

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, 500/-

PRINCIPAL BENCH

NEW DELHI

Company Petition No. 129 PB 2018

Connected with

Company Application No.CA (CAA) 33/PB/2018

Judgment dated: 01.05.2019

Coram:

CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR,

HON'BLE PRESIDENT

&

MR. S.K. MOHAPATRA,

MEMBER (TECHNICAL)

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013

read with Companies (Compromises, Arrangements, and Amalgamations)

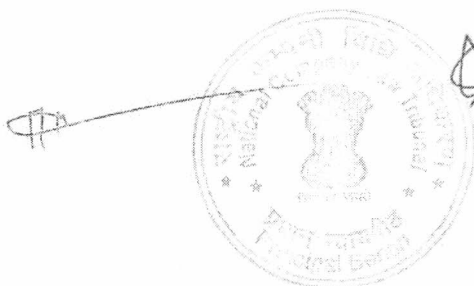
Rules, 2016.

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN

DCM LIMITED



No. 591
Date of Petition
Date of Preparation of Copy 06/05/19
No. of Pages 7
Copying Fee 57/-
Registration Fee
Date of Receipt &
Record of Copy
Date of Preparation of Copy 09/05/19
Date of Delivery of Copy 09/05/19
DD/DR/AR Court Officer
National Company Law Tribunal
New Delhi

HAVING ITS REGISTERED OFFICE AT
VIKRANT TOWER, 4, RAJENDRA PLACE
NEW DELHI – 110008

..... APPLICANT NO.1 / DEMERGED COMPANY NO. 1

AND

DCM NOUVELLE LIMITED

HAVING ITS REGISTERED OFFICE AT
601, 6TH FLOOR, VIKRANT TOWER,
4, RAJENDRA PLACE
NEW DELHI – 110008

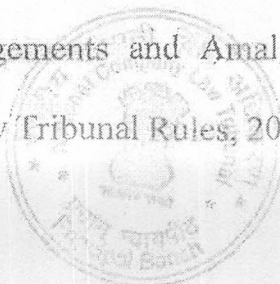
....APPLICANT NO. 2/ RESULTING COMPANY

Counsel for the Applicants: Mr K. Datta, Mr. Rajeev Kumar, Ms. Pallavi Shrivastava, Ms. Prachi Johri, Mr. Rahul Gupta & Mr Mahesh Agarwal, Advocates

ORDER

M.M.KUMAR, PRESIDENT

1. This Joint Application has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval



of the Scheme of Arrangement. The copy of the Scheme has been placed on record.

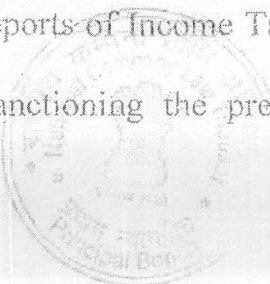
2. A perusal of the petition that initially the First Motion application seeking directions for convening/dispensing with the meetings of Shareholders and Creditors was filed before us and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, first motion order issued directions with respect to the same. On 10.09.2018 the Petitioners were directed to carry out publication in the newspapers English Daily 'Business Standard' (Delhi Edition) as well as in Hindi Daily 'Jansatta' (Delhi Edition). In addition thereto notices were directed to be served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department, SEBI, NSE, BSE and to the other relevant sectoral regulators.
3. It is seen from the records that the Petitioners have filed an affidavit affirming compliance of the order passed by the Tribunal. A perusal of the Affidavit discloses that the petitioners have effected the newspaper publication as directed in English Daily 'Business Standard' (Delhi Edition) as well as in Hindi Daily 'Jansatta' on 06.10.2018 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition were duly served on the Regional Director, Northern Region, Registrar of Companies, Delhi and Haryana, and Income Tax Department in compliance of the order

and in proof of the same acknowledgement by the respective offices have also been place on record.

4. The Regional Director has filed its representation and has made a few observations. Firstly, the Regional Director has stated that there is a complaint against demerged company regarding non-payment of amount of FDR which is under process. Secondly, the resulting company required to pay requisite fee on increase on its authorized share capital. Thirdly, the Regional Director has submitted that the appointed date as mentioned in the Scheme is 01.01.2017 which is more than two years old. Since one of the petitioners is a listed company, the petitioners be asked to revise their appointed date complying with applicable provisions. Lastly , it has been observed that the petitioner companies have not filed their latest statutory returns and be directed to file the same.
5. A rejoinder affidavit dated 11.04.2019 was filed by the Petitioner Companies replying to the observations of Regional Director. It is submitted by the companies that, first, the demerged company does not respond to the letters of investors as may be received through the RoC. However, the undertake to respond to them accordingly in the future. Secondly, they've also undertaken to pay the requisite fees if the authorized share capital of the resulting company is increased. Thirdly, it is submitted by the companies that resulting company vide board resolution dated 08.02.2019 and demerged company vide

board resolution dated 11.02.2019 have decided that they have no-objection if the appointed date is revised to 01.04.2019 for accounting convenience. Lastly, it has been submitted by the companies that they have filed their latest statutory returns with RoC, NCT of Delhi and Haryana.

6. It is pertinent to note the Income Tax Department, BSE and NSE have also given their no-objection to the Scheme.
7. In the joint petition it has also been affirmed that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 are pending against the Petitioner Companies.
8. Certificates of respective Statutory auditors of the both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.
9. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, and Reports of Income Tax Department, there appears to be no impediment in sanctioning the present scheme. Consequently,



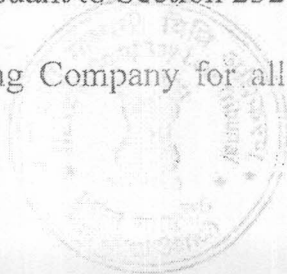
sanction is hereby granted to the scheme under section 230 to 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law. It is also to be noted that the revised Appointed Date is 01.04.2019.

10. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

11. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any granting exemption from payment of stamp duty, taxes including income tax, GST etc or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

12. THIS TRIBUNAL DO FURTHER ORDER

1. All property, rights and powers of Demerged Undertaking be transferred without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vested in the Resulting Company for all intents, purposes and interests of the



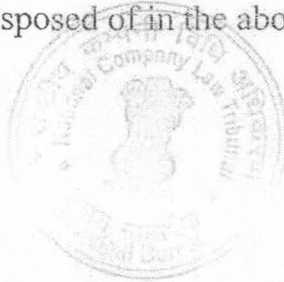
Demerged Undertaking subject nevertheless to all changes now affecting the same and;

2. All the liabilities (if any) and duties of Demerged Undertaking be transferred without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Resulting Company; and
3. Any proceedings pending by or against Demerged Undertaking or/ and Demerged Undertaking be continued by or against the Resulting Company, ; and
4. The Petitioner Companies shall within thirty Days of the date of the receipt of this order cause a certified copy of this order delivered to the Registrar of Companies for registration and the Demerged Undertaking shall be deemed to be transferred.
5. Any person shall be at liberty to apply to the Tribunal in above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.

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of application for Copy... 06/05/19
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Total ₹. 500/-
Date of Receipt &
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Date of Preparation of Copy... 08/05/19
Date of Delivery of Copy... 10/05/19

DEPUTY REGISTRAR
National Company Law Tribunal



Sd/-

(M.M. KUMAR)
PRESIDENT

Sd/-

(S.K. MOHAPATRA)
MEMBER(T)

सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003