

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

CP No.312 of 2016

In CA No 710 of 2016

In CP (TCAA) No. 25/HDB/2017

CP No. 313 of 2016

In CA No. 713 of 2016

In CP (TCAA) No. 26/HDB/2017

CP No.314 of 2016

In CA No. 716 of 2016

In CP (TCAA) No. 27/HDB/2017

Date of Order: 24.03.2017



**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

IN THE MATTER OF COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTIONS 391 TO 394

**AND OTHER APPLICABLE PROVISIONS OF THE COMPANIES ACT,
1956**

AND

IN THE MATTER OF THE SCHEME OF AMALGAMATION

BETWEEN

M/s P. Manoharlal Jewellers Private Limited

(Transferor Company No.1)

And

M/s P. Manoharlal Gems and Jewellers Private Limited

(Transferor Company No.2)

With

M/s P. Manoharlal and Sons Jewellers Private Limited

(Transferee Company)

And

Their respective Shareholders and Creditors

Counsel for the Petitioner:

Sh. G Kalyan Chakravarthy

Counsel for Regional Director:

Sh. Appa Rao, CGSC

Counsel for Official Liquidator:

Official Liquidator

CORAM

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Hon'ble Mr. Rajeswara Rao Vittalala, Member (Judicial)

ORDER

(As per Ravikumar Duraisamy. Member (T))

1. The present petition is filed under Sections 391 to 394 of the Companies Act, 1956, praying this Tribunal to;
 - a) Sanction the Scheme of Arrangement, with such modifications as may be deemed fit and necessary by this Hon'ble Court, so as to be binding on the Transferee Company and all the equity shareholders, the secured creditors and the unsecured creditors of the Transferor Companies.
 - b) That all the property, rights and powers of the Transferor companies be transferred with effect from the appointed date without further act or deed to Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act be transferred to and vest in the Transferee Company.
 - c) That all the debts, liabilities, duties and obligations of the Transferor Companies be transferred with effect from the Appointed date, without further act or deed to Transferee Company and accordingly the same shall pursuant to section 394(2) of the Companies Act, 1956 be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company.
 - d) That all the proceedings and / or suits and / or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company.
 - e) That the Transferor Companies would stand dissolved without the proceedings of Winding up pursuant to sanction of the Scheme of



Arrangement and in accordance with the provisions of the Section 394 of the Companies Act, 1956, etc.

2. Pursuant to the notification of Companies (Removal of Difficulties) Fourth Order, 2016 and Companies (Transfer of Pending Proceedings) Rules, 2016 by the Ministry of Corporate Affairs, New Delhi in Gazette of India, dated 07.12.2016, which came into force with effect from 15.12.2016, since the present proceedings relate to the scheme of Arrangement/Amalgamation, the case is transferred from the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh to NCLT, Hyderabad Bench. The matter was, subsequently, listed before this Bench on 01.02.2017, 3.02.2017 and 23.02.2017.



3. The brief facts of the case as averred in the Petition are as follows:
- Transferor Company No.1 was incorporated under the name and style of P. Manoharlal Jewellers Private Limited in the state of erstwhile Andhra Pradesh on 01.01.2013 under CIN U52100AP2013PTC085186.
 - Transferor Company No.2 was incorporated in the name and style as P.Manoharlal Gems and Jewellers Private Limited in the State of Telangana vide CIN U52341TG2012PTC085157, issued by RoC on 31.12.2012.
 - The Transferee Company was incorporated in the name and style as P. Manoharlal and Sons Jewellers Private Limited under the Companies Act, 1956 in the state of Telangana vide CIN U52100TG2012, issued by RoC on 31.12.2012.
 - The authorized share capital of the Transferor Companies is Rs.6,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each and 50,00,000 Redeemable Cumulative Preference Shares (RCPS) of Rs.10/- each. The issued, subscribed and paid up capital of the Transferor Companies is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each.

- e. The authorized share capital of the transferee company is Rs. 4,50,00,000/- divided into 10,00,000 equity shares of Rs. 10/- each and 35,00,000 RCPS of Rs 10/- each. The issued and paid up share capital is Rs. 1,00,00,000/- divided into 10,00,000 equity shares of Rs 10 each.
 - f. The main objects of the Transferor Companies and the Transferee Company are to carry on business as Jewellers, Goldsmiths, Silversmiths, Diamond Merchants, Diamond cutters and Polishers dealers in and manufacturers of all kinds of jewellery made of Gold, Silver or any precious or Semi-Precious metals, etc.
4. It is submitted that the Transferee Company shall issue one equity share of the face value of Rs.10/- each to the Transferor Companies for the consideration of transfer of all its assets, liabilities, undertakings in favour of the transferee company.
 5. The Scheme of Arrangement does not involve any compromise with Creditors of the Transferor Companies and will not affect any of the Creditors of the Company in any manner whatsoever.
 6. It is submitted that the Transferor Companies are not listed companies. The Transferor Companies and their nominees in their capacity as the shareholders have accorded their consent / no objection to the proposed Scheme of Amalgamation.
 7. The Transferor Companies have no Secured Creditors. The Transferor Company No.1 has 4 Unsecured Creditors for a value of Rs.5,62,000 and their No-Objection letters are submitted. The Transferor Company No.2 has 3 unsecured creditors for value of Rs.3,70,000/- and their No-Objection letters are also submitted.



