

**THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

C.A(CAA)/54/MB-I/2024

In the matter of

The Companies Act, 2013 (18 of 2013);

AND

In the matter of

Sections 232 r/w 230

*and other applicable provisions of the
Companies Act, 2013 and Rules framed
thereunder as in force from time to time;*

AND

In the matter of

Composite Scheme of Amalgamation

TCNS Clothing Co. Limited

CIN No. – L99999MH1997PLC417265

...Applicant Company 1
Transferor Company

Aditya Birla Fashion and Retail Limited

CIN No. – L18101MH2007PLC233901

...Applicant Company 2
Transferee Company

(“Collectively referred as Applicant Companies”)

Order delivered on 26.04.2024

Coram:

Shri Prabhat Kumar
Hon’ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon’ble Member (Judicial)

Appearances (through)

For the Applicant(s) : Mr. Ahmed Chunawala, Advocate

ORDER

1. Heard the learned Counsel for the Applicant Companies.
2. The present Scheme is a Scheme of Amalgamation among TCNS Clothing Co. Limited (**Transferor Company**) and **Aditya Birla Fashion and Retail Limited** (Transferee Company) and their respective shareholders under sections 232 r/w Section 230 of the Companies Act, 2013 (**'Scheme'**) and other Applicable provisions of the Companies Act, 2013.
3. The Board of Directors of the Transferor Company and Transferee Company in their respective meetings conducted on 5th May, 2023 for the Transferor Company and the Transferee Company have approved the Scheme.
4. The Rationale of the Scheme is as follows:
 - i. Strengthening of organizational capabilities around operational and financial areas, driving scale benefits through leveraging resources;
 - ii. Enabling coverage of complementary markets and consumer segments in line with focused strategy of building a comprehensive apparel portfolio; entering newer markets and driving penetration;

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- iii. Creating revenue synergies through sharing of consumer understanding, market insights, channel models to ensure faster go to market and achieve faster growth with fewer resources;
- iv. Driving synergy benefits around back-end such as procurement, logistics, supply chain, technology operations and shared services; driving optimal utilization of resources and building centers of excellence for a larger company;
- v. Enhancing organizational capabilities arising from pooling of talent and human capital with diverse skill sets and experience in areas such as design, sourcing and consumer insights, providing strength to operate strongly in a highly fragmented market;
- vi. Enabling more coordinated and comprehensive business management with clear focus on driving common goals around building best quality products, wide distribution, efficient operations, brand building; allowing for more efficient allocation of capital and resources for growth;
- vii. Driving channel efficiencies by providing opportunity to cross-sell products across markets;
- viii. Streamlining of legal, compliance and other statutory functions to allow a more coordinated approach towards governance for the businesses;
- ix. Post Scheme, Transferee Company to become a platform for building category-led business and be better placed to adequately finance the growth prospects of the business;
- x. Driving cost synergies and reducing overlaps between businesses.

5. The Business Clause is as follows:

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- i. The Applicant Company No.1 is engaged, inter alia, in the business of: (a) manufacturing, distribution and sale of women's apparel, jewelry, footwear and beauty products, in any manner and through any format, currently undertaken under brands "W", "Wishful", " Aurelia", "Elleven" and "Folksong"; and (b) wholesale cash and carry trading (including sale through franchisee outlets) of women's apparel, jewelry, footwear and beauty products, in any manner and through any format.
- ii. The Applicant Company No.2 is currently engaged in the business of manufacturing, marketing, sales and/or distribution of fashion apparel, footwear and accessories through offline and/or online channels including wholesale, retail and e-commerce under multiple owned and licenced brands.
6. The Authorized Share Capital of the Applicant Company No.1, as on March 31, 2024 is as under:

Particulars	Amount (in Rs.)
Authorized Capital	
18,00,00,000 equity shares of INR 2 each	36,00,00,000
2,00,00,000 preference shares of INR 1 each	2,00,00,000
Total	38,00,00,000
Issued, Subscribed and Paid-up	
6,32,73,418 equity shares of INR 2 each	12,65,46,836
Total	12,65,46,836

Applicant Company No. 1 is a subsidiary of Applicant Company No. 2. As on March 31, 2024, Applicant Company No. 2 holds 3,29,08,325 (Three Crore Twenty-Nine Lakh Eight Thousand Three Hundred and Twenty-Five) equity shares of Applicant Company No. 1 representing

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52.01% of the share capital of Applicant Company No. 1 and is a promoter of Applicant Company No. 1.

7. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme shall be convened & held as may be decided by the Chairman.
8. The Share Capital of the Applicant Company No.2 as on the March 31, 2024 is as under:

Particulars	Amount in (Rs.)
Authorised Capital	
2,00,00,00,000 equity shares of INR 10 each	20,00,00,00,000
50,00,000 8% Redeemable Cumulative Preference Shares of INR 10 each	50,00,000
15,000 Redeemable Cumulative Preference Shares of INR 100 each	15,00,000
95,00,000 Preference Shares of INR 10 each	9,50,00,000
Total	20,10,15,00,000
Issued and Subscribed Share Capital	
1,01,52,15,146 equity shares of INR 10 each	10,15,21,51,460
11,10,000 8% Non-Cumulative Non-Convertible Redeemable Cumulative Preference Shares of INR 10 each	1,11,00,000
Total	10,16,32,51,460
Fully Paid-up Share Capital:	
1,01,50,09,642 equity shares of INR 10 each	10,15,00,96,420

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11,10,000 8% Non-Cumulative Non-Convertible Redeemable Cumulative Preference Shares of INR 10 each	1,11,00,000
TOTAL	10,16,11,96,420

As on date, there is no change in the capital structure of the Applicant Company No.2.

9. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme shall be convened & held as may be decided by the Chairperson.
10. At least 30 clear days before the said meetings of the Equity Shareholders of the Applicant Company No. 1 & 2 to be held as aforesaid, a notice convening the said Meetings at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed form of proxy, shall be sent by email to each of the equity shareholders of all the Applicant Company No. 1 & 2 at their respective last known e-mail addresses of the respective Equity Shareholders as per the records of the Applicant Company No.1 & 2 or can be obtained free of charge at the registered office of the respective Applicant Companies as aforesaid. Equity shareholders whose e-mail address are not available, shall be provided an opportunity by way of notice in the advertisement of notice mentioned below to register their e-mail address to receive the notice of the relevant meetings, and to provide access to download the said notices from the respective websites of the Applicant Company No. 1

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or Applicant Company No. 2 (as the case may be), for those equity shareholders who may not have received the said notice. The Applicant Company No.1 & 2 shall publish the respective notices convening the meetings of Equity Shareholders in 'Business Standard' in English and 'Navshakti' in Marathi having circulation in the State of Maharashtra in which the registered office of the company is situated.

11. The Applicant Company No. 1 & 2 undertake to:
 - i. Issue notice convening the respective meetings of the Equity Shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - ii. issue statement containing all the particulars as per Section 230 of the Companies Act, 2013;
 - iii. Issue form of proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
 - iv. advertise the notice convening the said meetings as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. That Mr. Mukesh Mittal (Retd. IRS), Mob: 8586889911, email mukeshmittal6045@gmail.com shall be the Chairperson of the meeting of Equity Shareholders of the Applicant Company No. 1. The Scrutinizer for the meeting of the Applicant Company No. 1 shall be Mr. Mitesh Shah, ICSI No. F10070 COP 12891, Contact No: 9820464964, Email: csmjshah@gmail.com. The Applicant Companies

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are directed to pay Rs.2.00 Lakh to the Chairpers on and Rs. 50,000/- to the Scrutinizer for the Applicant Company No.1.

13. That Ms. Seema Khorana Patra, (Retired IRS), Mobile No. 9769537222 and 9969235258; email seemapatra@gmail.com shall be the Chairperson of the meeting of the equity shareholders of Applicant Company No. 2. The scrutinizer for the meeting of Applicant Company No.2 shall be Mr. Mitesh Shah, ICSI No. F10070 COP 12891, Contact No: 9820464964, Email: csmjshah@gmail.com. The Applicant Companies are directed to pay Rs.2.00 Lakh the Chairperson and Rs. 50,000/- to the Scrutinizer for the Applicant Company No.2.
14. The respective Chairpersons appointed for the aforesaid meetings of the Equity Shareholders of the Applicant Company No. 1 & 2 to issue the notices of the meetings referred to above. The said Chairpersons shall have all powers under the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including the manner and mode (whether through video conferencing or physical), and for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meetings by any person(s).
15. The quorum for the aforesaid meetings of the Equity Shareholders of the Applicant Company No. 1 & 2 shall be as prescribed under Section 103 of the Companies Act, 2013. In case the required quorum as stated above is not present at the commencement of the meetings, the meetings shall be adjourned by 30 (thirty) minutes and thereafter the persons present shall be deemed to constitute the quorum.

