

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO.II**

**C.P. (CAA) NO.56/KB/2023
Connected with
C.A. (CAA) NO.4/(KB)/2023**

A petition under Section 230(6) read with Section 232(3)

IN THE MATTER OF :

NOVEL SUPPLIERS PRIVATE LIMITED, a company incorporated under the companies act, 1956 and being a company within the meaning of the companies act, 2013, having corporate identification no. U51109WB1996PTC077415 and its Registered Office At 504, Woodburn Central, 5A, Bibhabati Bose Sarani, Kolkata 700 020 In The State Of West Bengal

AND

VM VINIMAY PRIVATE LIMITED, a company incorporated under the companies act, 1956 and being a company within the meaning of the companies act, 2013, having corporate identification no. U51909WB2009PTC139715 and its Registered Office At 504, Woodburn Central, 5A, Bibhabati Bose Sarani, Kolkata 700 020 In The State Of West Bengal

- 1. NOVEL SUPPLIERS PRIVATE LIMITED**
- 2. VM VINIMAY PRIVATE LIMITED**

... Petitioners

Date of pronouncing the order: 22nd July, 2024

Coram:

Shri Bidisha Banerjee, Member (Judicial)

Shri. D. Arvind, Member (Technical)

APPEARANCE

FOR THE PETITIONERS: Mr D N Sharma, Adv.

Mr Aniket Agarwal, Adv.

Mr Bhargav Chakraorty, Adv.

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Per: Bidisha Banerjee, Member (Judicial)

- 1.** The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“**Act**”) for sanction of the Scheme of Arrangement between Novel Suppliers Private Limited, being the Petitioner No.1 above named (“**Demerged Company**”) and VM Vinimay Private Limited, being the Petitioner No.2 abovenamed (“**Resulting Company**”) whereby and whereunder the Derivatives Trading Business (Demerged Undertaking) of the Demerged Company is proposed to be transferred to and vested in the Resulting Company from the Appointed Date, viz 1st April, 2022 in the manner and on the terms and conditions stated in the said Scheme of Arrangement (“**Scheme**”). The Scheme is annexed as Annexure “A” at pages 19 to 34 of the petition.
- 2.** The Petition has now come up for final hearing. Counsel for the Petitioners submits as follows:-

 - (a)** The Scheme was approved unanimously by the respective Board of Directors of the Demerged Company and Resulting Company at their respective meetings held on 22nd September, 2022 and 20th September, 2022. The board resolutions of the Petitioners are annexed as **Annexure “H”** at pages 166 to 167 and 168 to 169, respectively, of the petition.
 - (b)** The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

 - i.** The Demerged Company is a registered Non-Banking-Financial-Company engaged in the business of (a) investing in shares and securities (“**Investment Business**”) with a long term perspective, (b) trading in derivatives of shares and securities (“**Derivatives Trading Business**”) and

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(c) providing finance (“**Financing Business**”). The Investment Business of the Demerged Company is different from the Derivatives Trading Business of the Demerged Company. While the Demerged Company is engaged in trading in derivatives in its Derivatives Trading Business, it does not generally trade in the shares and securities held by it in its Investment Business. The investments of the Demerged Company in its Investment Business includes a strategic long-term investment in Equity Shares of a listed group company, namely Balrampur Chini Mills Limited (“**BCML**”), which constitutes a significant percentage of the total Equity Share Capital in BCML. Such shares in BCML are part of the controlling stake of the promoters in BCML. Such shares in BCML and a few shares in another listed company are held by the Demerged Company with a long term perspective and are not intended to be traded. However, unlisted shares and securities, including units in mutual funds, acquired and held as investments by the Demerged Company over the years have been lodged for meeting the margin / collateral requirements for trading in the derivatives segment. Such shares and securities are thus now part of the Derivatives Trading Business of the Demerged Company. In its Financing Business, the Demerged Company has provided finance in the form of inter-corporate deposits.

ii. The business considerations and factors applicable to the Derivatives Trading Business of the Demerged Company are different and divergent in nature from the Investment Business and Financing Business (collectively the “Investment-cum-Financing Business”) of the Demerged Company. The Derivatives Trading Business and the Investment-cum-Financing Business of the Demerged Company have their own set of strengths and dynamics in the form of nature of risks, challenges, opportunities and business methods, leading to different growth

