

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCHCSP NO 1059 OF 2017
AND
CSP NO 1060 OF 2017

In the Matter of the Companies Act, 2013;

And

In the Matter of Sections 230 to 232 read with Section 234 Of
the Companies Act, 2013;

And

In The Matter Of Scheme Of Amalgamation of Aarshay
Diamonds and Manufacturer Private Limited ('The Transferor
Company 1') And Aarshay International Mauritius Limited
(‘The Transferor Company 2’) with Aarshay Gems Private
Limited ('The Transferee Company') And Their Respective
ShareholdersAarshay Diamonds and Manufacturer Private Limited Petitioner Company / Transferor
Company 1

AND

Aarshay Gems Private Limited Petitioner Company / Transferee Company

Order delivered on 11th January, 2018

Coram:

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

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Gaurav Joshi; Ms. Alpana Ghone; Mr. Rajesh Shah with Mr.
Ahmed M Chunawala i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.
Mr. S. Ramakantha, Assistant Director in the office of Regional Director
Mr. Ramesh Gholap, Assistant Registrar of Companies
Mr. Santosh Dalvi, Assistant in the office of Official LiquidatorPer: **B.S.V Prakash Kumar, Member (J)**

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to the amendments made to the Scheme of Amalgamation of Aarshay Diamonds and Manufacturer Private Limited ('Transferor Company 1') and Aarshay International Mauritius Limited ('The Transferor Company 2') with Aarshay Gems Private Limited ('The Transferee Company') and their respective shareholders.
2. The sanction of this Tribunal is sought under section 230 to 232 read with section 234 of the Companies Act, 2013, to the Scheme of Amalgamation of Aarshay Diamonds and Manufacturer Private Limited ('The Transferor Company 1') and Aarshay International Mauritius Limited ('The Transferor Company 2') with Aarshay Gems Private Limited ('The Transferee Company') and their respective shareholders.
3. The learned Counsel for the Petitioners submits that Transferee Company and the Transferor Company 1 are engaged in manufacturing and trading of diamonds and precious metals. The Transferor Company 2 is an investment holding company.
4. The learned Counsel for the Petitioners submits that the Transferor Company 2, a Company incorporated under the provisions of the Mauritius Companies Act, 2001, has filed the Scheme of Amalgamation with the Supreme Court of Mauritius and this Scheme shall be conditional upon and subject to sanction of the Supreme Court under Sections 261 to 264 of the Mauritius Act in favour of the Transferor Company 2 and other relevant provisions of the Mauritius Act being obtained.
5. The amalgamation of the Transferor Company 1 and Transferor Company 2 with the Transferee Company would *inter alia* have the following benefits:
 - (a) Ensuring a streamlined group structure by reducing the number of legal entities in the group structure;
 - (b) Eliminating duplicative communication and coordination efforts across multiple entities and countries;
 - (c) Rationalizing costs by eliminating multiple record keeping and administrative functions; and
 - (d) Reducing time and efforts for consolidation of financials at the group level.
6. Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective petitions.

7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Applications and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Applications.
8. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under. The said undertaking is accepted.
9. The Regional Director has filed his Report dated 20th December 2017, stating therein that save and except as stated in paragraph IV (a) to (i), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:
 - (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 Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
 - (b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the Transferor Company 1 and the Transferee Company vide letter dated 26.09.2017 has served a copy Company Scheme Application No.863 & 866 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 27.10.2017 to IT Department.*
 - (c) *In addition to compliance of AS-14 (IND AS – 103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.,*
 - (d) *It is submitted that the M/s Aarshay International Mauritius Limited, Transferor Company 2 is situated in Mauritius, The FEMA regulations/ RBI Guidance, if any applicable is to be complied with by the Transferor Company 2 and also it need to comply with the applicable laws and provisions of that country.*

(e) *It is submitted that the Petitioner companies has not mentioned anything about employees benefit in the scheme of amalgamation. Therefore, the Deponent prays that the Hon'ble Tribunal may pass orders as may deemed fit.*

(f) *The Petitioner has not submitted NOC from RBI as required u/s 234 of the Companies Act, 2013. It is hereby submitted that the scheme may be sanctioned subject to receiving of NOC from RBI.*

(g) *As per Clause 4.2 of the Scheme, "Appointed Date" means the 15th day of November, 2017 or such other date as the courts may direct.*

In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 15th November, 2017. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

(h) *As regards ParaNo.13 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorised Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company 1 on its Authorised Share Capital in accordance with the provision of the provisions of Section 232 (3)(i) of the Companies Act 2013.*

(i) *ROC Mumbai has inter alia mentioned in its report as under:*

- *Para No. 2.4 of the Scheme, the Transferee Company has proposed increase in its Authorised Capital which is part of the Scheme. In this regard, the Transferee Company has to file requisite forms along with filing fees with O/o. ROC Mumbai.*
- *Transferor Company No. 2 – M/s Aarshay International Mauritius Limited is incorporated in Mauritius. Hence as per Section 234(2) of the Companies Act, 2013, prior approval of the RBI is required.*

10. In so far as observations made in paragraph IV (a) and (b) of the Report of Regional Director is concerned, the Petitioner Companies has on date complied with all the applicable provisions and in future also undertakes to comply with all applicable provisions of the Income-tax Act and all tax implications arising out of the Scheme of Amalgamation will be met and answered in accordance with applicable law.