8. It is submitted that the proposed Scheme of Arrangement will be beneficial to the Petitioner/Transferor Companies and the Transferee Company and their respective members and will result in better and more efficient operation of the Companies. Further, no members and the employees of the Petitioner Company (s) would be adversely affected in relation to the said Scheme of Arrangement.

9. It is submitted that in view of the above, Company Application Nos.710, 711, 712 of 2016 had been filed before the Hon'ble High Court of Hyderabad for dispensing with the meetings of equity shareholders, secured creditors and unsecured creditors of the Transferor Company No.1 while CA Nos. 713, 714, 715 of 2016 were filed before the Hon'ble High Court of Hyderabad for dispensing with the meetings of equity shareholders, secured creditors and unsecured creditors of the Transferor Company No.2 . By an order dated 06.06.2016 the Hon'ble High Court directed as follows:



- a. The meeting of the equity shareholders of the petitioner company(s) for the purpose of considering the Scheme of Arrangement is dispensed with'
- b. As there are no Secured Creditors in the petition company (s), the meeting of the Secured Creditors of the petitioner company is dispensed with'
- c. The meeting of the Unsecured Creditors of the petitioner company(s) for the purpose of considering the Scheme of Arrangement is dispensed with.

10. The Assets of the Petitioner Company(s) are sufficient to meet all its liabilities. The Scheme does not involve any compromise with the creditors of either company. The Scheme will not affect any of the creditors of the Petitioner Company (s) whatsoever whether in terms of the value of their debt or security for the debt.

11. As directed by the Hon'ble High Court, the Petitioner's Company (s) issued Newspaper advertisement in "Business Standard" dated 15.10.2016 and in Telugu "Andhra Prabha" dated 15/10/2016 informing the date of hearing fixed before the Hon'ble Judge on 27.10.2016 seeking view of any person supporting or opposing the said petition. Subsequently, the hearing came before this Bench on 03.02.2017 and 23.02.2017. The Petitioners have confirmed vide their Affidavit stating that no objections were received subsequent to the Newspaper publication issued as stated above.

12. Pursuant to the General Circular No.1/2014, dated 15.01.2014 issued by the Ministry of Corporate Affairs, New Delhi, the Regional Director, SER stated that wherein comments of Income Tax Department is required to be sought under Section 391 or 394 of the Companies Act, 1956, and a letter dated 24.10.2016 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days and till date no reply received from the IT Department.

The Regional Director, further submitted in his report dated 23.01.2017 that the Registrar of Companies, Hyderabad has reported that the transferor companies and the transferee company involved in the scheme of merger/amalgamation have not filed the Annual Returns for the Financial years ended 31.03.2016. Therefore, the Petitioner / transferor companies and the transferee company may be directed to file the Annual Returns for the financial year ended 31.03.2016 before the Scheme is approved, and no investigations and no inspections are pending against the petitioner companies.

13. For the objections raised by the Regional Director, SER, the Petitioner company vide reply dated 23.02.2017 has confirmed that the company has already submitted Annual Return for the Financial Year from 2016-17 and submitted acknowledgement of the same.



14. The Official Liquidator in his report dated 29.12.2016 stated that the appointed date of the proposed scheme is 01.01.2016 and submitted the following:

- a. As per the Director's report dated 02.09.2016 attached to the Audited Balance Sheet as at 31.03.2016, the Transferor Companies did not invite or accept any Deposits from the Public.
- b. That the amalgamation would be beneficial to the Transferor Companies and the Transferee Company and their respective members and will result in better and more efficient operation.
- c. It is opined by the Official Liquidator that the affairs of the Transferor Companies appears to have not been conducted in a manner prejudicial to the interests of its members or to public.



15. The Bench has considered the entire material available on record with regard to the proposed Scheme of Amalgamation (Annexure A) and particularly considered the Terms and Conditions with regard to legal proceedings, staff and employees, dissolution of the Transferor Companies, the issue of Shares, Accounting treatment, no change to be effected in Capital structure, cost, charges and expenses.

16. Having regard to the above material / reports, this Tribunal is of the opinion that the proposed Scheme of Amalgamation is in conformity with the provisions of the Act and the scheme does not affect the interest of the stake holders and the public interest and is intended to further develop the business interests of two Transferor Companies and Transferee Company for the maximum utilisation of available resources. Therefore the Scheme of Amalgamation approved by Board of Directors of the two Transferor Companies and Transferee Company is hereby sanctioned with effect from the appointed date i.e. 1.1.2016.

17. The Transferor Companies is directed to file the certified copy of this order with the Registrar of Companies for the State of Telangana and the

State of Andhra Pradesh within 30 days from the date of receipt of a copy of this order.

18. The Petitioners are directed to issue newspaper publication with respect to approval of scheme of amalgamation, in the same newspaper in which previous publications were issued. The same is to ensure transparency/dissemination of complete information to all stake holders about the approval granted by Tribunal for the Scheme as proposed. The petitioners are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Act.



The Company Petition is allowed accordingly as prayed for.

Sd/-

Sd/-

RAVIKUMAR DURAISAMY

RAJESWARA RAO VITTANALA

MEMBER (T)

MEMBER (J)

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68