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potentials and opportunities. The respective portfolio, size and strategic imperatives of the said businesses, prospects thereof and other factors applicable to the running and development of the said businesses are different and divergent in nature. As such the said Investment-cum-Financing Business constitutes one business vertical of the Demerged Company and the Derivatives Trading Businesses constitutes the other business vertical of the Demerged Company and such two business verticals, including funding thereof, are required to be treated and pursued separately.

iii. The Resulting Company is also a registered Non-Banking-Financial-Company and a group company of the Demerged Company. Till recently, the Resulting Company was only investing in shares and securities and was not trading in the same. However, none of the shares and securities so acquired by the Resulting Company over the years are strategic investments in any group companies. The Resulting Company was desirous of undertaking and focusing on its own Derivatives Trading Business. Accordingly, the Resulting Company recently registered itself and obtained client code for trading in the derivatives on NSE and BSE and lodged all the shares and securities acquired by it, as above, for meeting the margin / collateral requirements for trading in the derivatives segment. The Resulting Company has since commenced trading in derivatives. The Demerged Company and the Resulting Company have been looking at suitable proposals for restructuring and carrying on their businesses more conveniently.

iv. In the circumstances and as part of an overall restructuring plan, it is considered desirable and expedient to reorganise and reconstruct the Demerged Company and the Resulting Company by demerging its Derivatives Trading Business (Demerged Undertaking) to the Resulting

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- v.** Company in the manner and on the terms and conditions stated in this Scheme of Arrangement. The Investment-cum-Financing Business of the Demerged Company will continue to be owned, managed and run by the Demerged Company.
- vi.** The said businesses of the Demerged Company and the Resulting Company will stand realigned appropriately in two companies pursuant to the demerger. Such demerger will enable the Investment-cum-Financing Business and Derivatives Trading Business to be pursued and carried on more conveniently and advantageously with greater focus and attention through such two separate companies, i.e. the Demerged Company and the Resulting Company. The business considerations and factors applicable to the said businesses will be addressed more effectively and adequately by the respective companies.
- vii.** The Scheme will enable suitable combination and pooling of resources of the Derivatives Trading Business of the Demerged Company with the Derivatives Trading Business of the Resulting Company. The same will result in a consolidated and larger Derivatives Trading Business in the Resulting Company having greater capacity for conducting its operations with more efficient utilisation of their resources and improvement in various other operating parameters going forward.
- viii.** The Scheme will result in the said businesses being held more appropriately in such two separate companies and enable independent evaluation of the same. The same will facilitate running and operation of the said businesses and growth and development thereof to be funded independently and unlock shareholders value.

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ix. The Scheme will enable optimum running, growth and development of the respective businesses and interests of the Demerged Company and the Resulting Company and have beneficial results for the said Companies, their shareholders and all concerned. The Scheme is proposed accordingly.

(c) The Statutory Auditors of the Demerged Company and the Resulting Company have by their certificates dated 1st September, 2022 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. The Certificates on such accounting treatment issued by the Auditors of the Resulting Company are annexed collectively as Annexure “P” at pages 222 to 229 of the petition.

(d) The shares of the Petitioners are not listed on the stock exchanges.

(e) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners.

(f) The Demerged Company and the Resulting Company each have only one class of shareholders, viz Equity Shareholders. The Demerged Company has only one class of creditors, viz Unsecured Creditors, and does not have any secured creditors. The Resulting Company does not have any creditors, whether secured or unsecured. The certificate on class of shareholders of the Demerged Company is annexed as Annexure “I” at pages 170 to 172 of the petition. The certificate on class of shareholders of the Resulting Company is annexed as Annexure “J” at pages 173 to 174 of the petition. The certificate on class of creditors of the Demerged Company is annexed as Annexure “K” at pages 175 to 177 of the petition. The certificate on

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status of creditors of the Resulting Company is annexed as Annexure “L” at page 178 of the petition.

(g) The entitlement ratio of shares in consideration of the demerger has been fixed on a fair and reasonable basis and on the basis of the Report dated 1st September, 2022 of Mr Hansraj Jaria, Chartered Accountant and Registered Valuer. The report is annexed as “O” at pages 202 to 221 of the petition.

