

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

**Company Petition No.06/2016
With
Company Application No.01/2016**

*(Under Section 391-394 of Companies Act, 1956)
Connected with Company Application No.1/2016*

IN THE MATTER OF:

M/s Kashi Nath Seth Sarraf Private Limited

Registered Office at: Nirbhay Niwas,
Cinema Road, Hardoi Uttar Pradesh
(CIN: U52393UP2000PTC025695)

.....Transferor/Demerged Company/Applicant No.1

WITH

M/s Kashinath Somnath Sarraf Private Limited

Registered Office at: Nirbhay Niwas,
Cinema Road, Hardoi Uttar Pradesh
(CIN: U52100UP2015PTC073583)

.....Transferee/Resulting Company/Applicant No.2

JUDGMENT/ORDER DELIVERED ON 13.12.2017

CORAM : Sh. Harihar Prakash Chaturvedi, Member (Judicial)

For the Petitioner : Sh. Pradeep Tiwari, Advocate

For the Central Govt. : Sh. M.K. Bagri, OL

PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)



ORDER/JUDGMENT

1. The Present Company Petition was initially filed on 08.07.2016 by the petitioner applicant Companies under Section 391/394 of Companies Act, 1956 before the

Hon'ble Allahabad High Court Bench at Lucknow seeking prayer for sanction of

the Proposed Company Scheme of Arrangement between **M/s Kashi Nath Seth**

Sarraf Private Limited (*the Transferor/Demerging Company*) with **M/s**

Kashinath Somnath Sarraf Private Limited (*Transferee/Resulting Company*).

2. The Applicant Company in the Present Company Petition submits that the Proposed Company Scheme of Arrangement has earlier been approved by the Board of Directors and shareholders of respective Companies as per their meeting held on **01.03.2016**.
3. As per the Proposed Company Scheme of Arrangement the *Appointed Date* of the scheme is **01.10.2015**
4. The main object to and rationale of the Proposed Company Scheme of Arrangement are described as under:

- (i) To achieve the objective of the company to enter into overseas business.
- (ii) To raise capital resources for working capital to increase operation and to invest in brand promotion.
- (iii) To preserve and enhance business value thereby creating value for stakeholders.
- (iv) To set up a separate module company as per the international standards and to maintain the regulatory compliance of developed company by setting up a separate module.



- (v) To increase the net worth of **KASHINATH SETH SARRAF PRIVATE LIMITED**, which will facilitate and provide adequate opportunities to mobilize the financial resource for the growth of its business and invite private equity investment.
- (vi) To achieve better growth and result.
- (vii) To support and consolidate holding company's financial results.

(viii) To ensure better operational management and focus on accelerated growth.

5. The main objective of the Demerged Company as set out in the Memorandum of Association and its activities are stated as under; -

To carry on the business of jewellers, gem and stone merchants and to deal in precious stones, cutlery, presents and gifts, historical coins, curios and other articles of value, art, and antiquities, dressing-bags, hand bags and bronzes.

6. Further, the main objects of the Transferee Company as set out in the Memorandum of Association are inter-alia: -

a. **To carry on the business of jewellers, gem and stone merchants and to deal in precious stones, cutlery, presents and gifts, historical coins, curios and other articles of value, art, and antiquities, dressing-bags, hand bags and bronzes.**

b. **To carry on in India or elsewhere, the business as manufacturers, producers, processors, makers, designers, cutters, polishers, fitters, trimmers, contractors, sub-contractors, inventors, convertors, importers, exporters, trades, buyers, sellers, retailers, wholesalers, suppliers, indenters, packers, preservers, stockists, agents, sub-agents, merchants, distributors, consignors, jobbers, brokers, concessionaires or otherwise deal in jewellery made partly or wholly of gold, silver, platinum, diamond or any other precious, imitation, synthetic, natural or other varieties of stones and materials whatsoever, exchange, purchase or sale old jewellery, bullion, ornaments, cutlery, clocks, watches, and other**



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components and accessories, metals, silver utensils, diamonds, coins, medals china, precious stones, imitation, synthetic, natural or other varieties of stones, paintings, manuscripts, curious, antiques and object of art and to carry on all or any of the business of goldsmiths, silversmiths, jewellers, gems and diamond merchants.

7. It is submitted that the Proposed Company Scheme of Arrangement is not intended to in any manner, to have any beneficial effect on the managerial interest, if any, of the Directors of the Petitioner Companies, except to the extent of their shareholdings. Further, the Proposed Scheme will not adversely affect the rights and interest of any creditor and debenture holders of the Petitioner Companies or their respective shareholders, in any manner whatsoever.
8. It is further stated that the Proposed Company Scheme of Arrangement does not involve in any compromise with the creditors and debenture holders of the Petitioner Companies in any manner whatsoever. As such, the Scheme of Arrangement does not in any manner affect adversely to the interests of its creditor and debenture holders. That apart due provisions are made in the Proposed Company for making payments of all liabilities of the Demerging Company as and when it will fall due in the usual course.

