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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

CP(CAA) No. 17 of 2020 In CA(CAA) 18/NCLT/AHM/2020

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.07.2020**

Name of the Company: Ashima Dyecot Pvt Ltd
Ashima Ltd

Section : Section 230-232 r.w. 66 of the Companies Act,
2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER
(Through Video Conferencing)

None present

The order is pronounced in the open court, vide separate sheet.


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 22nd day of July, 2020

**NATIONAL COMPANY LAW TRIBUNAL,
BENCH AT AHMEDABAD**

**C.P. (CAA) No. 17/NCLT/AHM/2020
IN**

C.A. (CAA) No. 18/NCLT/AHM/2020

In the matter of:-

Ashima Dyecot Private Limited,

A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Texcellence Complex, Near Anupam Cinema, Khokhara, Ahmedabad – 380 021.

.... Petitioner Transferor Company

AND

Ashima Limited,

A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Texcellence Complex, Near Anupam Cinema, Khokhara, Ahmedabad – 380 021.

.... Petitioner Transferee Company

Order delivered on 22nd July, 2020

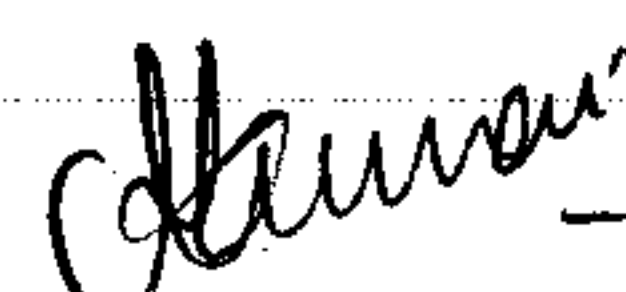
Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance: None Present.

ORDER

[Per se: Ms. Manorama Kumari, Member (Judicial)]

1. The instant joint petition is filed by the petitioner companies under Section 230 and 232 read with Section 66 and other applicable provisions of the Companies Act, 2013 seeking sanction of a Scheme of Arrangement in the nature of Amalgamation of Ashima Dyecot Private Limited with Ashima Limited.
2. It is submitted that both the companies belong to the same group of Management viz. Ashima Group. The Transferee Company is engaged in manufacturing of "Cotton Fabric Products" while the Transferor Company is engaged in the business of "processing textile fabrics" and manufacturing of "readymade garments". Thus, the business of the




Transferor and Transferee Company are complementary to each other. The proposed amalgamation of Transferor Company into Transferee Company shall result into several advantages to both the companies and their stakeholders. Some of them are as under:

- Consolidate the portfolio of brands and products that are relevant to the "textile sector" under a single roof;
- Enable the merged entity to cater to the needs of entire value chain from fabrics to garments.
- Operational synergies and efficiency for the merged entity.
- Greater integration and greater financial strength and flexibility to result in maximizing overall shareholders value;
- Enhancing the scale of operations, reduction in overheads, including administrative, statutory compliances, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of resources by avoiding duplication of efforts;

The requisite report confirming the proposed Share Entitlement Ratio of Equity Shares, being just and reasonable was provided by M/s. N. S. Kumar & Co., Independent Chartered Accountants and Niranjana Kumar, Registered Valuer, The Fairness Opinion was provided by M/s. Kunvarji Finstock Private Limited, Category I Merchant Banker. The Statutory Auditors of the Transferee Company have confirmed the compliance of applicable accounting standards for the accounting treatment proposed under the said scheme.

3. Ashima Limited, the Transferee Company being a listed public limited company, the approval was first obtained from the Audit Committee on 19th October 2019 and thereafter, the same was placed before the respective Board of Directors of all the companies. The resolutions dated 19th October 2019 were passed by the Board of Directors of both the Petitioner Companies. The Scheme was thereafter presented to concerned stock exchanges and the observation letters dated 10th January, 2020 were respectively obtained from BSE Limited and National Stock Exchange of India Limited.
4. The Petitioner Companies filed joint application being CA (CAA) No. 18 of 2020 with a prayer to convene separate meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of both the



C.P. (CAA) No. 17/NCLT/AHM/2020
IN
C.A. (CAA) No. 18/NCLT/AHM/2020

Applicant Companies and Preference Shareholders of the Applicant Transferee Company. Hence, vide the order dated 30th January 2020, passed in CA (CAA) No. 18 of 2020, the directions were issued for convening the above referred meetings of Applicant companies to obtain their approval to the proposed scheme. Further directions were also issued for the service of notice as well as publication of the notice in the newspapers. The Petitioner Companies complied with the said directions.

