

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT-V**

**CP (CAA)/278 /(MB)/2023**

**Connected with**

**CA(CAA)/22/(MB)/2023**

In the matter of the Companies Act, 2013 (18 of 2013)

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder as in force from time to time;

AND

In the matter of Scheme of Arrangement of KAIZEN PLASTOMOULD PRIVATE LIMITED, the Demerged Company and IBV TECHNOSOLUTIONS PRIVATE LIMITED, the Resulting Company and their respective shareholders.

**KAIZEN PLASTOMOULD PRIVATE  
LIMITED,**

(CIN: U25200MH1999PTC121583)

...Applicant Company 1/  
Demerged Company

**IBV TECHNOSOLUTIONS PRIVATE  
LIMITED,**

CIN: U25209MH2022PTC395117

...Applicant Company 2/  
Resulting company

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Order Dated: 08.05.2024

**Coram:**

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

**Appearance through Physical/VC/Hybrid Mode:**

For the Petitioner(s): Adv. Chirag Bhavsar (PH)

For the Regional Director: Altap Shaikh ICLS (VC)

**ORDER**

The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) to the Scheme of Arrangement of KAIZEN PLASTOMOULD PRIVATE LIMITED, the Demerged Company and IBV TECHNOSOLUTIONS PRIVATE LIMITED, the Resulting Company and their respective Shareholders.

1. The Scheme envisages Demerger of the "Demerged Undertaking" (*as defined in the Scheme*) of KAIZEN PLASTOMOULD PRIVATE LIMITED, the Demerged Company into IBV TECHNOSOLUTIONS PRIVATE LIMITED, the Resulting Company in order to take the benefit of geographical locations and management synergies.
2. We have heard the Learned Counsel for the Petitioner

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Companies and the representative appearing for the Regional Director, WR, MCA. No objections have come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

3. Learned Counsel for the Applicant Companies further states that the Demerged Company have 2 (Two) manufacturing factory units viz. one Aurangabad Factory Unit (*as defined in the Scheme*) and Pune Factory Unit (*as defined in the Scheme*) and the Demerged company is into the business of manufacturers, buyers, sellers, merchants, dealers, traders, suppliers, stockists, contractors, agents, commission, broker, repairers, distributors, processors, fabricators, drawers, rollers, re-rollers, exporters, importers, researchers, re-conditioners of industrial and consumer plastic moulds, plastic items and components of all kinds. By this Scheme, it is proposed to segregate the Pune Factory Unit along with Specified Assets and Investment (*as defined in the Scheme*) from the Demerged Company for independent collaboration and expansion and demerger of Pune Factory Unit along with Specified Investments and Assets, is vested in the IBV TECHNOSOLUTIONS PRIVATE LIMITED, Resulting Company in accordance with Sections 230 to 232 of the Act.
4. The Board of Directors of Petitioner Companies have approved the scheme at their respective Board Meetings conducted on 7<sup>th</sup> January 2023.

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5. The Learned Counsel for the Applicants states that appointed date of Scheme of Arrangement is 1<sup>st</sup> April, 2022.
6. The Learned Counsel for the Applicants states that the Applicant Companies are in the business of manufacturing and trading is engaged in the business of Manufacturers, Buyers, Sellers, Merchants, Dealers, Traders, Suppliers, Stockists, Contractors, Agents, Commission, Brokers, Repairers, Distributors, Processors, Fabricators, Drawers, Rollers, Re-rollers, Exporters, Importers, Researchers, Re-conditioners of Industrial and Consumer Plastic Moulds, Plastic Items and Components of all kinds. However, the Resulting Company is recently incorporated and yet to commence any business.
7. The learned Counsel for the Petitioner Companies further submitted the following rationale for the Scheme:
  - a. The Demerged Company has decided to mainly split up its two manufacturing units into two different business entities along with demerger of assets and investment portfolio of the Demerged Company into the Resulting Company for smooth operation and functioning of its business. Both the Companies directly and/or indirectly shall be controlled by same Promoters, requires a focused management team, specific skill sets and resources and investments to grow.
  - b. The Aurangabad Factory Unit of the Demerged Company is majorly and actively carrying on the

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business of manufacturing of injections and blow moulds, plastic moulds, plastic items and components of all kinds and serves a wide range of blue-chip clients, companies to leading car and bike manufacturers in India. Accordingly, the Board of the Demerged Company feels that the business of Aurangabad Factory Unit be held by the Demerged Company which requires a focused management team, specific skill sets & resources and investments to grow.

- c. The demerger will enable the Demerged Company to focus and enhance its core business operations by streamlining the operations and ensure better and efficient management control. The demerger will also provide scope for independent collaboration and expansion. The segregation of the Pune Factory Unit and Specified Assets and Investments into the Resulting Company would also enable greater / enhanced focus of management in the core business thereby facilitating the management to efficiently tap opportunities.