9. It is further submitted that the Auditors of the **M/s Kashinathseth Sarraf Private Limited** and **M/s Kashinath Somnath Sarraf Private Limited**, did not disclose any mismanagement in the affairs of respective companies (e.g. Transferor/Demerged Company and Transferee/Resulting Company)



It is informed that the Transferee /Resulting Company has duly complied with the all Accounting standards applicable there to. In support of this, the 2nd Applicant Company have obtained necessary certificate from its

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auditor certifying that the accounting treatment under the Scheme is found in compliance with the Accounting Standards, and such certificate was duly annexed with the previous **Company Application No.01 of 2016** which has been clubbed together with the Present Company Petition.

10. From a perusal of the Present Company Petition it may be seen that the Petitioner Companies initially had filed a First Stage Motion Petition bearing Company Application No.1/2016 on 30/05/2016 before the Lucknow Bench of Hon'ble Allahabad High court, under the Provision of Section 391 & 394 of the Companies Act, 1956 which was allowed by its order dated 04.07.2016 dispensing with the meeting of the equity shareholders, secured and unsecured creditors and by granting further liberty to the applicants to proceed to file petition for confirmation. In furtherance and compliance thereof the present company petition (IInd Stage Motion Petition) was jointly preferred by the petitioner company before the Hon'ble High Court which later on came to be transferred to this Bench by virtue of statutory Provision of Section 434(1) of the Companies Act, 2013.

11. In addition to the above, Hon'ble High court by its order dated **26.08.2016** further directed to the Petitioner Companies to issue a formal notice to the Central Government through the office of Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Kanpur and The Official Liquidator, Allahabad and to make a paper publication in English and Hindi newspapers.



In Compliance of the above stated direction of the Hon'ble High court the authorised representative of the petitioner companies has filed an affidavit of service confirming that such notices are dully published in the English version of "**Times of India**" and in the Hindi version of "**Dainik Jagran**"

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Hardoi Edition. The Petitioners further served a notice of the present Company Petition to the Central Government through the Office of Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi and Registrar of Companies, UP at Kanpur.

12. In response to the above notices issued by the Registrar of Companies, Kanpur has filed its report, before this Tribunal informing such there is no prosecution, is found to be filed against Transferor Companies & Transferee Company nor any proceeding pending against it under section 235 to 251 of the Act, nor any violation is reported under section 383A/215 of the Companies Act, 1956 against these Companies.

That apart The ROC in Para 9 of its report furnished particulars about the Share Exchange Ratio of both petition which may be reproduced here below:

“In respect of every 7 fully paid up equity shares of Rs.10/- each held by the shareholders of M/s Kashi Nath Seth Saraf Pvt. Ltd in the demerged company, 4 fully paid up equity shares of Rs.10/- each of the transferee company shall be issued.”

13. In addition to the above, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, having receipt a report from the Registrar of Companies dully filed his Representation Affidavit in this Tribunal stating such that its office is having no objections to the Proposed Company scheme of Amalgamation as there is no prosecution/ proceeding pending against the Transferor and the Transferee Companies and there is no any kind of violation of laws under the Companies Act, FEMA, IPC, SEBI Act, RBI Act by the director of the Applicant Companies is reported.



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14. As in the present matter The Official Liquidator, Allahabad also filed its report, by describing the detail particulars of Authorized, Issued, Subscribed and Paid up Capital of the Transferor and Transferee Company as on 31/03/2015 which is stated as under:

Details of Share Capital of the Transferor/ Demerged Company:

Share Capital	Amount (in Rupees)
Authorized Capital 30,00,000 Equity shares of Rs.10/- each.	3,00,00,000/-
Issued Capital 18,66,000 Equity shares of Rs.10/- Each fully paid up.	1,86,60,000/-
Subscribed and Paid up share Capital 18,66,000 Equity shares of Rs.10/- each fully paid up.	1,86,60,000/-

Details of Share Capital of the Transferee/ Resulting Company:

Share Capital	Amount (in Rupees)
Authorized Capital 50,000 Equity shares of Rs.10/- each.	5,00,000/-
Issued Capital 50,000 Equity shares of Rs.10/- each Each fully paid up.	5,00,000/-

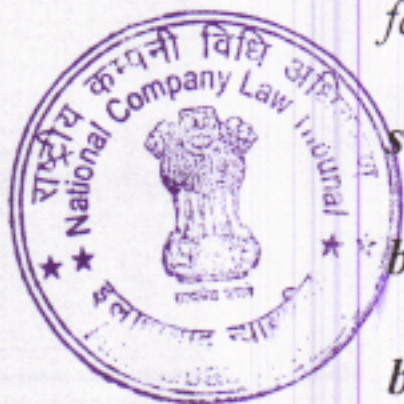


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Subscribed and Paid up share Capital 18,66,000 Equity shares of Rs.10/- each fully paid up.	5,00,000/-
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Having made the scrutiny there of The Official Liquidator dully filed his report stating that the affairs of the Transferor Companies are not found to be conducted in a manner prejudicial to the interest of its shareholders or to the public at large. As para 14 of his report he has stated further that his office is having no objection for dissolution of the Transferor Companies without being wound up under the provisions of Section 391/394 of the Companies Act or corresponding Section 230-232 of the Companies Act, 2013 read with rules made there under.

