice upon the Income Tax Authorities for comments* of the Company with the Regional Director vide their letter dated 13th June, 2017 and by further Affidavit dated 29th June, 2017 and the National Company Law Tribunal, Mumbai Bench.

11. As far as the observation in paragraph IV (d) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the Petitioner Company have already submitted explanation for the same of the Company with the Regional Director vide their letter dated 13th June, 2017 and by further Affidavit dated 29th June, 2017 and the National Company Law Tribunal, Mumbai Bench. The value of one share of Gini & Jony Limited as on 31st March 2016 has been determined as Rs 94.71 per share & that of Gini Jony Freedom Fashions Limited has been determined at Rs 1.2628 per share thereby implying that post arrangement against seventy five shares of GJFFL, one share of GJL would be allotted i.e a share exchange ratio of 1:75.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 399 of 2017 is made absolute in terms of prayers clause (a) to (c) and 402 of 2017 is made absolute in terms of prayer clauses (a) to (c).
15. Petitioners are directed to lodge 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, as per the relevant provisions of the Companies Act 1956 / 2013.

16. The Petitioner Companies 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 within 60 days from the date of receipt of the order, if any.
17. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of receipt of the Order.
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/-

B.S.V. Prakash Kumár Member (J)