

NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH

COMPANY PETITION NO. 36 OF 2016

(under Sections 391 to 394 of the Companies Act, 1956)

CONNECTED WITH

COMPANY APPLICATION NO.22 OF 2016

(under Sections 391 to 394 of the Companies Act 1956)

Read with Section 230 to 232 of the Companies Act 2013

AND

IN THE MATTER OF

SCHEME OF ARRANGEMENT AMONGST

M/S V.N. DYERS AND PROCESSORS PVT LTD

AND

M/S RISHIK SPINNING PRIVATE LIMITED

AND

THEIR RESPECTIVE SHAREHOLDERS

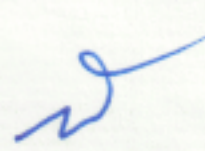
*Present: Shri S. Shekhar, Advocate for petitioner
Shri M.K. Bagri, OL for Central Govt.*

ORDER

(As per Harihar P. Chaturvedi, Member J.)

The present company petition was filed before the Hon'ble High Court of Allahabad as a second motion petition for sanction of the scheme of arrangement between the petitioner companies.

Later on it transferred to this Tribunal in the first motion petition (i.e. CA No. 22 of 2016). The Hon'ble Allahabad High Court vide its order dated 19.07.2016 pleased to dispense with the petitioners companies for convening meeting of its Shareholder, Creditors to ascertain their wishes with regard to

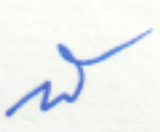


sanction of the proposed scheme for arrangement. Further it pleased also to issue a direction by its order dated 05.08.2016 for making publication in two daily Newspapers fixing the date for hearing and inviting comments/objection if any from the concerned.

The High Court pleased also to issue a notice on the petition to the Regional Director, Ministry of Corporate Affairs, Northern Region, New Delhi, the Registrar of Companies Kanpur, U.P. inviting their response /representation on behalf of the Central Govt. in respect of the present company petition. Thereafter vide its order dated 21.12.2016 the Hon'ble High Court transferred the case to this Tribunal as per the provisions in clause (C) of Section 434 (1) of the Companies Act 2013 read with companies (transfer of pending proceedings) Rules and other relevant provisions.

Pursuant thereto the present company petition came up for hearing before this Bench on various dates. The petitioner companies has been represented by its Counsel Shri S. Shekhar and the Central Govt. through Ld. OL. It is also pointed out during the course of hearing that the affidavit on behalf of the RD and the report of OL have been filed before Hon'ble High Court and is available on record. It is also stated that no any kind of objection to the proposed scheme is received in the office of the counsel of the petitioner, the Registry of the Hon'ble Allahabad High Court and/or before this Tribunal.

During the course of hearing, the Ld. OL made efforts to draw our attention to certain observation made by the Regional Director in its affidavit contending that the compliance thereof is a pre-requisite for sanction of the present scheme. In response thereto the petitioner company has filed an affidavit dated 03.04.2017 by giving undertaking through its authorised signatory Mr. Mahendra Pratap Singh



by deposing such none of the petitioner companies or its directors have contravened any provisions of Companies Act, 1956, FEMA, IPC, SEBI, RBI. Further, it is informed that there is no proceeding pending under Section 235 to 251 of Companies Act 1956 nor any proceedings under Section 397 or 398 of the Companies Act 1956 has ever been launched against the petitioner companies by this affidavit both the petitioners companies through its authorised signatory have undertaken to comply with the accounting standard 14 and other applicable accounting standards as issued by the institute of Chartered Accountant of India in relation to demerger between the petitioner companies. Hence such affidavit is taken on record for consideration to pass order on sanction of the present scheme.

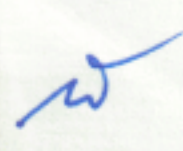
We have gone through the contents of the present company petition read with previous Companies Application No. 22 of 2016 and documents annexed therewith. The present petition is filed praying for sanction of the scheme of arrangement between the M/s V.N Dyers & Processors Pvt Ltd (*Demerged Company*) and M/s Rishik Spinning Pvt Ltd (*Resulting Company*) the petitioner companies have made such request in the prayer clause after the Para 35 of the petition which reads as under:

- (iii) Sanction the scheme of arrangement of company M/s V.N Dyers & Processors Pvt Ltd (*Demerged Company*) and M/s Rishik Spinning Pvt Ltd (*Resulting Company*) and their respective shareholders being Annexure No. 1 to the petition so as to binding on the petitioner companies and its shareholders and creditors.
- (iv) The petitioner companies have stated that the Board of Directors of the demerged company as well as resulting company have approved proposed scheme of arrangement in its meeting held on 5.10.2015. Their accounts

have also been duly audited for the year 2014-15. It is also submitted that petitioner No. 1 demerged company is having 19 shareholders and all of them have given their consent through their affidavits expressing their no objection for dispensing with the meeting of shareholders. Thus they approved the proposed scheme ratifying the resolution of the Board of Directors passed on behalf of both the companies (demerged company and resulting company). Further the secured creditors of the demerged company i.e. *V.N.Dyers and Processors Pvt Ltd* have given its consent by expressing their no objection to the proposed scheme as well as for dispensing with the meeting of the secured creditors. It is stated that all the unsecured creditors of the demerged company have given consent through affidavits expressing their no objection for dispensing with their meetings and thus they have approved the Board Resolution for sanction of the proposed scheme of arrangement. The sundry creditors of demerged company equally have expressed their consent for dispensing with their meeting and expressed their no objection to the proposed scheme of sanction.

