

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

(CAA)-26/ND/2020

CONNECTED WITH

CA (CAA) – 182/(ND)/2019

**IN THE MATTER OF: SECTIONS 230-232 OF THE
COMPANIES ACT, 2013**

IN THE MATTER OF SCHEME OF ARRANGEMENT

AMONGST

K.R. Equipments Private Limited

Having Registered Office at
C-15, IFS Apartments, Mayur Vihar Phase- I
Delhi-110091

...Applicant No.1/Demerged Company

WITH

Cleanauto Solutions Private Limited

Having Registered Office at
C-15, IFS Apartments, Mayur Vihar Phase-I
Delhi-110091

...Applicant No.2/Resulting Company

CORAM:

SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)

DR. V.K. SUBBURAJ, MEMBER (TECHNICAL)



APPEARANCE:

For the Petitioner(s): Mr. Pradeep K. Mittal and Praveen K. Mittal, Advocates

For the RD: Ms. Tania Sharma, Ms. Charchika Yadav, Advocates

For the Income Tax Department: Mr. Zoheb Hussain, Sr. Standing Counsel

ORDER

Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

Order delivered on: 02.12.2020

1. This Joint application has been filed by the Applicant Companies under sections 230 and 232 of the Companies Act, 2013 read with the Company (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of approving the Scheme of Arrangement, as contemplated between the Demerged Company with Resulting Company.
2. Both the Demerged Company and the Resulting Company have their registered offices which lie within the jurisdiction of this Tribunal.
3. A perusal of the petition discloses that initially the Demerged Company and Resulting Company had jointly filed the first motion application bearing CA

 2

(CAA)/182/ND/2019 which had been disposed of by this Tribunal vide its order dated 17.01.2020 directing: -

A.) In respect to the Demerged Company:

- i. The requirement of convening a meeting of the shareholders was dispensed with, in view of the consent affidavits of its 3 equity shareholders.
- ii. The requirement of convening a meeting of the 30 unsecured creditors was dispensed with, in view of consent affidavits of more than 90% in value in favour of the scheme.
- iii. As the company has no secured creditors, the requirement of convening a meeting does not arise.

B.) In respect to the Resulting Company:

- i. The requirement of convening a meeting of the shareholders was dispensed with, in view of the consent affidavits of its 2 equity shareholders.
- ii. As the company has no unsecured creditors, the requirement of convening a meeting does not arise.
- iii. As the company also has no secured creditors, the requirement of convening a meeting does not arise.

4. The Demerged Company is currently engaged in pursuing its main objects which are as following



3

To carry on the businesses of designer's manufacturers, fabricators assemblers and dealers of equipments capable of being used in any industry and give consultancy in systems and equipment design etc.

5. The Scheme is sought to be justified on the grounds:

(i) That the employees of both these activities can be incentivized based on the performance of such business activities provided they do have separate entity taking care of expansion and growth requirement.

(ii) Certain investments into incidental business activities can be utilized to their maximum scale and potential provided a focused environment and resource allocation is created through separate entity. Considering this object in mind, it is essential that the Demerged Undertaking comprising of various incidental business activities be transferred through process of the demerger to the Resulting Company.

(iii) The demerger of the Demerged Undertaking of K.R. Equipments Private Limited is proposed whereby the Demerged Undertaking will be transferred to CleanAuto Solutions Private limited.



Demerged Undertaking means all the movable and immovable properties including investments and cash and cash bank balance and liabilities, of whatsoever nature and kind and wherever situated of the Demerged Company, which pertain to its incidental businesses and Investment Undertaking, all the movable and immovable properties, vehicles, investments, employees and other assets related to activities of the Demerged Undertaking.

6. Copies of the audited financial statements as on 30.03.2019 of both the Applicant Companies have been filed.

7. The applicant company has now initiated the Second Motion. An affidavit dated 03.03.2020 discloses that the applicant had effected publication in daily newspapers in "Business Standard" (English) and in "Business standard" (Hindi) both dated 11.02.2020 (Delhi Edition).

8. Further, in compliance with the directions issued by this Tribunal, a notice of the petition has also been served on the following authorities/ sectoral regulators:

- i. Office of the Regional Director, Ministry of Corporate Affairs, New Delhi, (Northern Region);
- ii. Office of the Registrar of Companies, Ministry of Corporate Affairs, NCT of Delhi and Haryana;
- iii. Income Tax Department, New Delhi



A copy of each of the acknowledgements of receipt obtained from each of the aforementioned authorities is attached with the affidavit.

9. That the Regional Director, Northern Region, New Delhi, to whom notice was issued has filed an Affidavit before the New Delhi Bench of the Tribunal and submitted the following observations:

- That the proposed share exchange ratio was approved and adopted by the Board of Directors of the Demerged and Resulting Company at their separate Board meetings held on 01.07.2019 and 30.06.2019 respectively. Whereas the valuation report is dated 07.09.2019 as it could not be ascertained as to how the swap ratio which was prepared on the succeeding date can be approved ahead of the preparation of the valuation report.
- That as per the e-records on MCA-21 portal the resulting company has not yet filed eform MGT-6 regarding holding of one share by Mr. Suvan Agarwal as nominee of the Demerged Company.



10. The petitioner company duly sent their reply to the Regional Director vide letter dated 17.07.2020 replying to both the observations made by the Regional Director. That upon perusal of the same it is observed that the Regional Director reiterates certain observations made in the ROC Report.

11. The counsel for the Income Tax Department have filed an affidavit on 13.07.2020 placing on record the observations of the Income Tax Department. The Income Tax officer in its report submits that there is an outstanding demand of Rs. 39,220/- against the Demerged Company. The counsel for the petitioner has agreed to furnish undertaking to meet the future Tax Liabilities.

12. The Petitioner filed Undertaking affidavit dated 31.07.2020 to the report filed by the Income Tax Department submitting that both the petitioner companies remain the same after the approval of the Scheme of Arrangement and the Income Tax Department can very well

claim the outstanding amount from the Demerged Company.

13. 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, and the Income Tax Department, whereby no specific objections have been raised to the proposed Scheme or if raised has been met by filing undertaking, there appears no impediment to grant sanction to the Scheme. However, the Companies shall remain bound by the undertaking filed by either of them. Consequently, sanction is hereby granted under Sections 230-232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

14. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this

Tribunal sanctions the Scheme of Arrangement annexed with the Company Petition as well as the prayer made therein.

15. 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 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.

16. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

That in terms of the Scheme:

- A.** All the property, rights and powers of the Demerged Undertaking of the Demerged Company 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 vest in the Resulting company for all the estate and interest of the Demerged Undertaking of the Demerged Company therein but subject nevertheless to all charges now affecting the same;

B. All the liabilities and duties of the Demerged Undertaking of the Demerged Company 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;

C. All proceedings now pending by or against the Demerged Undertaking of the Demerged Company be continued by or against the Resulting company,

D. All the employees of the Demerged Undertaking of the Demerged Company in service on date immediately preceding the date on which the scheme finally take effect shall become



the employees of the Resulting company without any break or interruption in their service;

- E.** Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The Petition stands **allowed** on the above terms.

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(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

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(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)

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