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16. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, is filed with the Applicant Company No.1 & 2 at their respective Registered Offices not later than, 48 hours before the aforesaid Equity Shareholders meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Company No. 1 & 2 or depository records and where the entries in the books / register / depository records are disputed, the respective Chairpersons of the Meetings shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
18. The respective Chairpersons to file an affidavit not less than seven days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
19. The respective Chairpersons to report to this Tribunal, the result of the aforesaid meetings within thirty days of the conclusion of the meetings, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
20. That the counsel for the Applicant Company No. 1 & 2 submits that since the Scheme is an amalgamation between the Applicant

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Companies and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013.

21. That there is 1 (Sole) 8% Non-Cumulative Non-Convertible Redeemable Preference Shareholder in the Applicant Company No. 2. That the convening and holding the meeting of the 8% Redeemable Preference Shareholders in the Applicant Company No. 2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme is dispensed with in view of the consent affidavit given by the Sole 8% Redeemable Preference Shareholders in the Applicant Company No. 2.
22. That there are 4 (Four) Secured Creditors in the Applicant Company 1 having value of Rs. 99,50,87,606/- as on 31st December, 2023 i.e. HDFC Bank, ICICI Bank, Yes Bank and CITI Bank. That the convening and holding the meeting of the Secured Creditors of the Applicant Company No. 1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme is dispensed with in view of the consent affidavits given by all the Secured Creditors.
23. That there are 4 (Four) Secured Creditors in the Applicant Company 2 having value of Rs. 17,27,77,00,000/- as on 31st December, 2023 i.e. Axis Bank Limited, Federal Bank Limited, SBI Bank and HDFC Bank. That the convening and holding the meeting of the Secured Creditors of the Applicant Company 2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme is dispensed with in view of the consent affidavits given by all the Secured Creditors of the Applicant Company 2.

24. That there are 431 (Four Hundred and Thirty-One) Unsecured Creditors having value of Rs. 253,09,92,253/- as on 31st December, 2023 in the Applicant Company No. 1. That there are 7961 (Seven Thousand Six Hundred and Thirty-One) Unsecured Creditors (including debenture holders) of the value of Rs. 31,10,02,29,127/- as on 31st December, 2023 in Applicant Company No. 2. The Counsel for the Applicant Companies submits that so far as Unsecured Creditors of the Applicant Companies are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Companies and the Scheme does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Companies and hence they will in no way be affected by the Scheme of Amalgamation. The Applicant Company No. 2 has obtained a Net-worth certificate from M/s Suresh Surana & Associates LLP which states that the Applicant Company No. 2 will have a positive net-worth post amalgamation which is annexed as Exhibit BB to the Company Scheme Application stating that the Net-worth of the Applicant Companies is Rs. 3911.90 crores. The Counsel for the Applicant Companies submits that in view of the **Judgment of Mahaamba Investments Limited V/s IDI Limited (2001)** 105, this Bench is of the view that there will be no impact on the Creditors of the Companies and that they have a highly positive net worth. Hence, this bench hereby directs the Applicant Companies to issue notice to their respective Unsecured Creditors by Courier/ Registered AD/ Speed Post/ email (whose email address are registered with the Company) with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company. Hence, this bench hereby directs

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the Applicant Companies to issue notice to their respective Unsecured Creditors by Registered AD/ Speed Post, email (whose email address are registered with the Company) with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1 and 2, as applicable.

25. The Applicant Companies shall serve the notice pursuant to Section 230(5) of the Companies Act, 2013 read with 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon:
- i. Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra;
 - ii. Registrar of Companies, Mumbai;
 - iii. The Income Tax Department within whose jurisdiction along with the CCIT, Nodal Officer;
 - iv. The concerned GST Authorities (if registered) within the registered office in the state it is registered;
 - v. BSE Limited (BSE);
 - vi. National Stock Exchange of India Limited (NSE) and
 - vii. Securities and Exchange Board of India (SEBI);

with a direction that they may submit their representations in relation to the Scheme, if any, to this Tribunal within 30 days from the date of receipt of the said notice, with a copy thereof to the concerned Applicant Company No. 1 or 2, failing which it shall be presumed that concerned authorities have no objection to make on the proposed Scheme.

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26. The Transferor Company is also directed to serve the Copy of Scheme upon the Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
27. The Notice shall be served through by Registered Post-AD/ Speed Post/ Hand Delivery and email along with copy of Scheme and state that “*If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme*”. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.
28. The Applicant Companies will submit, to the extent not forming part of the scheme, –
 - a. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.
 - b. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme.
 - c. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.
29. The Applicant Company to file affidavit of service in the registry proving dispatch of notices to the Regulatory authorities and do report

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to this Tribunal that the directions regarding the issue of notices have been duly complied with.

30. The Appointed Date shall mean Effective Date or such date as may be approved by the Tribunal.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V. G. Bisht
Member (Judicial)