11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Counsel for the Transferee Company undertakes to comply with IND AS 14 (IND AS-103) and other applicable Indian Accounting

Standard's such as AS-5 (IND AS-8) etc. The Counsel for the Transferee Company further states that the surplus / deficit arising out of the Scheme, if any, shall be credited / debited to Capital Reserve Account / Goodwill Account, as the case maybe.

12. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies hereby undertake to comply with the FEMA regulations / RBI Guidance and all the applicable laws and provisions of India as well as Mauritius.
13. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies hereby undertake that all the employees of the Transferor Company 1 shall be transferred as on the Effective Date on the same terms and conditions as applicable to them in Transferor Company 1.
14. In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Company has received approval from the RBI for the scheme and the same is submitted to the office of the Regional Director.
15. In so far as observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Petitioner Companies hereby undertake that clause 4.2 of the Scheme to be read as "*Appointed date means the 22nd Day of December 2017*".

The Counsel for the Petitioner Companies further states that the modified Scheme of Amalgamation was approved by the shareholders of the Transferee Company and Transferor Company 1 in their respective meetings held on 18th October, 2017. The modified scheme was also approved by the Board of Directors of the Transferor Company 1, the Transferor Company 2 and the Transferee Company at their respective meetings held on 19th October, 2017. The copy of the modified scheme was also annexed to the petitions filed by the Petitioner Companies with this Tribunal. Further, in compliance with the undertaking given by the Petitioner Companies in the petitions, the copy of the modified scheme was also served upon the Office of the Regional Director, the Registrar of Companies, Official Liquidator and the Income Tax Authorities on 22nd November, 2017.

On reading the modified scheme and on hearing the submissions of the Petitioner Counsel, it appears that for some delay took place in filing proceedings before Supreme Court of Mauritius in respect to one of the transferor companies based in Mauritius, the Petitioner's Counsel has sought for postponement of appointed

date to 22.12.2017 on which, the Officer appearing on behalf of the RD has raised an objection for change of appointed date from 15.11.2017 to 22.12.2017 stating that the Petitioner has failed to give sufficient reason for such a change having regard to the postponement of appointed date.

On perusal of this issue, it appears that the Petitioner has reasoned it out saying that change of appointed date is to sync with the proceedings progressing before the Supreme Court of Mauritius.

The Petitioner has also placed a letter reflecting that RBI has not raised any objection for approval of this scheme, if it is in accordance with the regulation as set out in the letter dated 21.12.2017.

For no other reason is appearing to say that change of appointed date is prejudicial to the shareholders of the company, this Bench hereby approves appointed date as 22.12.2017.

16. In so far as observations made in paragraph IV (h) of the Report of Regional Director is concerned, the Petitioner Companies hereby undertakes to file all the requisite E-forms with ROC, Mumbai in accordance with all the relevant applicable provisions of Companies Act, 2013.
17. In paragraph IV (i) of the Report of Regional Director is concerned, the Regional Director has reproduced the observations made by the Registrar of Companies. The Counsel for the Petitioner Companies undertakes the following with respect to the said observations:
 - The Transferee Company hereby undertakes to file all the requisite E-forms with ROC, Mumbai in accordance with all the relevant applicable provisions of Companies Act, 2013.
 - The Petitioner Companies have received approval from the RBI and the same is submitted to the office of the Registrar of Companies, Mumbai.
18. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 10 to 17 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
19. No Objection letter has been granted by the Reserve Bank of India on 21st December, 2017. Relevant extract of the letter is reproduced below:

“3. You may ensure compliance with the following reporting requirements:

- a) The Indian Party shall confirm the reconciliation of remittances through its designated Authorized Dealer and report the unreported transactions*

as the Project office reflect the amount of ODI is USD 120000.00 while the Indian Party stated the amount of USD 120100.00.

- b) The Indian Party shall comply with Regulation 15(iii) of Notification No. FEMA 120.*
- c) Indian Party may report the disinvestment of SDS on OID portal through AD Bank.*
- d) The disinvestment by way of amalgamation may be reported in Form ODI Part III through AD Bank subject to compliance with Regulation 16 of Notification ibid read with A.P (DIR Series) Circular No. 73 dated June 29, 2011. Any other transaction arising due to cross border merger shall be reported to the Reserve Bank in the same manner in which it is otherwise required to be reported under the Act or Rules or Regulations framed thereunder."*

The Petitioner Companies undertakes to comply with the above.

- 20. The Registrar of Companies, Maharashtra has filed his Report with the Regional Director wherein the ROC has mentioned that there are no complaints, prosecution and scrutiny and matter may be decided on merits.
- 21. The Official Liquidator has filed his report dated 21st December, 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
- 22. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
- 23. Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions are made absolute.
- 24. Petitioner Companies are directed to file a copy of this Order and the Scheme duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, 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.
- 25. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 1059 of 2017 to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.

26. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable if any, within 60 days from the date of receipt of the order.
27. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
28. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

Date: 11.01.2018