

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 242 (MAH) OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ;

AND

In the matter of Scheme of Arrangement between Talwalkars Better Value Fitness Limited (“The Demerged Company”) and Talwalkars Lifestyles Limited (“The Resulting Company”) and their respective Shareholders

Talwalkars Better Value Fitness Limited, a Company }  
Incorporated under the provisions of Companies }  
Act 1956 having its registered office at 801-813, Mahalaxmi }  
Chambers, 22, Bhulabhai Desai Road, Mumbai- 400026, India }  
.....First Applicant Company

AND

Talwalkars Lifestyles Limited, a Company incorporated under the }  
Provisions of Companies Act 2013 having its Registered office }  
At 801-813, Mahalaxmi Chambers, 22, Bhulabhai Desai Road, }  
Mumbai- 400026 }  
.....Second Applicant Company

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

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

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

**DATE: 9<sup>th</sup> March, 2017**

**MINUTES OF THE ORDER**

1. The Counsel for the Applicants states that the present Scheme is an Arrangement between Talwalkars Better Value Fitness Limited, the Demerged Company and Talwalkars Lifestyles Limited, the Resulting Company and their respective Shareholders. This Scheme of Arrangement provides for the transfer of ‘Gym

Business' from Talwalkars Better Value Fitness Limited, the Demerged Company to Talwalkars Lifestyles Limited, the Resulting Company, and the consequent discharge of consideration by the Resulting Company to the Demerged Company, pursuant to the relevant provisions of the Act.

2. The Counsel for the Applicants further submit that the Demerged Company is engaged in the business of owning, managing and franchising gymnasia, fitness centers and health clubs. The Demerged Company also renders different types of healthcare and beauty services including diet, nutrition-based, weight-loss programs like Reduce, Nuform, yoga, physiotherapy, Zumba, Zorba, and other allied lifestyle and wellness activities. The Resulting Company is engaged in the business of owning, managing and franchising gymnasia, fitness centers and health clubs and also renders different types of healthcare and beauty services including diet, nutrition-based, weight-loss programs like Reduce, Nuform, yoga, physiotherapy, Zumba, Zorba, and other allied lifestyle and wellness activities.
3. The Counsel for the Applicants further submit that rationale for Scheme is that in order to achieve better management and to have clear focus on business operations, the management of Demerged Company has decided to demerge Gym Business, thereby transferring Gym Business of Talwalkars Better Value Fitness Limited to Talwalkars Lifestyles Limited, in the interests of maximizing overall shareholder value. Therefore, with a view to effect such plan, the Board of Directors of Demerged Company and the Resulting Company proposes that the Gym Business of the Demerged Company be transferred to and vested in the Resulting Company on a going concern basis.
4. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at M.C. Ghia Hall of Indian Textile Accessories & Machinery Manufacturer's Association, Bhogilal Hargovindas Building, 4<sup>th</sup> Floor, Kala Ghoda, 18/20, K. Dubash Marg, Mumbai – 400 001 on 27<sup>th</sup> April 2017 at 11:30 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement between Talwalkars Better Value Fitness Limited and Talwalkars Lifestyles Limited and their respective Shareholders .
5. The First Applicant Company will also obtain the approval of shareholders to the said Scheme of Arrangement through Postal Ballot.



6. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at Indian Textile Accessories & Machinery Manufacturer's Association, Bhogilal Hargovindas Building, 18/20, K. Dubhash Marg, Mumbai - 400 001 on 27<sup>TH</sup>, April 2017 at 2:00 P.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement between Talwalkars Better Value Fitness Limited and Talwalkars Lifestyles Limited and their respective Shareholders.
7. The Second Applicant Company will also obtain the approval of shareholders to the said Scheme of Arrangement through Postal Ballot.
8. That at least 30 clear days before the said Meetings of the Equity Shareholders of the First and Second Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14<sup>th</sup> December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the First and the Second Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the First and the Second Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
9. That at least 30 clear days before the meetings of the Equity Shareholders of the First and Second Applicant Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the First and Second Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.



10. That the Notice of the Meetings shall be advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai not less 30 days before the date fixed for the meeting.
11. That Mr. Girish Talwalkar, Chairman of the First Applicant Company, and failing him, Mr. Madhukar Talwalkar, Director of the First Applicant Company and failing him Mr. Vinayak Gawande, also Director of the First Applicant Company, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant to be held at M.C. Ghia Hall of Indian Textile Accessories & Machinery Manufacturer's Association, Bhogilal Hargovindas Building, 4<sup>th</sup> Floor, Kala Ghoda, 18/20, K. Dubash Marg, Mumbai – 400 001 , on 27<sup>th</sup> April 2017 at 11:30 A.M. or any adjournment or adjournments thereof.
12. That Mr. Girish Talwalkar, Director of the Second Applicant Company, and failing him, Mr. Prashant Talwalkar, Director of the Second Applicant Company and failing him Mr. Harsha Bhatkal, also Director of the Second Applicant Company, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to be held at Indian Textile Accessories & Machinery Manufacturer's Association, Bhogilal Hargovindas Building, 18/20, K. Dubhash Marg, Mumbai - 400 001 on 27<sup>th</sup> April 2017 at 2:00 P.M. or any adjournment or adjournments thereof.
13. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
14. That the quorum of the aforesaid meetings of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
15. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meetings, are filed with the First and Second Applicant Company at its Registered Office at 801-813, Mahalaxmi



Chambers, 22, Bhulabhai Desai Road, Mumbai- 400026 not later than 48 hours before the aforesaid meeting.

16. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the First and Second Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
17. That Mr. Bharat Upadhyay, Practicing Company Secretary is hereby appointed as Scrutinizers of the meeting of Equity shareholders of the First and the Second Applicant Company proposed to be held on 27<sup>th</sup> April 2017 at M.C. Ghia Hall of Indian Textile Accessories & Machinery Manufacturer's Association, Bhogilal Hargovindas Building, 4<sup>th</sup> Floor, Kala Ghoda, 18/20, K. Dubash Marg, Mumbai – 400 001 and his remuneration is fixed as Rs. 35,000/-
18. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
19. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
20. The First Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) to Securities and Exchange Board of India (iii) the Central Government through the office of Regional Director, Western region, Mumbai (iv) BSE Limited (v) National Stock Exchange of India Limited (vi) Registrar of Companies (vii) Reserve Bank of India with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
21. The Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction



the Second Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai (iii) Registrar of Companies (iv) Reserve Bank of India with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

22. The Counsel for the First Applicant Company further submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013, This bench hereby directs the First Applicant Company to issue notice to all its Secured and Unsecured Creditors as on 1<sup>st</sup> February 2017 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
23. The Counsel for the Second Applicant Company submits that there are no Secured and Unsecured Creditors in the Second Applicant Company, therefore the question of sending notices to the Secured and Unsecured Creditors does not arise.
24. The First Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, Creditors, publication of notices in newspapers and to the regulatory authorities as stated in clause 20 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.
25. The Second Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, publication of notices in newspapers, to the regulatory authorities as stated in clause 21 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

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

Sd/-

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