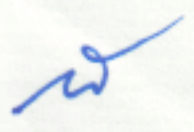
It is reported that the second petitioner the resulting company is having no Secured Creditor nor Unsecured Creditors; hence the Hon'ble High Court pleased to dispensed with the meeting of Shareholders, Secured & Unsecured Creditors of both the companies means (i.e. *the Demerged & the Resulting Company*).

It is submitted that under the proposed scheme the demerged company proposes to reorganise and segregate by way of demerger of its Spinning Mills Division will create as on going concern to the resulting company and it is contended that by proposed scheme of segregation of petitioner's Spinning Mills Division will create enhance value for shareholder and allow a focus strategy



in operation which would be in the best interest of the petitioner No.1/demerged company interest its shareholder and all other connected with the petitioner No.1 demerged company and the demerger will also provide a scope for independent collaboration and expansion without committing the existing organisation in its entirety. Further it will be helpful for the management of both the company to require different expertise and approach to the business, to facilitate these benefits and to increase the fund base of the resulting company. It is submitted that the Board of Directors or both the companies as per their meeting held on 5.10.2015 passed a resolution unanimously approving the proposed scheme. It is also clarified that the director of both the companies are having no material interest in the scheme of arrangement except as being shareholder in general.

The salient feature of the proposed scheme are elaborately narrated in Paras 11 and 12, 1.2,12.3 of the present company petition. It is stated that auditors of the demerged company did not make any adverse remarks or comments in their report nor it discloses any irregularities or mismanagement in the affair of the demerged company. The affair of the petitioner No.1/demerged company have been conducted prudently and properly it is also clarified that subsequent to the aforesaid audit accounts there has not been any material change in the affairs petitioner No.1/demerged company except in normal course of its business for which the account is under preparation. The petitioner companies have stated that its assets are sufficient to meet their liabilities and the present arrangement does not involve in any compromise or composition with the creditors of the petitioner company or it will effect right of any creditor of the petitioner company. It is also submitted that there are no proceeding pending for winding up before the High

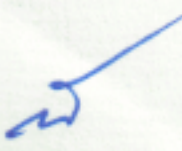


Court against the petitioner No.2 (resulting) company as well as against the petitioner No.1 (demerged) company. It is pleaded that the proposed scheme of arrangement takes care of the interest of its workers and employees of the demerged company and their service conditions are adequately protected. The share of the companies are not listed in stock exchange thus no approval is necessary nor required from any stock exchange. The present petition is made bonafidely and in the interest of justice and no one will be prejudiced if proposed scheme is sanctioned, it will be benefitted to all in respect of the petitioner companies and their shareholders, creditors, employees etc.

Thus as per the petitioner the proposed scheme is reasonable and fair nor it is detrimental to the interest of the public . In case the proposed scheme is not sanctioned by this Tribunal then the petitioners will have to suffer irreparable loss and prejudice. Therefore, the petitioner companies have made prayer in the as per prayer clause of the petition which reads as under:

- (iii) *Sanction the Scheme of Arrangement among V.N.Dyers and Processors Pvt Ltd and Rishik Spinning Private Limited and their respective Shareholders being Annexure No.1 to the petition, so as to be binding on the petitioner companies and its shareholders and creditors;*
- (iv) *Pass such further and other orders as deemed proper in the facts and circumstances of the case.*

Having heard the submission of the counsel for both the parties and after considering the affidavit filed/undertaking given by the petitioner companies in response to the affidavit of the Regional Director we are of the view that office of



the RD through OL has not expressed any objection of serious nature, against the sanction of the proposed scheme of arrangement between the petitioner companies. The prerequisite for sanction of the scheme has been complied with or undertaken to be complied with as per the affidavit filed/undertaking given by the petitioner companies. Therefore, we feel the present scheme of arrangement seems to be reasonable and is not in contravention of the public policy, or interest to its Shareholders, Secured and Unsecured Creditors, Signatory Creditors nor it is detrimental to the interest of the public at large. Therefore, present petition deserved to be allowed, hence is allowed. The prayer made in Para 3 of prayer clause of the company petition is made absolute. In the result the proposed scheme of the arrangement between the Petitioner No. 1 Company namely M/s V.N. Dyers and Processors Pvt Ltd (Demerged Company) and Petitioner No. 2 Company M/s Rishik Spinning Private Limited (Resulting company) is approved and hereby sanctioned.

Further a cost of Rs. 15,000/- is awarded in favour of the Central Government through the office of Regional Director (N.R.) towards legal expenses incurred which is payable by the Petitioner Companies within four weeks from the receipt of authentic copy of the order.

The petitioner company to furnish a copy of this order along with company scheme to the office of Registrar of Companies and also to communicate to the office Superintendent of Stamp of the State Government for the purpose of adjudication of stamp duty if payable, within 60 days of receipt of this order.

The counsel of the Petitioner Company to furnish a copy of draft order of sanctioned scheme in the prescribed format under Companies Compromises

(Arrangement and Amalgamations) Rules, 2016 read with other relevant Rules for the purpose of scrutiny and authentication by the Registry of this Tribunal.

All concerned regulatory authorities may act upon a copy of the order along with the sanctioned scheme duly authenticated by the Asst. Registrar, National Company Law Tribunal, Allahabad Bench and to take necessary steps as per the Provisions of Companies Act and Rules.

Accordingly, the Petition stands disposed of.

Date:- 24.04.2017


SH. H.P. CHATURVEDI (Judicial Member)