5. In view of the directions so issued, notices of the meetings were sent individually to all the concerned Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the petitioner companies on or before 6th February 2020; together with a copy of the Scheme of Arrangement and the Explanatory Statement as well as all other requisite disclosures. The notice convening the meetings were also advertised in 'Indian Express' and Gujarati daily 'Sandesh' as well as 'Gujarat Samachar' Ahmedabad editions for all the meetings, on 8th February 2020; The affidavit dated 14th February 2020 was filed by the Chairman of the said meetings confirming the compliance of the directions. The aforesaid meetings were duly convened and held at Ahmedabad on 11th March 2020 and the Chairman appointed for the said meetings reported the result of the said meetings to this Tribunal vide the affidavit dated 16th March 2020.
6. (i) In case of Ashima Limited, perusal of the Chairman's report confirms the cumulative approval of the scheme by requisite majority of 97.77 % in numbers and 90.32 % in value, who exercised their right to vote through different modes made available, viz. remote e-voting and voting by physical ballots at the meeting. Further, the number of votes cast by the Public Shareholders in favour (i.e. 1,11,12,808 votes) of the resolution approving the proposed Composite Scheme of Arrangement were more than the number of votes cast against it (i.e. 95,73,362 votes) by the Public Shareholders, thereby approving the resolution as required as per SEBI Circular CFD/DIL3/CIR/2017/21 dated 10th March, 2017, by requisite majority of 53.72 %.
- The scheme was approved unanimously by the Preference Shareholders, Secured Creditors as well as Unsecured Creditors of the said Transferee Company at the respective meetings.



- (ii) In case of Ashima Dyecot Private Limited, the petitioner Transferor Company, perusal of the Chairman's report confirms the unanimous approval granted to the proposed Scheme from the Equity Shareholders, Secured Creditors as well as Unsecured Creditors at the respective meetings.
7. In view of the aforesaid order dated 30th January 2020, the original Applicant companies were also directed to serve Notice of the Scheme to the Regulatory Authorities-viz. (i) Central Govt. through the Regional Director, North-Western Region, (ii) Registrar of Companies, Gujarat, (iii) concerned Income Tax Authorities; and upon (iv) The Reserve Bank of India; and (v) BSE Limited; (vi) National Stock Exchange Limited and (vii) Securities and Exchange Board of India only in case of Ashima Limited, the Transferee Company, and (viii) the Official Liquidator for Ashima Dyecot Private Limited, the Applicant Transferor Company, along with Notice, Explanatory Statement and other requisite documents and disclosures. The notices were duly served on all the authorities on or before 11th February 2020. The affidavit dated 13th February 2020 confirming the compliance of the said directions for service of Notice on all the above Regulatory Authorities along with the acknowledgments for the same was filed with this Tribunal. In response to the said notice, the Regional director filed representation in form of an affidavit dated 28th February 2020, the Office of the Official Liquidator filed representation in form of report dated 3rd June 2020. A letter dated 25th February 2020 was addressed by Reserve Bank of India. No Representations were received from the Income Tax Authorities or any other regulatory authority for any of the companies.
8. The joint petition was filed on 19th March 2020 and was admitted on 16th June 2020. The date of hearing was fixed as 15th July 2020. Directions were issued to publish Notice of Hearing of Petition in the newspapers viz. English daily, 'Indian Express' and Gujarati daily 'Sandesh' as well as 'Gujarat Samachar' Ahmedabad editions for both the companies, at least before 10 days of the date of hearing of the petition. Further directions were also issued to serve notice of hearing of the petition to the statutory authorities' viz. (i) Central Govt. through Regional Director- North Western Region, (ii) Registrar of Companies, (iii) Income Tax authorities, and (iv) Official Liquidator at least before 10 days of the date of hearing of the petition.



