

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 500 OF 2017

AND

CSP NO. 501 OF 2017

Under Section 230-232 of the Companies Act,
2013

In the matter of Scheme of Amalgamation of K
GIRDHARLAL DIAMONDS (INDIA) PRIVATE
LIMITED, the Transferor Company with K.
GIRDHARLAL INTERNATIONAL PRIVATE
LIMITED, the Transferee Company.

K. GIRDHARLAL DIAMONDS (INDIA) PRIVATE LIMITED

....Petitioner/ the Transferor Company
AND

K. GIRDHARLAL INTERNATIONAL PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 27th July, 2017

Coram:

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

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala

i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Per: V. Nallasenapathy, Member (T)

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 K GIRDHARLAL DIAMONDS (INDIA) PRIVATE LIMITED, the Transferor Company with K.GIRDHARLAL INTERNATIONAL PRIVATE LIMITED, the Transferee Company.

2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of K GIRDHARLAL DIAMONDS (INDIA) PRIVATE LIMITED, the Transferor Company with K.GIRDHARLAL INTERNATIONAL 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 Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Scheme Application Nos. 135 of 2017 and 388 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 thereunder, whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business as importers, exporters,

manufacturers, processors, assorters, wholesalers, distributors, retailers, dealers and indenting agents of diamonds, diamond manufacturing machines, synthetic stones, gems and jewellery, precious and semi-precious stones and bullion and to cut, design, polish rough diamonds, gems and precious stones and research and development in diamond polishing and the Transferee Company has been carrying on the business of importing, exporting, manufacturing, processing, whole selling, distributing, commission agents, retailing, dealing and indenting agents of diamonds, precious and semi-precious stones, synthetic stones, jewellery, studded gold jewellery, plain gold jewellery, platinum plain and studded jewellery, silver jewellery, gems. As per the opinion of the management, the Transferee Company and the Transferor Company are under the same management. The management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits and both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamated Company will have the benefit of the combined assets and cash flows of the two companies and that the combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively and it will be conducive to better and more efficient and economical control and conduct of the Companies and with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and a larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.

7. The Regional Director has filed a Report on 18th day of July, 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. It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 24.04.2017 for comments. The office of the Directorate also has issued reminder dated 17.07.2017.*

3. Petitioner in clause 13 of the Scheme has inter alia mentioned that Board of Directors of the transferee company in consultation with the statutory auditors, is authorised to account for any of the balances in any other matter, if such accounting treatment is considered to be more appropriate.

in this regard it is submitted that accounting treatment proposed shall be only in accordance with the accounting standards prescribed under the Companies Act, 2013 and the Board cannot adopt in own standard.

8. So far as the observation in paragraph IV (a) and (b) 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 (c) 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, a Certificate from the Auditors stating that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.
10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 and 9 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
11. The Official Liquidator has filed his report on 13th June, 2017 in the Transferor Company Scheme Petition No. 500 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
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. 500 of 2017 is made absolute in terms of prayers clause (a) to (d) and 501 of 2017 is made absolute in terms of prayer clauses (a) to (c).
14. Petitioners are 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 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.
16. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 500 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
17. 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 Kumar Member (J)