

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CSP 899/230-232/NCLT/MB/MAH/2017

CSP 902/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Shyam Fabric Mills Private Limited

.....Petitioner in CSP 899/2017

(Transferor Company)

M/s. Ranisati Fabric Mills Private Limited

.....Petitioner in CSP 902/2017

(Transferee Company)

Order delivered on: 22.01.2018

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Mr. Rajesh Shah, Advocate a/w. Mr. Ahmed Chunawala, Advocate i/b. M/s. Rajesh Shah & Co. – Advocate for the Petitioners.

**For the Regional Director :**

Mr. Ramesh Gholap – Dy. Registrar (WR).

*Per : Bhaskara Pantula Mohan, Member (J)*

**ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Merger by Absorption (hereinafter as **Scheme**) between M/s. Shyam Fabric Mills Private Limited (Transferor Company) with M/s. Ranisati Fabric Mills Private Limited (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Transferor Company and the Transferee Company both are engaged in the Business of manufacturing of Fabrics.



4. As both the companies are in same business accordingly, this Scheme will result in to administrative efficiency and better utilization of resources, reduction in overhead expenses & Paper work and will result into better utilization of resources and economy in the long run.
5. The Authorised Share Capital of the Transferor Company is ₹ 30,00,000 comprising of 30,000 Equity Shares of ₹ 100/- each whereas the Issued, subscribed and paid up capital is ₹ 29,43,000/- comprising of 29430 Equity Shares of ₹ 100/- each.
6. The Authorised Share Capital of the Transferee Company is ₹ 50,00,000 comprising of 50,000 Equity share of ₹ 100/- each whereas the Issued, subscribed and paid up capital is ₹ 33,16,100/- comprising of 33,161 Equity share of ₹ 100/- each fully paid.
7. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
  - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
  - b) The Regional Director has filed a Report on 21.11.2017 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 (a) to (c) 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:*

*(a) 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.*

*M. P. Chaudhary*



*(b) It is submitted that, ROC, Mumbai has inter alia mentioned in their at clause 32, the statutory auditor of the transferee company has qualified his report dated 05.09.2016 stating that "Financing statement comply with the Accounting standard specified u/s 133 of the Act, r.w. Rule 7 of the Companies (Accounts) Rules, 2014 except AS-15 retirement benefit which is treated on cash basis.*

*(c) Petitioner Companies in the clause in the clause 13 of the Scheme inter alia mentioned that combination of Authorised Capital. In this regard Hon'ble NCLT may direct Transferee Company to comply with provisions of Section 232 (3)(i) of the Companies Act, 2013, if applicable.*

- c) Apropos observation in paragraph IV (a) of the Report of the Regional Director is concerned, it is submitted that the Transferee Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation (merger by absorption) will be met and answered in accordance with law.
- d) Apropos observation in paragraph IV (b) of the report of Regional Director is concerned, it is submitted that the Transferee Company undertakes to compound the offence in case the violation is proved for non-compliance of AS-15.
- e) Apropos the observation in paragraph IV (c) of the report of Regional Director is concerned, it is submitted that the Transferee Company undertakes to comply with provisions of Section 232 (3) (i) of the Companies Act, 2013, if applicable.
- f) The Official Liquidator has filed his report dated 22.08.2017 and stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company may be ordered to dissolve without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.
- g) It is further submitted that, no objector has approached neither to the Petitioners nor before Tribunal, to oppose this Scheme.

*Approved:*



8. 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. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) Since the Transferor Company is wholly owned subsidiary of the Transferee Company hence, in lieu of the Consideration of Scheme no shares shall be issued by the Transferee Company to the Transferor Company. And consequentially, after Scheme becomes effective, the investment of the Transferee Company into Equity Shares of the Transferor Company shall stand cancelled.
- d) Further, during the course of hearing it is noticed that, the said Scheme is not a Scheme of Amalgamation as titled but contrary it is a Scheme of Merger by Absorption, hence, a liberty is granted to the Petitioners to amend the Scheme appropriately.
- e) Transferor company is to be dissolve without winding-up after Scheme becomes effective.
- f) Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- g) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned





Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.

- h) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
  - i) Transferor Company (i.e. Petitioner in CSP No. 899 of 2017) to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
  - j) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
  - k) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
  - l) Any concerned Authority is at liberty to approach this Bench for any further clarification after sanctioning of the Scheme.
  - m) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 1<sup>st</sup> April, 2017.
9. Ordered accordingly. To be consigned to Records.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Dated : 22.01.2018**