9. Pursuant to the directions, notices were duly served by the petitioner companies on the statutory authorities on or before 24th June 2020 and publications were duly made in the newspapers- on 26th June 2020. The affidavit of service and publication dated 30th June 2020 confirming the same has been placed on record.
10. The Petitioner Companies, on receipt of the representation of Regional Director and Official Liquidator, have filed a common additional affidavit on 25th June 2020 in response to the aforesaid representations which is/are as under:
- (i) It has been submitted that Para 2 (a), (b) and (e) of the representation of the Regional Director deals with the factual aspects viz. Service of Notice for the proposed Scheme, nature of the proposed Scheme, the proposed Exchange Ratio as recommended by independent Chartered Accountants and Rationale for the Scheme.
 - (ii) Para 2 (c) of the affidavit, refers to the proposed consolidation of the Authorized Share Capital of the Transferor Company with that of the Transferee Company as envisaged under clause 12 of the Scheme. It is observed by the Regional Director that under Section 232 (3) (i) of the Companies Act, 2013, the Transferee Company shall get the set off for the amount of fees paid by the Transferor Company. In view of the same, the Transferee Company will be required to pay the difference of amount of fees payable on the enhanced Authorized Capital as on date and the actual amount of fees paid by both the Petitioner Companies at the relevant point of time. In this regard, it has been undertaken by the Petitioner Transferee Company to pay such difference, as applicable, for the amount of fees payable as on date on the proposed enhancement of Authorized Capital of Rs. 58,98,00,000/-
 - (iii) Para 2 (d) of the affidavit, refers to the insufficiency of the Authorized Capital of the Petitioner Transferee Company for the issue of its new shares to the shareholders of the Petitioner Transferor Company in terms of Clause 13 of the Scheme. In this regard, it has been submitted that upon Scheme being effective, the company shall first consolidate the Authorized Capital of the Petitioner Transferor



Company with that of the Petitioner Transferee Company. It is further provided vide clause 13.11 and 13.12 of the Scheme, that the Authorized Capital of the Transferee Company shall be increased to the required extent by following the requisite procedure envisaged under the Companies Act and payment of applicable duty and registration fees etc.

- (iv) The Regional Director vide Para 2(f) refers to the compliance with the applicable SEBI circulars by the petitioner Transferee Company, viz. Ashima Limited being a listed company. In this regard, it has been submitted that the said Transferee Company has complied with all applicable requirements of the said circulars. It has been further confirmed that in compliance with the applicable SEBI Circular, the said Scheme has been approved by the requisite majority of the Public shareholders. The said fact has been confirmed by the Chairman of the meeting; vide Chairman's report dated 16th March 2020. The Petitioner Transferee Company has also undertaken to comply with the post scheme requirements of the said circulars as mentioned in the sanction letters of BSE and NSE.
- (v) Para 2 (g) of the affidavit refers to the investments made by foreign shareholders in case of both the petitioner companies, which being part of the record of the company are not disputed. However, it has been clarified that the said companies have complied with the applicable provisions of FEMA and RBI guidelines. Further, upon the scheme being effective requisite compliances shall be further made while issuing the shares pursuant to the scheme to such foreign shareholders. At this stage, it is worth noting that the Reserve Bank of India vide its letter dated 25th February 2020, indicated that it shall not provide clearance to any scheme on individual basis but the onus for all compliances is on the petitioner company.
- (vi) Para (h) of the affidavit of the Regional Director refers to Clause 15 of the Scheme which deals with the Accounting Treatment. The Petitioner companies have specified in the scheme, that the treatment shall be in compliance with the applicable Accounting Standards viz. IND AS 103. In this regard, it has been submitted that the upon scheme being effective, the accounting treatment



shall be in compliance with the Applicable Accounting Standards prescribed under Section 133 of the Companies Act, 2013. It is also clarified that the Statutory auditors of the Petitioner Transferee company has already confirmed the same vide his certificate dated 17th October 2019 which is already placed on record as Annexure G to the said petition.