We have gone through the above stated averments made in the Present Company Petition and perused the documents annexed therewith. We also perused the contents of the Representation Affidavit of the RD (NR) along with Report of ROC and O.L filed in the present case to examine the merits of the proposed Company scheme of Amalgamation in the light of Judicial Trend settled by the Company Court/High Courts by observing such "*the Court must examine the scheme on its own merits and is not bound to treat the scheme as fait accompli. It is well-settled that in exercising its discretion in according sanction, the court will consider, first, whether the statutory provisions have been complied with; secondly, whether the scheme is such as a man of business would reasonably approve. Bearing in mind these principles, the scheme may be examined.*



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In addition to the above this Tribunal is required further to consider circumstance necessary for the Sanction of a Proposed Company Scheme. Some of the outstanding circumstances for sanction of a Company Scheme may be discussed as under:

- a. The proposal for the Scheme was made in good faith;
- b. The Scheme is fair and reasonable;
- c. The Scheme will yield to smooth and satisfactory working;
- d. The Scheme does not offend public or commercial morality;
- e. The Scheme is not detrimental to the interests of the creditors or members or public interest.

By applying to above described legal Principle. We feel that the proposed scheme does not seems to be contrary to the public policy, nor prejudicial to the its shareholders and detrimental to public at large as the Transferor Company are stated to be Subsidiary of the Transferee Company.

Moreover, the Board of Directors of the Transferor Companies and Transferee Company have already considered and approved the proposed Company Scheme of Arrangement.

It is also a matter of record the shareholders, secured and unsecured creditors of both Applicant Company have given their consent for and expressed their no objection to the Approval of the Proposed Company Scheme. It may also be seen that adequate measures are taken in the Proposed Company Scheme of Arrangement to secure the Interest of the Company, its shareholders, creditors, stakeholders and its employees.



15. Therefore, in the light of the above stated factual position of Petitioner Companies, all the statutory compliances requirement in the Proposed Company scheme either seems to have been complied with or have been further undertaken for necessary compliances by Applicants Company as per undertaking given in the Affidavits. Hence, the Proposed Company Scheme, appears to be fair and

reasonable inconformity with statutory provisions. Hence it deserves for approval. Accordingly, the Present Company Scheme petition is allowed in terms of its Prayer Clause. In the result, the Company Scheme of Arrangement annexed to the present Company Petition is hereby sanctioned, and to be acted upon by the Petitioner Companies and all concerned parties as per the terms and condition contained therein.

16. Consequent upon the approval and sanction of the Present Company Scheme, demerged undertaking of transferor/ Demerged Company to be transferred without further act or deed to the Transferee/Resulting Company and accordingly the same shall pursuant to Section 232 of Act, be transferred to and vested in the Transferee Company for all intents and interest of the Transferor Company, therein.

17. Further Demerged undertaking of Transferor /Demerged Company be transferred without further act or deed to the Transferee/ Resulting Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company.

18. Notwithstanding the above, while sanctioning the above company scheme, we make it clear that this order should not be meant for an order for grant of exemption from payment of stamp duty, taxes. Statutory charges or other payment in accordance with law or in respect to any relaxation, compliance with any other requirement which may be specifically required under the law.



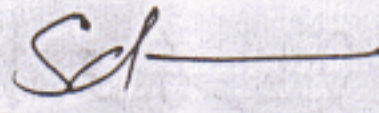
19. That Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration. The Registrar of Companies shall place all documents relating to demerged undertaking of Transferor Company and

registered with him on file kept by him in relation to the Transferee Company and files relating to the Petitioner Companies shall be consolidated accordingly.

20. Further, a cost of Rs. 25,000/- is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), towards Legal Expenses incurred by the government which is payable by the Petitioner companies within four weeks from the receipt of an authentic copy of this order.
21. The Petitioner counsel to furnish a copy of draft order of Sanction of the Scheme in the prescribed format under Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication to be made by the Registry of this Tribunal.
22. All Concerned Regulatory Authorities to act as per the authentic copy of this order annexed with the Company Scheme and duly authenticated by the Registry of this Tribunal.

Dated- 13/12/2017

Typed by:
Aman Kumar Dwivedi
(Law Research Associate)


H.P. Chaturvedi,
Member (Judicial)

