

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 1045 OF 2017
AND
CSP NO 1050 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 Diamore
Diamonds Private Limited ('The Transferor Company 1') And
Ankit Investments Mauritius Limited ('The Transferor
Company 2') With A. D. Mehta Export Private Limited ('The
Transferee Company') And Their Respective Shareholders

Diamore Diamonds Private Limited Petitioner Company / Transferor Company 1

AND

A. D. Mehta Export Private LimitedPetitioner 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 Liquidator

Per: **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 Diamore Diamonds Private Limited ('Transferor Company 1') And Ankit Investments Mauritius Limited ('The Transferor Company 2') with A. D. Mehta Export 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 Diamore Diamonds Private Limited ('Transferor Company 1') and Ankit Investments Mauritius Limited ('The Transferor Company 2') with A. D. Mehta Export Private Limited ('The Transferee Company') And Their Respective Shareholders.
3. The learned Counsel for the Petitioners submit that Transferee Company is engaged in the jewellery business. The Transferor Company 1 is engaged in the business of cutting, polishing, preparing, studding furnishing of cut and uncut gems and other precious stones. The Transferor Company 2 has been carrying out the activity of promoting new companies / making strategic investments outside India.
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 (h), 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 company vide letter dated 26.09.2017 has served a copy company scheme application No. 855 & 856 of 2017 along with relevant orders etc.*
 - (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 observed that the Petitioner companies has not mentioned anything about employee beneficial in the Scheme. The Deponent prays that the Hon'ble Tribunal may pass order as may deem fit.*
 - (e) *It is submitted that the M/s Ankit Investments 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.*

- (f) *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.*
- (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) *ROC Mumbai has interalia stated in its report as follows:*
- *The Transferor Company has submitted in its letter dated 07.10.2017 wherein stated that RBI has no objection to the Amalgamation post completion of all reporting requirements by the Indian Party. The terms and conditions, if any provided in the RBI letter dated 31.10.2017, the Transferee Company has to comply with the said requirements.*
 - *As per Para 4.6 of the Scheme, effective date shall not be subsequent to the Appointed date as provided under section 232(6) of the Companies Act 2013.*
 - *As per Para 13.1 provided, combination of Authorised Capital of Transferor Company No. 1 with Transferee company. In this regard, the Transferee has to file e-forms on MCA portal with ROC, Mumbai.*
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 that all the employees of the Transferor Company 1 as on the Effective Date shall be transferred to the Transferee Company on the same terms and conditions as applicable to them in the Transferor Company 1.
13. In so far as observations made in paragraph IV (e) 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.
14. In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Companies hereby undertake to abide by the same with respect to the setting off the fees paid by the Transferor Company 1 on the authorized share capital in accordance with the applicable provisions of the Companies Act, 2013 and file all the requisite E-forms with ROC, Mumbai in accordance with all the relevant applicable provisions of Companies Act, 2013.
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 Company 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. A copy of the Board Resolution of the Transferor Company 2 i.e. Ankit Investments Mauritius Limited approving the modified Scheme is annexed as Annexure G2 to the petition of the Transferee Company. 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 by 23rd 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 31.10.2017.

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 paragraph IV (h) 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 as under with respect to the said observations:

- The Transferee Company undertakes to comply with the terms and conditions provided in the RBI no objection letter dated 31.10.2017.
- The Petitioner Company undertakes that the Scheme of Amalgamation shall take effect from the appointed date as stipulated in clause 4.2 of the Scheme.
- The Petitioner Companies hereby undertake to file all the requisite E-forms with ROC, Mumbai in accordance with all the relevant applicable provisions of Companies Act, 2013.

17. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 16 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

18. No Objection letter has been granted by the Reserve Bank of India on 31st October, 2017. Relevant extract of the letter is reproduced below:

"RBI has observed that there is pending regulatory reporting of overseas direct investment transactions in web portal of OID in respect of transferee company (A. D. Mehta Export Pvt Limited). RBI has no objection to the amalgamation post completion of all the reporting by the Indian party, provided the amalgamation is in compliance with Regulation 16 of Notification No FEMA 120/ RB-2004 dated July 7, 2004 as amended from time to time read with AP (DIR Series) circular no 73 dated June 29, 2011 and other regulatory requirements under the provisions of ibid."

The Petitioner Companies undertake to comply with the above.

19. 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.
20. The Official Liquidator has filed his report dated 21st December, 2017 stating therein that the affairs of the Transferor Company 1 and Transferor Company 2 have been conducted in a proper manner and the Transferor Company 1 may be ordered to be dissolved without winding up.
21. 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.
22. Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions are made absolute.
23. 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.
24. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 1050 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.
25. 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.
26. 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.
27. 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