

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSP NO 1047 OF 2017  
AND  
CSP NO 1048 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 D.  
Navinchandra Jewels Private Limited ('The Transferor  
Company 1') And Kalpana International Mauritius Limited  
(('The Transferor Company 2')) With P. D. Mehta Export  
Private Limited ('The Transferee Company') And Their  
Respective Shareholders

D. Navinchandra Jewels Private Limited ..... Petitioner Company / Transferor Company 1

AND

P. D. Mehta Export Private Limited ..... Petitioner Company / Transferee Company

Order delivered on 11<sup>th</sup> 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 D. Navinchandra Jewels Private Limited ('Transferor Company 1') And Kalpana International Mauritius Limited ('The Transferor Company 2') with P. 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 D. Navinchandra Jewels Private Limited ('Transferor Company 1') and Kalpana International Mauritius Limited ('The Transferor Company 2') with P. 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 1<sup>st</sup> January 2018, 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) *In addition to compliance of AS-14 (IND AS – 103) the Transferee Company 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.;*
  - (b) *As per Part –A Definition and Share Capital Clause 4.2 of the scheme, 'Appointed Date' means the 15<sup>th</sup> 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 15<sup>th</sup> November, 2017.*
  - (c) *Further, it is submitted that, as per Company Scheme Application No. 857 & 858 of 2017 the appointed date is 15/11/2017. Subsequently on the date of the meeting on 18/10/2017 for approved the scheme, the board resolution of Petitioner Company approving the modified scheme of amalgamation was mooted. The board had proposed for change of appointed date from 15/11/2017 to 22/12/2017. The said resolution was passed in the said meeting. Any modification to the scheme should be approved by the Body of the shareholders who had approved the original scheme. Such modification should have been brought to the Notice of Central Government. However, the company has directly filed the modified scheme with NCLT vide CSP No. 1046 & 1047 / 2017. The same has been admitted by NCLT.*

*Further it is submitted that M/s. P. D. Mehta Export Private Limited the Transferee Company owns 100% Share Holding of M/s. Kalpana*



*International Mauritius Limited, the Transferor Company No-2 and the Wholly Owned Subsidiary of Transferee Company*

*In this regard it is submitted that since the company has changed its appointed date from 15/11/2017 to 22/12/2017, the Petitioner Company be directed to submit the consent letter of M/s. Kalpana International Mauritius Limited, the Transferor Company -2 is required. Subsequently, such modification further the change in appointed date from 15/11/2017 to 22/12/2017 is subject to the confirmation by this Hon'ble Tribunal;*

- (d) 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<sup>th</sup> September, 2017 has served a copy Company Scheme Application No. 857 & 858 of 2017 along with relevant orders etc.*
  - (e) 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.*
  - (f) As regards Part-B Clause 13 of the Scheme, Combination of Authorised Share Capital and fee payable by the Transferee Company shall be in accordance with the provisions of Section 232 (3)(i) of the Companies Act 2013.*
  - (g) The scheme doesn't provide for protection of employees of M/s. Kalpana International Mauritius Limited, the Transferor Company-2. In this regard the Hon'ble Tribunal may kindly direct the petitioner to incorporate a clause for protecting the interest of workers/employees of the Transferor Company – 2 in accordance with the laws of Mauritius.*
  - (h) In view of the objection raised by the ROC Mumbai, mentioned at para 11 above Hon'ble NCLT may pass appropriate orders/ orders as deem fit.*
10. The Regional Director has filed his further report dated 8<sup>th</sup> January, 2018 wherein he has prayed that paragraph IV (c) of the earlier report dated 2<sup>nd</sup> January, 2018 shall be substituted as under:

*"Further, it is submitted that, as per Company Scheme Application No. 857 & 858 of 2017 the appointed date is 15/11/2017. Subsequently on the date of the meeting on 18/10/2017 for approved the scheme, the board resolution of Petitioner Company approving the modified scheme of amalgamation was*



*mooted. The board had proposed for change of appointed date from 15/11/2017 to 22/12/2017. The said resolution was passed in the said meeting. Any modification to the scheme should be approved by the body of the shareholders who had approved the original scheme. Such modification should have been brought to the Notice of Central Government. However, the company has directly filed the modified scheme with NCLT vide CSP No. 1046 & 1047 / 2017. The same has been admitted by the NCLT.*

*Further it is submitted that M/s P.D. Mehta Export Private Limited the Transferee Company owns 100% shareholding of M/s Kalpana International Mauritius Limited, the Transferor Company No. 2 and the wholly owned subsidiary of Transferee Company.*

*"The company has changed its appointed date from 15/11/2017 to 22/12/2017. In this regard, the petitioner company be directed to submit the consent letter of M/s Kalpana International Mauritius Limited (Transferor Company No 2) is required. Such modification (i.e. change in appointed date as mentioned above) is subject to prior intimation to all concern who have received notice u/s 230 (5) of the Companies Act, 2013 and prior confirmation by this Hon'ble Tribunal."*

11. In so far as observations made in paragraph IV (a) 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.
12. In so far as observations made in paragraph IV (b) 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 22<sup>nd</sup> Day of December 2017*".
13. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, Counsel for the Petitioner Company 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 18<sup>th</sup> 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 19<sup>th</sup> October, 2017. A copy of the Board Resolution of the Transferor Company 2 i.e. Kalpana International 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 23<sup>rd</sup> 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.

15. In so far as observations made in paragraph IV (d) and (e) 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.
16. In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, 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. In so far as observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Transferee Company hereby undertakes to comply with all rules & regulations of Mauritius in respect of workers and employees employed of Transferor Company 2 in the said country.



18. In so far as observations made 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 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 the Transferor Company 1. The Transferee Company hereby undertakes to comply with all rules & regulations of Mauritius in respect of workers and employees employed of Transferor Company 2 in the said country
- The Petitioner Company undertakes to comply with the terms and conditions provided in the RBI no objection letter dated 31.10.2017. Further, the modified Scheme of Amalgamation is approved by the Board of Directors of the Transferor Company 2 at its meeting held on 19th October, 2017 which is annexed as "Annexure-G2" to the petition of the Transferee Company.

19. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 11 to 17 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

20. No Objection letter has been granted by the Reserve Bank of India on 31<sup>st</sup> 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 (P. D. Mehta Export Pvt Ltd). RBI has no objection to the amalgamation post completion of all the reporting by the Indian party, provided the amalgamation (disinvestment of overseas entity to Indian Party) 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.

21. 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.

22. The Official Liquidator has filed his report dated 28<sup>th</sup> 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.



23. 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.
24. Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions are made absolute.
25. 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.
26. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 1047 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.
27. 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.
28. 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.
29. 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**