

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH: C-IV**

CA(CAA)-53/MB/2024

*In the matter of
Sections 230 to 232 and other applicable
provisions of the Companies Act, 2013*

And

*In the matter of
The Scheme of Arrangement between
Eastern Cargo Carriers (India) Private Limited
(Demerged Company/
Applicant Company-1)*

And

***Soft Stone Recycling Private Limited**
(Resulting Company/
Applicant Company-2)*

And their respective Shareholders.

Eastern Cargo Carriers (India) Pvt. Ltd. ... Applicant Company-1/
[CIN: U74999MH1992PTC064729] Demerged Company

Soft Stone Recycling Private Limited ... Applicant Company-2/
[CIN: U37100MH2013PTC248743] Resulting Company

(hereinafter collectively referred to as the 'Applicant Companies')

Order pronounced on: **23.07.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearance :

For the Applicants : Mr. Ahmed M. Chunawala i/b
Rajesh Shah & Co., Advocates.

ORDER

1. This is an Application filed on 28.03.2024 jointly by Eastern Cargo Carriers (India) Private Limited & Soft Stone Recycling Private Limited under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, seeking directions of this Bench for their Scheme of Arrangement between **Eastern Cargo Carriers (India) Private Limited** (Demerged Company) and **Soft Stone Recycling Private Limited** (Resulting Company) and their respective shareholders (the "Scheme").
2. The Applicants states that the Board of Directors of the Applicant Companies in their respective meetings held on 07.03.2024 have approved the Scheme. The Appointed Date for the Scheme is 1st April 2023.
3. *Nature of Business:*
 - i. The Applicant Companies state that the Demerged Company is engaged in the business of Freight forwarding. The object clause was amended in the year 2015 to undertake the business of recyclers, refiners, makers, processors, finishers, smelters, trading, importers and exporters of, dealers in, and agents for all kinds and forms of waste and acquiring, developing/adopting conventional technology for recycling waste.
 - ii. The Applicant Companies further state that the Resulting Company is formed to undertake the business of recyclers, refiners, makers, processors, finishers, smelters, traders, importers and exporters of, dealers in, and agents for all kinds of scrap and waste material.

4. **Rationale:**

The Applicant Companies submit that -

- (a) The Demerged and Resulting Companies are owned, managed and controlled by the same family and group. Given its exposure to multi business, it has become imperative for the Demerged Company to reorient and reorganize itself in a manner that allows imparting greater focus on various services it deals in. As part of the restructuring exercise, it is proposed to consolidate business of Recycling of waste products, mainly tetra pack into one Company.
- (b) The Scheme proposes to reorganize, segregate and demerge the Demerged Undertaking of Recycling waste products, mainly tetra pack from Demerged Company into the Resulting Company and the Demerged Company will be left with the business of Freight Forwarding. With this repositioning the Demerged Company is desirous of enhancing the operational efficiency.
- (c) The proposed demerger pursuant to this Scheme is expected, *inter alia*, to result in following benefits.
 - (i) segregation and unbundling of the businesses of the Demerged Company into the Resulting Company, which will enable enhanced focus on the Demerged Company and Resulting Company for exploiting opportunities of each businesses of the said companies.
 - (ii) unlocking of value for the shareholders of the Demerged

Company, attracting investors and providing better flexibility in accessing capital, focused strategy and specialization for sustained growth.

(iii) logistics alignment leading to economies of scale for the Resulting Company and creation of sectoral efficiencies and benefitting stakeholders as well as optimization of operation and capital expenditure; and

(iv) enhancing competitive strength, achieving cost optimization, ensuring benefits through focused management of the financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Resulting Company and the Demerged Company thereby significantly contributing to future growth and maximizing shareholders' value

(d) Since Applicant companies are owned managed and controlled by shareholders from same family and belonging to the same Group, Scheme will not adversely affect the rights and interests of the shareholders. Further the creditors of the Applicant Companies will also not be affected by the Scheme as no compromise or arrangement with the creditors is envisaged in the Scheme.

5. The Applicant Companies state that the Authorized, Issued, Subscribed and Paid-Up Share Capital of the Applicant Companies as on 31.03.2023 are as under:

First Applicant Company:

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
15,00,000 Equity Shares of Rs. 10/- each	1,50,00,000
3,55,000 10% Cumulative Redeemable Preference Shares of Rs. 100/- each	35,50,000
2,50,000 7% Cumulative Redeemable Preference Shares of Rs. 100/- each	25,00,000
3,95,000 Unclassified Shares of Rs. 10/- each	39,50,000
TOTAL	2,50,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
11,45,090 Equity Shares of Rs. 10/- each fully paid-up.	1,14,50,900
TOTAL	1,14,50,900

Second Applicant Company:

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each.	1,00,000
TOTAL	1,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each fully paid-up.	1,00,000
TOTAL	1,00,000

6. *Consideration:*

The Applicant Companies further submit that upon the Scheme becoming effective and in consideration of the transfer and vesting of the Demerged Undertaking of the ECCIPL by way of Demerger in the SSRPL, SSRPL shall without any further application, payment, instrument, act or deed, issue and allot to each equity shareholder of the ECCIPL or such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the ECCIPL, *9 (Nine) equity share of Rs.10/- (Rupees Ten) each credited as fully paid-up in the capital of the SSRPL for every 1000 (One Thousand) equity share of Rs. 10/- (Rupees Ten) each fully paid up held by said equity shareholder in the ECCIPL.*

7. The Applicant Companies further submit that there are Four (4) Equity Shareholders in the First Applicant Company. The consent affidavits of all four Equity Shareholders of the First Applicant Company have been obtained.