8. The Learned Counsel submits that the Resulting Company towards the consideration for the Scheme shall issue 1 (One) Equity Shares of Rs.10/- (Rupees Ten only) for every 1 (One) equity shares of Rs.10/- (Rupee Ten only) each of Demerged Company held by such equity shareholders of the Demerged Company or their respective heirs, executors or, as the case may be, successors on the Record Date.

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9. The Learned Counsel appearing on behalf of the Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.
10. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report inter alia stating therein its observations on the Scheme as stated in para 2 (a) to (j) of the Report. In response to the observations made by the Regional Director, the Petitioner Companies filed an Affidavit in Rejoinder and have given necessary clarifications and undertakings. The observations made by the Regional Director and submission made by the Petitioner Companies are provided in the table below:

<b>Sr. No. Para (2)</b>	<b>RD Report / Observation</b>	<b>Response of the Petitioner Companies</b>
<i>a)</i>	That on examination of the report of the Registrar of Companies, Mumbai dated 08.12.2023 (Annexed as	I say that, as far as the observation of the Regional Director stated in paragraph 2 (a) (i) are concerned,

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<p>Annexure A-1) for Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and / or representation regarding the proposed scheme of Arrangement has been received against the Petitioner Companies, Further, (Petitioner Resulting Company has incorporated on 12/12/2022, hence AR &amp; BS not filed yet) and Petitioner Transferee Company has filed Financial Statements up to 31.03.2023.</p> <p>i. That the ROC Mumbai in his report dated 08,12,2023 stated that No Inquiry, Inspection, Investigations, Prosecutions and Complaints under</p>	<p>Petitioner Companies submit that the statement made therein are factually correct.</p> <p>I say that, as far as the observation of the Regional Director stated in paragraph 2 (a) (ii) (a) of his report are concerned, Petitioner Companies submit that the statement made therein are factually correct and that the charge is created after filing Company Scheme application with Hon'ble NCLT, Mumbai Bench.</p> <p>I say that as far as the observation of the Regional Director stated in paragraph 2 (a) (ii) (b) of his report are concerned, Petitioner Companies submit that, as directed by NCLT vide Order passed in CSA 22 of 2023 notices are sent to unsecured creditors by sending individual notices through</p>
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	<p>Companies Act, 2013 are pending against the Petitioner Companies,</p> <p>ii. Further ROC has mentioned as follows:</p> <p>-</p> <p>a. As per MCA Portal, the Demerged Company is having one charge with the status as OPEN created on 26.07.2023.</p> <p>b. Notice should be issued to the unsecured creditors of the Demerged Company and obtain consent affidavit.</p> <p>c. Interest of the Creditor should be protected.</p>	<p>R.P.A.D. or Email or by Speed Post or by courier or Hand delivery.</p> <p>I say that as far as the observation of the Regional Director stated in paragraph 2 (a) (ii) (c) of his report are concerned, Petitioner Companies state that the interest of creditors will be protected and all creditors will be paid in normal course of business.</p>
<p>b)</p>	<p>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Petitioner Companies shall pass such accounting</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (b) of his report are concerned, Petitioner</p>



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	entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc	Companies undertake that in addition to Accounting Standard-14 or IND-AS 103, the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.
c)	The Hon'ble Tribunal may kindly direct the Petitioner Companies 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	I say that as far as the observation of the Regional Director stated in paragraph 2 (c) of his report are concerned, Petitioner Companies state that Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.
d)	The Petitioner Companies under provisions of section 230(5) of the Companies Act	I say that as far as the observation of the Regional Director stated in paragraph

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	<p>2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the Petitioner Companies concerned.</p>	<p>2 (d) of his report are concerned, Petitioner Companies state that notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement are duly served and that the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the Petitioner Companies concerned.</p>
<p>e)</p>	<p>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (e) of his report are concerned, Petitioner Companies state and undertake that Mumbai Bench of Hon'ble NCLT vide order passed in CSA 22 of 2023, meetings of Members</p>

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	<p>Section 230 of the Act and the Minutes, thereof are duly placed before the Tribunal.</p>	<p>and Creditors are dispensed with. Further, consent of members of Petitioners Companies are obtained prior to filing Company Scheme application and the same are appended to the Application. Further notices are sent to unsecured creditors by sending individual notices through R.P.A.D. or Email or by Speed Post or by courier or Hand delivery.</p>
<p>f)</p>	<p>It is submitted that the Petitioner/Demerged Company and Resulting Company be directed to place on record of this Tribunal the list of assets to be demerged with complete details of its assets and valuation.</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (f) of his report are concerned, Petitioner Companies state that list of Assets to be demerged with complete details of its assets and valuation are mentioned as under:</p> <ul style="list-style-type: none"><li>• Pune factory unit, having address at Gat No. 411, Plot No.</li></ul>

