

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**CA (CAA) No. 08/ALD/2024
(First Motion)**

(Under Section 230 and 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 and other Applicable Provisions).

IN THE MATTER OF SCHEME OF ARRANGEMENT OF:

1. TIWARI SHEET GRAH PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 on 11.06.1999 bearing CIN: U15133UP1999PTC024500) having its Registered Office at IGLAS ROAD JOGIA HATHRAS U.P- 204101 IN.

.....Transferor/Demerged Company/ Applicant Co.-1

AND

2. TIWARI COLD STORAGE PRIVATE LIMITED, a Company incorporated under the Companies Act, 2013 on 04.05.2021 bearing CIN: U63023UP2021PTC145831) having its Registered Office at 563, SAKET COLONY, ALIGARH ROAD GIRRAJPETROL PUMP HATHRAS, U.P- 204101 IN.

.....Transferee/Resultant Company/ Applicant Co.-2

ORDER DELIVERED ON- 2nd July, 2024

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances:

Shri Anuj Kumar, Adv. : *For the Applicant Companies*
with R.C. Sharma, C.S.

ORDER

1. This is a joint First Motion Application filed by Applicant Companies under Section 230-232 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Arrangement between the Applicant Companies. The said Scheme is attached as **Annexure-5** of the Application.
2. The Applicant Companies have prayed for dispensing with the requirement of convening the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of Transferor/Demerged and Resultant Companies
3. In the Application, it is stated that the Transferor/Demerged i.e. **TIWARI SHEET GRAH PRIVATE LIMITED** is a private limited company and registered under the provisions of the Companies Act 1956 having CIN-U15133UP1999PTC02450 and the Registered Office at Iglas Road, Jogia, Hathras-204101 (Uttar Pradesh). The Authorized Share Capital of the Transferor/Demerged is Rs. 1,20,00,000/- (Rupees One Crore Twenty Lakh Only) divided into 1,20,000 (One Lakh Twenty

Thousand only) Equity Shares of Rs.100/- (Rupees One Hundred) each. The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs.1,09,67,700/-(Rupees One Crore Nine Lakh Sixty-Seven Thousand Seven Hundred only) divided into 1,09,677 (One Lakh Nine Thousand Six Hundred Seventy-Seven only) Equity Shares of Rs.100/- (Rupees One Hundred) each. The Main Objects of the Company are set out in its Memorandum of Association and Articles of Association annexed with the Application and marked as Annexure-2.

4. The partial demerger of “TIWARI SHEET GRAH PRIVATE LIMITED, wherein, manufacturing of ice and preservation of Food and vegetables business undertaking of said Company would be demerged and shall be transferred to another Company “TIWARI COLD STORAGE PRIVATE LIMITED” (hereinafter referred as Transferee Demerger Company) and wherein the remaining business of running the cold storage business for the preservation of potatoes and constructing, developing, building and acquiring by purchase, lease, exchange, run or hire the cold storage or potatoes shall be retained by Tiwari Sheet Grah Private Limited.

- 5.** That present demerger would involve, transfer as ongoing concern basis, all of the undertaking of Unit-I installed at Village Ganga Garhi, Mursan to Iglas Road, District Aligarh of Transferor Company, pertaining to manufacturing of ice and preservation of Food and edible business undertaking including all the present, prospective, assets & liabilities of all the undertaking of Unit-I (hereinafter referred as “Demerged Undertaking” as defined later in the Scheme) & including the assets specifically mentioned in SCHEDULE:-1, made part of the scheme, into TIWARI COLD STORAGE PRIVATE LIMITED, Transferee/Resultant Company, with TIWARI SHEET GRAH PRIVATE LIMITED particularly focusing on business of preservation of potatoes and constructing, developing, building and acquiring by purchase, lease, exchange, run or hire the cold storage (hereinafter referred as “remaining undertaking”).
- 6.** In the Application, it is stated that the Transferee/Resultant Company (the Applicant No.2) i.e. TIWARI COLD STORAGE PRIVATE LIMITED is a private limited company and registered under the provisions of the Companies Act, 2013

having CIN-U63023UP2021PTC14583 and the Registered Office at 63, Saket Colony, Aligarh Road, Girraj Petrol Pump, Hathras, Hathras, Uttar Pradesh, India, 204101. The Authorized Share Capital of the Transferee/Resultant Company is Rs.15,00,000/- (Rupees Fifteen Lakhs Only) divided into 1,50,000 (One Lakh Fifty Thousand only) Equity Shares of Rs.10/- (Rupees Ten) each and present Issued, Subscribed & Paid up is Rs. 1,00,000/- (Rupees One Lakh Only) divided into 10,000 (Ten Thousand Only) Equity Shares of Rs. 10/- (Rupees Ten) each. The Main Objects of the Company are set out in its Memorandum of Association and Articles of Association annexed with the Application and marked as Annexure-4.

- 7.** By the Scheme, with effect from the Appointed Date (30.06.2023), the part of the business and liability as mentioned in the Scheme of Demerger shall be vest in the Resultant Company, Tiwari Cold Storage Private Limited from the Demerged Company Tiwari Sheet Grah Private Limited.
- 8.** It is submitted that the Registered Offices of the Applicant Companies are situated in the State of Uttar Pradesh and, therefore, both the Applicant Companies are under the

territorial jurisdiction of this Bench.