In view of the fact that all the Equity Shareholders of the First Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.

8. The Applicant Companies further submit that there are Two (2) Equity Shareholders in the Second Applicant Company. The consent affidavits of both two Equity Shareholders of the Second Applicant Company have been obtained.

In view of the fact that all the Equity Shareholders of the Second Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the Second Applicant Company is hereby dispensed with.

9. The Applicant Companies further submit that there are no Secured Creditors in both the Applicant Companies.
10. The Applicant Companies further submit that there are Two (2) Unsecured Creditors having value of Rs. 1,42,24,000/- as on 29.02.2024 in Second Applicant Company. The consent affidavits of both two Unsecured Creditors of the Second Applicant Company have been obtained.

In view of the fact that both the Unsecured Creditors of the Second Applicant Company have given their consent to the Scheme, the meeting of the Unsecured Creditors of the Second Applicant Company is hereby dispensed with.

11. The Counsel for the Applicant Companies submits that there are 301 (Three Hundred One) Unsecured Creditors having value of Rs.26,39,59,265/- as on 29.02.2024 in the First Applicant Company and requests this Tribunal to direct to convene the meeting of the Unsecured Creditors of the First Applicant Company, to be convened for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.
12. The First Applicant Company is hereby directed to:

- a) Issue Notice convening meeting of the Unsecured Creditors of the First Applicant Company in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - b) Issue Statement containing all the particulars as per Section 230(3) of the Companies Act, 2013;
 - c) Issue form of proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
 - d) Advertise the Notice convening meeting in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
13. At least 30 clear days before the said meeting of the Unsecured Creditors of the First Applicant Company to be held as aforesaid, a notice convening the said meeting mentioning the place, day, date and time, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the prescribed form of proxy, shall be sent by R.P.A.D./Speed Post and through Email, addressed to the Unsecured Creditors of the First Applicant Company, at their last known address and email address as per the records of the First Applicant Company. The First Applicant Company shall publish the notice convening the meeting of Unsecured Creditors in '*Business Standard*' in English and '*Navshakti*' in Marathi having circulation in the State of

Maharashtra in which the registered office of the company is situated.

14. That Mr. A. Jain, CA, Mob.: 9818126753, e-mail: ca.anjain@gmail.com, shall be the Chairman of the meeting of Unsecured Creditors of the First Applicant Company to be held as per the date and venue mutually decided by the management of the company and the Chairperson. The date of meeting shall be within 45 days from the date of this order.
15. The Scrutinizer for the aforesaid meeting of the Unsecured Creditors of the First Applicant Company shall be Mrs. Jayshree S. Joshi, a Practicing Company Secretary having Membership Number: FCS 1451 and CP No.487.
16. The Chairperson appointed for the aforesaid Unsecured Creditors meeting to issue the advertisement and send out the notices of the meeting referred to above. The said Chairperson of the meeting shall have all powers under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise at the aforesaid meeting or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
17. The quorum of the aforesaid meeting of the Unsecured Creditors of the First Petitioner Company shall be as prescribed under Section 103 of the Companies Act, 2013, present either in person or by authorized representative. If the quorum is not present within half an hour from the time appointed for the holding of the meeting, the Unsecured Creditors

present shall be the quorum and the meeting shall be held.

18. The voting by proxy or authorized representative in case of body corporate be permitted, provided that authorization duly signed by the person entitled to attend and vote at the meeting, is filed with the First Petitioner Company at the Registered Office not later than 48 hours before the aforesaid meeting.
19. The value and number of Unsecured Creditors of the First Petitioner Company shall be in accordance with the books of accounts of the First Petitioner Company where the entries in the books are disputed, the Chairperson of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
20. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with.
21. The Chairman of the meeting of the First Petitioner Company to report to this Tribunal, the result of the aforesaid meeting within one month of the conclusion of the meeting of the Unsecured Creditors along with the Scrutineer's report.
22. The Chairman will receive a consolidated amount of Rs.1,50,000/- (Rupees One lakh fifty thousand only) for conducting the above meeting of Unsecured Creditors of the First Applicant Company.

23. The Scrutinizer will receive a consolidated amount of Rs.50,000/- (Rupees Fifty Thousand only) for the job in the meeting of the Unsecured Creditors of the First Applicant Company.
24. The Applicant Companies are directed to serve notice along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the -
- i. Central Government through the office of Regional Director, Western Region, Mumbai;
 - ii. Jurisdictional Registrar of Companies;
 - iii. Jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Company's assessment are made with clearly mentioning the respective PAN of the Companies;
 - iv. the concerned Nodal Officer in the Income Tax Department having jurisdiction over such authority.
 - v. concerned Goods and Service Tax Authorities;
25. The above notice shall be served through R.P.A.D./Speed Post and by e-mail pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The said notice will contain a statement that *"If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme"*.

26. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.
27. The Applicant Companies will submit –
- a. details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any;
 - b. list of pending IBC cases, if any;
 - c. details of all other litigation pending against the Applicant Company having material impact on the proposed Scheme;
 - d. details of all Letters of Credit sanctioned and utilized as well as Margin Money details, if any.
28. The Appointed Date is 1st April 2023.
29. The Applicant Companies to file an Affidavit of Service and Compliance Report within 10 working days after serving notice to all the Regulatory Authorities as stated above.
30. With the above directions, CA(CAA)-53/2024 is **allowed**.

Sd/-
Anu Jagmohan Singh
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

23.07.2024/pvs