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		<p>demerged company in the bank and with the company and it is shown as investment in the books of accounts of the company, and as more particularly defined as the specified assets and investment in the Scheme of Arrangement.</p>
<p><i>g)</i></p>	<p>It is submitted that the Petitioner/Demerged Company and Resulting Company has stated that the scheme is in compliance of Section 2(19AA), in this regard, petitioner company may be directed to place on record that as to how this scheme is in compliance of Section 2(19AA) of the Income Tax Act, 1961;</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (g) of his report are concerned, Petitioner Companies state that the Petitioner/Demerged Company and Resulting Company are in Compliance with section 2(19AA) of the Income Tax Act, 1961.</p>
<p><i>h)</i></p>	<p>As per Definition of the Scheme, <b>"Appointed Date"</b> means 1st April 2022 or any other</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (h) of his report are</p>

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<p>date as may be approved by the Tribunal or the Board of Directors (as defined hereinafter).</p> <p><b>"Effective Date"</b> shall mean the last of the dates on which the conditions and matters referred to in Clause 18 occur or have been fulfilled or waived and references in this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of this Scheme" shall mean the 'Effective Date'.</p> <p><b>"Record Date"</b> shall mean the date to be fixed by the Board of Directors of respective Companies or a committee thereof for the purpose of determining the members of the Demerged Company to whom the shares of the Resulting Company will be allotted pursuant to Clause 11 of the</p>	<p>concerned, Petitioner Companies state that the Scheme under section 232(6) has clearly indicated an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account of its inherent powers. Further, Petitioner Companies undertake to comply with the requirements as clarified vide circular no. F.No.7 /12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>
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<p>Scheme, upon effectiveness of this Scheme.</p> <p>In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account of its inherent powers.</p> <p>The Petitioner Companies shall undertake to comply with the requirements as clarified vide circular no. F. No.7/12/2019/CL-I dated 21.08.2019 issued by the Minish-y of Corporate Affairs.</p>	
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i)	Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Department, if any	I say that as far as the observation of the Regional Director stated in paragraph 2 (i) of his report are concerned, Petitioner Companies undertake to comply with the directions of the Income Tax Department & GST Department, if any.
j)	Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.	I say that as far as the observation of the Regional Director stated in paragraph 2 (j) of his report are concerned, Petitioner Companies undertake to comply with the directions of the concerned sectoral Regulatory, if any.

11. The observations made by the Regional Director have been explained by the Petitioners in Paragraph 10 above. Moreover, the Petitioner Companies, undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013, Income tax Act, 1961 and the Rules made thereunder. The clarifications and undertakings given by the Petitioner Companies are accepted.

12. The learned Counsel further submits that as on the Appointed Date there are no Secured Creditors in the Petitioner



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Companies.

13. The Income Tax Department has lodged a claim dated 22<sup>nd</sup> January, 2024 on the Demerged Company for pending outstanding income tax demands for the Assessment Year 2008-2009 and Assessment Year 2010-2011. The Petitioner Companies have filed an Affidavit dated 20<sup>th</sup> February, 2024 giving clarification on the claim lodged by the Income Tax Department for these respective Assessment Years. Moreover, the Demerged Company undertakes that the liability as regards to the claims raised by the Income Tax Department for these respective Assessment Years shall remain in the Demerged Company and the Demerged Company undertakes to pay the outstanding demand raised by the Income Tax Department, if it is found that the same is due and payable by the Demerged Company for these respective Assessment Years.
14. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
15. From the material on record, the Scheme appears to be fair, reasonable and is not in violation to any provisions of law nor is contrary to public interest/policy.

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16. Since all the requisite statutory compliances have been fulfilled, CP(CAA)/278/(MB)/2023 is made absolute in terms of prayer clause 49 of the Company Petition. Hence Ordered.

**ORDER**

17. The Petition is allowed subject to the following.
- (i) The Scheme, with the Appointed Date fixed as 1<sup>st</sup> April, 2022 is hereby sanctioned. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Creditors and Employees.
  - (ii) The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the certified copy of Order from the Registry.
  - (iii) The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal with the Superintendent of Stamps concerned, within 60 working days from the date of the receipt of the Order, for the purpose of adjudication of stamp duty, if any, payable.
  - (iv) The Petitioner Companies shall comply with all the

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undertakings given by them.

- (v) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- (vi) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.
- (vii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

**Sd/-**

**Madhu Sinha**

**Member (Technical)**

//VLM//

**Sd/-**

**Reeta Kohli**

**Member(Judicial)**