(h) By an order made on 28th February, 2023 as corrected by an order dated 1st March, 2023 in Company Application CA(CAA) No.4/KB/2023, this Hon’ble Tribunal was pleased, *inter alia*, to:

- a. dispense with the meetings of the Equity Shareholders the Petitioners in view of all (100%) Equity Shareholders having given their consent by their consent by way of affidavits to the proposed Scheme of Arrangement;
- b. dispense with the meeting of the sole Unsecured Creditor of the Demerged Company in view of the consent affidavit provided by way of affidavit to the proposed Scheme of Arrangement;
- c. direct notices to be issued u/s 230(5) of the Companies Act, 2013 to the Statutory Authorities; and
- d. direct the Petitioners to file their confirmation petition for sanction of the Scheme under Section 230(6) read with Section 232(3) of the said Act.

Copies of the said orders are annexed, collectively, as Annexure “M” at pages 179 to 186 of the petition.

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- (i) In compliance with the said order dated 28th February, 2023, the Petitioners had duly sent notices to the Statutory Authorities, being (i) the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; (ii) Registrar of Companies, Kolkata; (iii) Income Tax Department having jurisdiction over the Petitioners and (iv) Reserve Bank of India, Department of Supervision (Non-Banking), Kolkata by hand delivery through special messenger, email and Speed Post, on 15th March, 2023. Copies of the Notice sent to the Statutory Authorities, as aforesaid, and postal receipts thereof are annexed as Annexure “A” at pages 4 to 87 of the affidavit of service filed by the Petitioners on 31st March, 2023.
- (j) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 2nd June, 2023, the instant petition was admitted by this Tribunal and made returnable on 4th July, 2023. In compliance with the said order, the Petitioners have duly sent notices afresh to the Statutory Authorities, being
- (k) (i) the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; (ii) Registrar of Companies, Kolkata; (iii) Income Tax Department having jurisdiction over the Petitioners and (iv) Reserve Bank of India, Department of Supervision (Non-Banking), Kolkata, by hand delivery through special messenger, by post and by email, on 5th June, 2023. Further, the Petitioners in compliance with the directions given by this Tribunal on 2nd June, 2023 have also duly published the notice of hearing once each in the “Financial Express” in English and “Aajkal” in Bengali in their respective issues dated 19th June, 2023. An affidavit of service in this regard has also been filed by them on 3rd July, 2023. Copies of the Notice to the Statutory Authorities as aforesaid, postal receipts thereof and newspaper publications are annexed as Annexures “A”, “B”, “C” at pages

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5 to 87B, 88 to 88E, and 89 to 90, respectively, of the said affidavit of service filed by the Petitioners on 3rd July, 2023.

(1) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

3. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”) and the Reserve Bank of India, Department of Supervision (Non-Banking) (“**RBI**”) have made their representations in the matter.

4. The RBI by its letter dated 1st July, 2024 has given its no-objection to the Scheme as follows:-

“2. In this connection, we advise that the Bank does not have any objection to the proposed scheme of arrangement between Novel Suppliers Private Limited (NBFC, CoR- B.05.04357) and VM Vinimay Private Limited (NBFC, CoR- N.05.06928).”

3. Please note that this “No Objection” is valid for six months from the date of issuance of this letter.

4. You are further advised to intimate us the date of sanction of the scheme of arrangement by the Hon’ble NCLT along with a certified true copy of the NCLT order within one month from the date of the order.”

5. The RD has made his representation by his reply affidavit on 28th June, 2023 (“**RD Affidavit**”). The observation of the RD have been dealt with by

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the Petitioners by their Rejoinder affidavit on 5th July, 2024 (“**Rejoinder**”).
The observations of the RD and responses of the Petitioner are as under:-

A. Paragraph 2(a) of RD Affidavit:

“That it is submitted that as per available record, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, the Demerged Company and Resulting Company are up-dated in filing their Financial Statements and Annual Returns for the financial year 31/03/2022.”

Response as per Paragraph 3 of Rejoinder:

“The contents of paragraph 2(a) of the said Affidavit are admitted.”

B. Paragraph 2(b) of RD Affidavit:

“That it is submitted that the Resulting Company namely VM Vinimay Private Limited having Registration No. N.05.06928 dated 18/04/2012 and the Demerged Company namely Novel Suppliers Private Limited having Registration no. B05.04357 dated 11/09/2001 are registered with RBI as NBFC Companies. However, no ‘NOC’ from RBI has been provided yet in the matter.”

Response as per Paragraph 4 of Rejoinder:

“With reference to paragraph 2(b) of the said Affidavit, I state that the Petitioners had duly applied to the Reserve Bank of India (“**RBI**”) for its no-objection to the Scheme of Arrangement. The RBI by its letter dated 1st July, 2024 has since given its no-objection to the Scheme of Arrangement.

