

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 872 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 793 OF 2015

D. NAVINCHANDRA GEMS PRIVATE LIMITED

..... Petitioner / the Demerged Company

AND

COMPANY SCHEME PETITION NO 873 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 794 OF 2015

DNJ CREATION PRIVATE LIMITED

..... Petitioner / the First Resulting Company

AND

COMPANY SCHEME PETITION NO 874 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 795 OF 2015

D. NAVINCHANDRA DIAMONDS PRIVATE LIMITED

..... Petitioner / the Second Resulting Company

In the matter of the Companies Act, 1956
(1 of 1956);

AND

In the matter of Sections 391 to 394 read
with Sections 100 to 104 of the
Companies Act, 1956;

AND

In the matter of Composite Scheme of
Arrangement between D. Navinchandra
Gems Private Limited ('the Demerged
Company') AND DNJ Creation Private
Limited ('the First Resulting Company')
AND D. Navinchandra Diamonds Private

Limited ('the Second Resulting Company')
AND Their Respective Shareholders and
Creditors

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in all the Company Scheme Petitions

Mr. A.R. Varma, i/b Mr. A. A. Ansari for Regional Director in all the Company Scheme Petitions

CORAM: G.S. Patel, J.

DATE: 18th March, 2016

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petition.
2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956, to the Composite Scheme of Arrangement between D. Navinchandra Gems Private Limited ('the Demerged Company') and DNJ Creation Private Limited ('the First Resulting Company') and D. Navinchandra Diamonds Private Limited ('the Second Resulting Company') and Their Respective Shareholders and Creditors.
3. Learned Counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 872 of 2015 is primarily engaged in the business of manufacturing and trading in jewellery, diamonds and fancy-cut diamonds and Petitioner in Scheme Petition No. 873 of 2015 has been incorporated with the objective of carrying on the business of manufacturing and trading in jewellery & gemstones and Petitioner in Scheme Petition No. 874 of 2015 has been incorporated with the objective of carrying on the business of manufacturing and trading in diamonds.

4. The rationale for the Composite Scheme is realignment of shareholding pattern of the Demerged Company, segregation of Jewellery Business Undertaking and Diamond Business Undertaking of the Demerged Company from its other businesses and housing it under the First Resulting Company and the Second Resulting Company respectively so as to facilitate their independent growth by creation of separate entities focusing on jewellery business and diamond business thereby achieving operational and managerial efficiency and enhanced management focus and operational flexibility.
5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Counsel for the Petitioners state that Petitioner Companies have complied with all directions passed in company summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.
7. The Counsel for the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under. The said undertakings is accepted.
8. The Regional Director has filed an Affidavit dated 17th March, 2016 stating therein that save and except as stated in paragraph 6(a) and 6(b) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) and 6(b), of the said affidavit it is stated that:

a) The petitioner companies through their advocate M/s Hemant Sethi & Co vide letter dated 01/03/2016 has

*informed the deponent that the Board of Directors of all the petitioner companies vide their board resolution dated 13/02/2016 approved an amendment of the Scheme in respect of clause 1.2 of the Scheme so far as it relates to appointed date provided in the scheme from 01/10/2015 to 01/04/2016. Further it has been informed that the shareholders of the respective companies have given their consent for the said amendment. Copy of the letter received from the Advocate is annexed hereto and marked as **Exhibit 'D'**. In view of the above, petitioner company may be directed to suitably amend the clause 1.2 of the scheme by substituting 01.04.2016 in place of 01.10.2015.*

b) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.

9. Learned Advocate for Petitioner Companies submits that as per observation raised by the Regional Director in paragraph 6(a) of his Affidavit, Clause 1.2 of the Scheme is required to be amended and hence the Petitioner Companies seek leave of this Court to substitute the words '1st day of October, 2015' appearing in clause 1.2 with the words '1st day of April, 2016'.
10. In view of above, leave to amend the Scheme and all consequential amendments are granted. Amendments to be carried out within three weeks from today.
11. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner Companies submit

that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Composite Scheme of Arrangement will be met and answered in accordance with law.

12. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Companies. The said undertaking given by the Petitioner Companies is accepted.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petitions No. 872 to 874 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (c).
15. The Petitioner Companies to lodge a copy of this order alongwith the form of minutes duly authenticated by the Company Registrar, High Court, Bombay and the amended Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of issuance of Order.
16. Petitioner Companies are directed to file a copy of this order along with a copy of the amended Scheme and the form of minutes duly authenticated by the Company Registrar, High Court, Bombay with the concerned Registrar of Companies, electronically, along with E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

17. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.
18. Filing and issuance of the drawn up order is dispensed with.
19. All concerned regulatory authorities to act on a copy of this order, the Form of Minutes annexed as Exhibit 'E' to the affidavit in support of Company Scheme Petition No. 872 of 2015, Exhibit 'E' to the affidavit in support of Company Scheme Petition No. 873 of 2015 and Exhibit 'L' to the affidavit in support of Company Scheme Petition No. 874 of 2015 along with amended Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(G.S. Patel, J.)

I certify that this Order uploaded is a true and correct copy of original signed order.

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