11. The other regulatory authority viz. Official Liquidator has made a representation dated 3rd June 2020 for the Transferor Company. It has been observed that the Transferor Company has conducted its business in accordance with Objects Clause and the same has not been conducted in any manner prejudicial to the interest of its members or public interest, hence the petitioner transferor company may be dissolved without following the process of winding up. Further, the Official Liquidator has sought directions to be issued to preserve the books of accounts, papers and records of the Transferor Company and not to dispose of the same without prior permission of the Central Govt. as per the provisions of Section 239 of the Companies Act, 2013. No adverse observations are made in the said report.
12. No representation has been received from the Income Tax Authorities. Hence, it is assumed that the said authorities have no objection to the proposed Scheme. However, it is submitted that on the basis of the records of the Petitioner Companies as on 31st March 2020, there is no undisputed outstanding demand for income tax for either of the petitioner companies. There is a disputed outstanding demand for the Transferee Company for the Assessment Year 2018-19. The appeal filed in this regard is pending before Commissioner of Income Tax (Appeals). It is hereby confirmed that as and when the said demand is crystallized, the Petitioner Transferee Company will be liable for making payments for the same. It is further confirmed, that the said Transferee Company shall be liable for any demand already created or become payable due to any of the proceedings related to Income Tax department in future for outstanding demand prior to amalgamation in respect of the Transferor Company. The Transferee Company undertakes to abide by all the applicable provisions of the Income Tax Act.



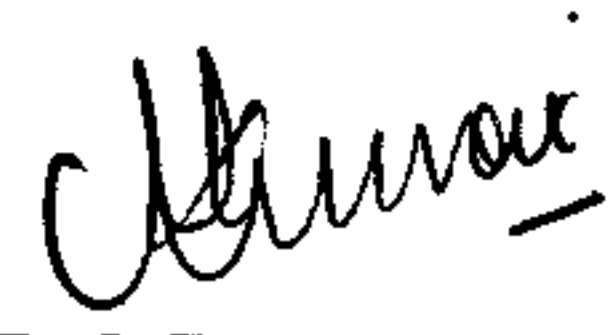
13. In compliance with the proviso to sub-section (7) of Section 230, the Statutory Auditor of the Transferee Company dated 17th October 2019, confirming that the accounting treatment envisaged under the said scheme of Arrangement in the books of the Transferee Company is in compliance with the applicable Accounting Standards notified by Central Govt. in section 133 of the Companies Act, 2013.
14. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that all the requirements of section 230 and 232 of the Companies Act, 2013 are satisfied and the same is not against interest of the shareholders and creditors as well as in the public interest.
15. As a result, the petition being CP (CAA) No. 17 of 2020 is hereby allowed. The Scheme which is at Annexure- 'F' to the petition is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, their shareholders, secured creditors and unsecured creditors and all concerned under the scheme.
16. The amount to be paid to the Office of the Regional Director towards legal costs and expenses is quantified at Rs. 50,000/-. The amount to be paid to the office of the Official Liquidator is quantified at Rs. 25,000/- The said fees shall be paid by Ashima Limited, the Petitioner Transferee Company.
17. The sanction of the scheme shall not come in the way of any Competent Authority(s), Central Govt., State Govt. and/or Local bodies to take any action as per the provisions of law for the time being in force, for the default or as the case maybe.
18. Filing and issuance of drawn up order is hereby dispensed with. All concerned authorities to act on a copy of this order along with the scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the authenticated copy of this order alongwith Scheme immediately.
19. The Petitioner Companies are further directed to lodge a copy of this order, the schedule of immovable assets of the Transferor Company as on the date of this order and the Scheme duly authenticated by the

Ashima

C.P. (CAA) No. 17/NCLT/AHM/2020
IN
C.A. (CAA) No. 18/NCLT/AHM/2020

Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.

20. The Petitioner Companies are directed to file a copy of this order along with a copy of the scheme with the concerned Registrar of Companies, electronically, along with INC-28 in addition to physical copy as per relevant provisions of the Act.
21. CP (CAA) No. 17 of 2020 is disposed off accordingly.


MANORAMA KUMARI
Adjudicating Authority
Member (Judicial)

Shreya