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A copy of the said letter dated 1st July, 2024 of the RBI is annexed hereto and **marked as “A”**.”

C. Paragraph 2(c) of RD Affidavit:

“The Petitioner Companies should be directed to provide list/details of Assets, if any, to be demerged from the Demerged Company to the Resulting Company upon sanctioning of the proposed Scheme.”

Response as per Paragraph 5 of Rejoinder:

“With reference to paragraph 2(c) of the said Affidavit, I state that the Resulting Company will duly file the list/details of assets, if any, to be demerged / transferred from the Demerged Company to the Resulting Company upon sanction of the Scheme in the prescribed format, as also sought by the Petitioners in prayer (i) of the petition.”

D. Paragraph 2(d) of RD Affidavit:

“That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.”

Response as per Paragraph 6 of Rejoinder:

“With reference to paragraph 2(d) of the said Affidavit, I state that the Demerged Company is not being dissolved herein as this is a case of demerger and not amalgamation and hence Section 232(3)(i) of the Companies Act, 2013 (“**Act**”) is not applicable.”

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E. Paragraph 2(e) of RD Affidavit:

“That the Resulting Company should be directed to pay applicable stamp duty on the Demerge/ Transferor of the immovable properties from the Demerged Company to it.”

Response as per Paragraph 7 of Rejoinder:

“With reference to paragraph 2(e) of the said Affidavit, I state that the stamp duty consequent to transfer of immovable properties under the Scheme shall be paid, if applicable, by the Resulting Company.”

F. Paragraph 2(f) of RD Affidavit:

“The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.”

Response as per Paragraph 8 of Rejoinder:

“With reference to paragraph 2(f) of the said Affidavit, the Petitioners confirm that the Scheme enclosed to the Company Application and the Company Petition are one and same and there is no discrepancy and no change is made.”

G. Paragraph 2(g) of RD Affidavit:

“It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 13/04/2023 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.”

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Response as per Paragraph 9 of Rejoinder:

“With reference to paragraph 2(g) of the said Affidavit, the same are matters of record. It is evident from the same, that the Income Tax Department has no objection to the sanction of the Scheme.”

6. Heard submissions made by the Ld Counsel appearing for the Petitioners and the Joint Director the Office of R.D.(E.R), MCA, Kolkata. He submits that the office of the RD has no objection, if this scheme is sanctioned. We are satisfied with explanations given by the Petitioners. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

(a) The Scheme of Arrangement mentioned in paragraph 1 of the petition, being Annexure "A" thereto, is sanctioned by this Hon'ble Tribunal to be binding with effect from 1st April, 2022 (“**Appointed Date**”) on Novel Suppliers Private Limited (“**Demerged Company**”) and VM Vinimay Private Limited (“**Resulting Company**”), their shareholders, creditors and all concerned;

(b) All the property, rights and powers of the Demerged Company relating to the Demerged Undertaking, including those described in the Schedule of Assets herein but excluding those described in Clause 4.2 of the Scheme, be transferred from the said Appointed Date, without further act or deed, to the Resulting Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Resulting Company for all the estate and interest of the Demerged Company therein but subject nevertheless to all charges now affecting the same, as provided in the said Scheme.

(c) All the debts, liabilities, duties and obligations of the Demerged Company relating to the Demerged Undertaking be transferred from the said

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Appointed Date without further act or deed to the Resulting Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Resulting Company.

- (d)** The employees of the Demerged Company relating to the Demerged Undertaking shall be engaged by the Resulting Company as provided in the Scheme;
- (e)** All proceedings and/or suits and/or appeals now pending by or against the Demerged Company in respect of the Demerged Undertaking be continued by or against the Resulting Company as provided in the Scheme;
- (f)** The Resulting Company do without further application issue and allot to the shareholders of the Demerged Company, the shares in the Resulting Company to which they are entitled in terms of clause 10 of the said Scheme;
- (g)** The Demerged Company and the Resulting Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration;
- (h)** All other matters covered by the Scheme shall take effect subject to and in terms of the Scheme;
- (i)** Leave be granted to the Petitioners to file the Schedule of Assets of the Demerged Undertaking of the Demerged Company in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of the order to be made herein.

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(j) Any person shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

7. The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.

8. Company Petition (CAA) No.56/KB/2023 is **disposed of** accordingly.

9. Certified copy of the order may be issued upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 22nd day of July, 2024

Oindrila, K.(LRA)