

THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH,
AT NEW DELHI

COMPANY PETITION NO. CAA- 12 (PB)/ 2019

Under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the matter of
Scheme of Arrangement between

Ogaan India Private Limited	Demerged Company
AND	
Ogaan Retail Private Limited	Resulting Company

Judgment delivered on: 21.05.2019

CORAM:

CHIEF JUSTICE (RTD.) M.M. KUMAR, HON'BLE PRESIDENT

Mr. S. K. MOHAPATRA, HON'BLE MEMBER (T)

Present:

For Petitioners : Ms. Shweta Bharti, Mr. J. K. Chaudhary,
Ms. Katyani Mahendru, Advocates.

For ITD : Ms. Lakshmi Gurung Standing Counsel.



ORDER

S. K. Mohapatra, Member

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 by way of Demerger of the demerged undertaking of demerged Company and vesting it into the Resulting Company. The copy of the Scheme of Arrangement (hereinafter referred as the "Scheme") has been placed on record.
2. The "Demerged Company", M/s Ogaan India Private Limited was incorporated on 24.12.1982 under the provisions of the Companies Act, 1956, having its Registered Office at H-2, Hauz Khas Village, New Delhi-110016.
3. The "Resulting Company", M/s Ogaan Retail Private Limited was incorporated on 15.09.2017 under the Companies Act, 2013, having its registered office situated at



H. No. 4895, Plot No. 99, Ward No. XI, H-2, Hauz Khas Village, New Delhi-110016.

4. It is seen from the records that the First Motion application seeking dispensation from convening the meetings of Shareholders and Creditors of petitioner companies was filed before this Bench vide CA (CAA) No. 161 (PB) 2018 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders, Secured Creditors of both the petitioner companies and unsecured creditors of resulting company were dispensed with, vide order dated 12.10.2018 passed by this Bench. Directions were also issued in the same order to convene meeting of unsecured creditors of Resulting Company.
5. Subsequently, in compliance of the order dated 12.10.2018 the aforementioned meeting was duly convened on 10.12.2018 and the proposed Scheme was unanimously approved by the members present and voting in the meeting. The reports of the Chairperson and Scrutinizer have been placed on record.



6. Subsequently, on 01.02.2019 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Jansatta' Hindi Delhi edition. In addition to the public notice, notices were directed to be served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.
7. It is seen from the records that the Petitioner companies have filed an affidavit dated 22.02.2019, affirming compliance of the order dated 01.02.2019. A perusal of the affidavit discloses that the Petitioners have affected the newspaper publication as directed in one issue of the "Business Standard" English Edition on 21.02.2019 as well as in "Jansatta" Hindi Edition on 20.02.2019, in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of the petition have been duly served to the Regional Director (Northern Region), Official Liquidator, Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department and to other relevant sectoral regulators in compliance of the order and in proof of the same



acknowledgement made by respective offices have also been enclosed.

8. The Regional Director has filed its representation on 27.03.2019 wherein no objection has been raised against the Scheme. It is further stated in the report that Registrar of Companies has not received any compliant/ objection from shareholders, creditors or any other stakeholders of the Petitioner Companies. It is also stated that the Demerged company and Resulting Company have filed their up to date Annual Return and Balance Sheet for the year ending 31.03.2018 and no prosecution, investigation or inspection has been conducted in respect of petitioner companies.
9. The Official Liquidator has filed its report on 28.03.2019 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the demerged company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.



10. The Department of Income Tax has also filed its report on 11.04.2019 wherein it is submitted that there is no outstanding demand pending in respect of Demerged Company.
11. The petitioner companies have filed affidavit dated 25.04.2019 in which it is stated that the both the Demerged Company and the Resulting Company will continue as a going concern and any revenue dues can be recovered from the petitioners as per law. However, it is seen that the Income Tax Department has not raised any objection against the sanctioning of the Scheme.
12. Be that as it may, in order to protect the interest of the Revenue, it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. as provided in law.
13. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner



Companies. It is stated that the appointed date as provided in the Scheme shall be April 1st, 2018.

14. Certificates of respective Statutory auditors of both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation 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.
15. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies as approved by shareholders and creditors.
16. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three Judges Bench of Hon'ble Supreme Court held that:



'A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process.'

17. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.
18. It has also been affirmed in the petition that the Scheme is in the interest of both the demerged company and the resulting company including their shareholders, creditors, employees and all concerned.
19. In view of the foregoing, upon considering the approval accorded by the members and creditors of both the Petitioner companies to the proposed Scheme, and the no objection affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, Official Liquidator and Income



Tax Department and also as no objection from any quarter against the Scheme has been received; there appears to be no impediment in sanctioning the present Scheme.

20. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

21. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

22. 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.

23. While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.



24.

THIS TRIBUNAL DO FURTHER ORDER

- i. *That all the property, rights and powers of demerged company in respect 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 Companies Act, 2013, be transferred to and vest in the resulting company.*
- ii. *That all the liabilities and duties of demerged company in respect 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*
- iii. *That all proceedings now pending by or against demerged company in respect of demerged undertaking, be continued by or against the resulting company; and*



iv. *That all the employees of demerged company in respect of demerged undertaking, if any, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the resulting company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in demerged company on the said date.*

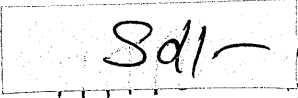
v. *That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Company for registration and on such certified copy being so delivered the Registrar of Company shall place all documents relating to the demerged company in respect of demerged undertaking with the file kept by him in relation to the resulting company; and*




vi. *That 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 disposed of in the above terms.

Let copy of the order be served to the parties.


21.05.19
(M.M. KUMAR)

PRESIDENT


(S.K. MOHAPATRA)

MEMBER (T)