

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH, AT MUMBAI
COMPANY SCHEME APPLICATION NO. 1117 OF 2017.

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

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder as in force from time to time;

AND

In the matter of Scheme of Arrangement between FIRESTAR DIAMOND INTERNATIONAL PRIVATE LIMITED, the Demerged Company, NIRAV MODI PRIVATE LIMITED, the Resulting Company and RHYTHM HOUSE PRIVATE LIMITED, the Transferor Company and their respective shareholders.

FIRESTAR DIAMOND)
INTERNATIONAL PRIVATE LIMITED,)
a company incorporated under the)
Companies Act, 1956, having its registered)
office at Unit No. 23, 3rd Floor, Tower II,)
Wing B, Kohinoor City, Kiroli Road, Off.)
LBS Marg. Kurla (W), Mumbai - 400 070,)
Maharashtra, India) ...Applicant Company.

Called for Notice of Admission:

Ms. Prachi Garg, Mr. Munaf Virjee i/b DSK Legal, Advocates for the Applicant

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapthy, Member (T)

Date: January 24, 2018

Per: V. Nallasenapthy, Member (T)

ORDER

1. The Counsel for the Applicant Company states that the present Scheme of Arrangement between FIRESTAR DIAMOND INTERNATIONAL PRIVATE LIMITED ("the Demerged Company"), NIRAV MODI PRIVATE LIMITED ("the Resulting Company") and RHYTHM HOUSE PRIVATE LIMITED ("the Transferor Company") and their respective shareholders.
2. The Counsel for the Applicant Company further submits that the Demerged Company is engaged in the business of jewelry manufacturing and caters to both the retail and the wholesale segment. In order to segregate the retail business of the Demerged Company, it is intended to demerge the retail business undertaking on a going concern basis into the Resulting Company. Further, the Transferor Company whose 100% shareholding, is held by the Demerged Company, forms part of the retail business undertaking is sought to be transferred as part of the retail business undertaking and shall become a wholly owned subsidiary of the Resulting Company upon demerger. Thereafter, immediately upon demerger of the retail business undertaking, whereby the Transferor Company becomes a wholly owned subsidiary of the Resulting Company, the Transferor Company is sought to be amalgamated with the Resulting Company.
3. The Counsel for the Applicant Company further submits that the rationale for the Scheme is that it would lead to:
 - (i) Greater administrative efficiency and shall enable the Demerged Company to focus on and enhance its remaining business operations by streamlining operations and cutting costs;
 - (ii) Ability to leverage financial and operational resources of each business;
 - (iii) Each business would be able to address independent business opportunities, pursue efficient capital allocation and attract different sets of investors, strategic partners, lenders and other

stakeholders, and will enable investors to separately hold investments which best suit their investment strategies and risk profiles;

- (iv) Streamlining of group structure; and
- (v) Consolidation of business operations: pursuant to the demerger of the retail business undertaking by the Demerged Company to the Resulting Company and the amalgamation of the Transferor Company with the Resulting Company, the Resulting Company will have advanced shareholder's value accruing from consolidation of business operation resulting in economies of scale, operational rationalisation, organisation efficiency and optimum utilisation of various resources.

4. The Tribunal directs that a meeting of Equity Shareholders of the Applicant Company be convened and held at the Registered Office at Unit No. 23, 3rd Floor, Tower II, Wing B, Kohinoor City, Kiro Road, Off. LBS Marg, Kurla (W), Mumbai - 400 070, Maharashtra on the 5th day of April, 2018 at 11.00 am for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement between Firestar Diamond International Private Limited (the Demerged Company) Nirav Modi Private Limited (the Resulting Company) and Rhythm House Private Limited (the Transferor Company) and their respective shareholders.
5. At least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post / Courier / Speed Post or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or through e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company.

6. At least 30 clear days before the Meeting of the Equity Shareholders of the Applicant Company is held as aforesaid, a notice indicating the place, date and time of the aforesaid meeting be published and advertised in two local newspapers viz. 'Fress Press Journal' in English and 'Navshakti' in Marathi by the Applicant Company stating that the copies of the Scheme of Arrangement and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 along with the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid.
7. Mr. Haresh Vrajlal Shah, Director, failing whom Mr. Nirav Deepak Modi, Director of the Applicant Company shall be appointed as the Chairman for the aforesaid meeting of Equity Shareholders. The Scrutinizer for the meeting shall be Mr. Sanket Bipin Shah, Company Secretary & Authorised Signatory of the Applicant Company and failing him, Ms. Darshi Shailesh Shah.
8. The Chairman appointed for the aforesaid Meeting shall issue the notices of the Meeting referred to above. The said Chairman shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
9. The quorum for the aforesaid Meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
10. The voting by proxy or authorised 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 meeting, is filed with the Applicant Company at its Registered Office at Unit No. 23, 3rd Floor, Tower II, Kohinoor City, Kiro Road, Off. LBS Marg, Kurla (W), Mumbai - 400 070, Maharashtra, India, not later than, 48 hours before the aforesaid meeting as required under

Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

11. The value and number of the shares of each member shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
12. The Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
13. The Chairman to report to this Tribunal, the result of the aforesaid meeting within thirty (30) days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
14. The Counsel for the Applicant submits that since the present Scheme is an arrangement between the Applicant Company and their respective shareholders and no compromise or arrangement is sought with the creditors, 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 Applicant Company to issue notice to its secured creditors by Registered Post / Speed Post / Hand Delivery / Courier or through email as required under section 230 (3) of the Companies Act, 2013 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.

15. The Counsel for the Applicant submits that since the present Scheme is an arrangement between the Applicant Company and their respective shareholders and no compromise or arrangement is sought with the creditors, 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 Applicant Company to issue notice to its unsecured creditors, which are due and payable, having an outstanding balance of Rs. Rs. 5,00,000/- (Rupees Five Lakh) or more as on 30th day of September 2017 representing 99.80% in value by Registered Post / Speed Post/ Hand Delivery / Courier or through email as required under section 230 (3) of the Companies Act, 2013 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.
16. The Applicant Company is directed to serve the notice upon the (i) concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made; (ii) the Central Government through the office of Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai (iii) Registrar of Companies 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 a copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
17. The Applicant Company to file an affidavit of service of the directions in the Registry proving dispatch of notices to the equity shareholders, creditors, publication of notices in newspapers and to the regulatory authorities as stated in clause 16 above do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy , Member (T)

Sd/-

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