9. The Board of Directors and management of the Transferor/Demerged Company and the Resultant Company have proposed the Scheme of Arrangement of Demerger to Demerge the part of business into the Resultant Company for the following reasons:

- a) allowing each business to create a strong and distinctive platform which enables greater flexibility to pursue long-term objectives;*
- b) enabling accelerated growth of the Construction and building business and allowing the other businesses of Tiwari Sheet Grah Private Limited to explore suitable strategies to fund its growth plans;*
- c) offering the shareholders, a clear focused investment opportunity in the preservation of potatoes business and thereby unlocking value of their holding;*
- d) For synergetic effect and betterment of shareholders and other stakeholders.*

10. The Board of Directors of the Transferor/Demerged Company and of the Resultant Company in their meetings held on 30.06.2023, considered and unanimously approved the proposed Scheme of Arrangement of Demerger subject to sanctioning of the same by this Tribunal.

- 11.** The Appointed Date of the proposed Scheme of Arrangement of Demerger is 30.06.2023.
- 12.** The Applicant Companies have filed the Audited Financial Statements for the Financial Year ended on 31st of March 2023.
- 13.** That the Auditors of the Transferor/Demerged Company and of the Transferee/Resultant Company have certified that upon this scheme becoming effective, the Arrangement of Demerger shall be accounted in the books of accounts of the Transferor/Demerged Company and the Transferee/Resultant Company in accordance with the applicable Accounting Standards (AS) as notified under Section 133 of the Companies Act 2013 read together with the Companies (Accounts), Rules, 2014 and other accounting principles. Copy of Compliance Certificate is annexed and marked as Annexure-10.
- 14.** The Applicants have stated that after Arrangement of Demerger, the members of the Transferor/Demerged Company shall get 1,09,677 equity shares of the Resultant Company of Rs. 10/- each at par in the ratios of 1:1 on proportionate basis to the existing shareholders of the

Transferor/Demerged Company specific to the mirror merger. (The Valuation Report given by Arpit Baslas, the Registered Valuer attached and marked as Annexure-2 of the Scheme of Arrangement of Demerger). These shares shall be allotted keeping in view the provisions of section 230-232 of the Companies Act, 2013 and other relevant/applicable provisions of the companies Act, 2013 and in compliance with the norms laid down under section 2(19AA) of income Tax Act, 1961 and as defined on page 70 to 72 of the petition.

- 15.** It is submitted by the learned authorized representative that the Scheme also takes care of the interests of the staff/workers and employees of the Applicant Companies
- 16.** It is stated that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013, or the provisions of the Companies Act, 1956 is pending against the Applicant Companies.
- 17.** The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors as follows:

Name of the Applicant Companies	Shareholders along with their consent on affidavit		Creditors along with their consents on affidavit			
	Equity Shareholders	Consents submitted on affidavit	Secured Creditors	Consents submitted on affidavit	Unsecured Creditors	Consents submitted on affidavit
Transferor Company/ Applicant No.1	7(Seven)	Affidavit received from all Equity Shareholders constituting 100% of the paid up share capital. Dispensation of the Meeting requested.	1 (One)	Affidavit received from the Secured Creditor constituting 100% of the total Value of Debt. Dispensation of the Meeting requested.	4 (Four)	Affidavit received from all Unsecured Creditors constituting 100% of the total Value of Debt. Dispensation of the Meeting requested.
Resultant Company/ Applicant No.2	2(Two)	Affidavit received from all Equity Shareholders constituting 100% of the paid up share capital. Dispensation of the Meeting requested.	NIL	NIL	NIL	NIL

18. Accordingly, the directions of this Bench in the present case are as under:-

In relation to Transferor and Resultant Companies:

- a. *All the equity shareholders of the Transferor/ Demerged Company and the Resultant Company have given their written consents by way of affidavits, therefore the requirements of convening meeting of the Shareholders of the Transferor/ Demerged Company and the Resultant Company may be dispensed with.*
- b. *Since the Secured Creditors of the Transferor/ Demerged Company has given its No Objection Certificate and the Transferee/ Resultant Company has No Secured Creditor, therefore the requirements of convening meeting*

of the Secured Creditors of the Transferor/Demerged Company and the Transferee/Resultant Company may be dispensed with.

- c. It is stated that the Transferor/Demerged Company has 4 Unsecured Creditors and they have given their No Objection by way of Affidavits for the proposed Arrangement of Demerger, and the Transferee/Resultant Company has No Unsecured Creditor, thus the holding of meetings of Unsecured Creditors of the Transferor/Demerged Company and the Transferee/Resultant Company be dispensed with.*

19. In view of the above, the first Motion Application stands allowed by giving liberty to the Applicant Companies to file Second motion Petition with a prayer that the Applicant Companies shall make specific prayer for sending notices to the (a) the Central Government through the office of Regional Director, Northern Region Ministry of Corporate Affairs, (b) ROC Kanpur, (c) Official Liquidator, Allahabad, (d) Income Tax Department through the Nodal officer, Principal Chief Commissioner of Income Tax (East) Lucknow stating the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition. The applicant companies shall also file separate affidavits stating the Sectoral regulators

governing the respective companies while filling second motion petition.

- 20.** The Company Petition for confirmation of the scheme is to be filed within the time period prescribed under the provisions of the act and corresponding rules made thereunder.
- 21.** That appropriate prayer would also be made in the second motion petition for publication in newspaper.
- 22.** The application bearing Company Application CA (CAA) No.8/ALD/2024 is disposed of accordingly.
- 23.** Certified Copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

-Sd-

(Ashish Verma)
Member (Technical)

Date- 2nd July, 2024

-Sd-

(Praveen Gupta)
Member (Judicial)