

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH – V
COMPANY PETITION (CAA) NO. – 42/(ND)/2023
WITH
COMPANY APPLICATION NO. CA (CAA) 109/(ND)/2022**

Under Section 230-232 and other applicable provisions of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF SCHEME OF ARRANGEMENT OF:

INDIAN COMPRESSORS LIMITED

Having registered office at:

33,35 and 37, Okhla Industrial Estate,
Phase III, New Delhi-110020

...PETITIONER COMPANY NO.1

AND

KG AURO VENTURES PRIVATE LIMITED

Having registered office at:

37, Okhla Industrial Estate,
Phase III, New Delhi-110020

...PETITIONER COMPANY NO.2

Order Delivered On: 18.04.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Vikrant Rohilla, Adv.
For the Respondent :
For the IT Department : Mr. Puneet Rai, Sr. St. Counsel, Mr. Ashvini Kr,
Mr. Rishabh Nangia, Advs.
For the RD : Ms. Jyoti Khurana, Adv
For the OL : Ms. Hemlata Rawat, Mr. Rahul Bhatt Advs.

**C.P. (CAA) No. 42/(ND)/2023
With
CA (CAA) No. 109/(ND)/2022
Order Delivered on: 18.04.2024**

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present Joint Petition is filed by the Petitioner Companies herein **M/s Indian Compressors Limited** (Petitioner Company No.1) and **M/s KG Auro Ventures Private Limited** (Petitioner Company No.2) under Section 230-232 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 Sanction of the proposed Scheme of Demerger between M/s Indian Compressors Limited (Petitioner Company No.1) and M/s KG Auro Ventures Private Limited (Petitioner Company No.2). The copy of the Scheme of Arrangement (hereinafter referred as the “Scheme”), has been placed on record.
2. The Petitioner Company No. 1 i.e., **M/s Indian Compressors Limited** is an unlisted public limited company incorporated on 26.08.1943 under the provisions of the Indian Companies Act, 1913 in the name of Didwania Brothers Private Limited vide CIN: U34300DL1943PLC000712, consequently it become a public company by the name of Didwania Brothers Limited and fresh certificate of incorporation dated 16.05.1988 was issued. With the approval of Central Government, it changed its name from Didwania Brothers Limited to Indian Compressors Limited and received a fresh Certificate of Incorporation dated 30.05.1988. The registered office of the Company is situated at 33,35 and 37, Okhla Industrial Estate, Phase III, New Delhi-110020. Thus, the registered office of the Petitioner Company No.1 is under the jurisdiction of this Tribunal. The authorized share capital of the Petitioner Company No. 1 is Rs. 7,50,00,000/- divided into 72,30,000 Equity Shares of Rs. 10/- each and 2,70,000 Preference Shares of Rs. 10/- each. The issued, subscribed and paid-up share

capital of the Petitioner Company No. 1 is Rs. 5,13,11,640/- divided into 51,31,164 equity shares of Rs. 10/- each.

3. The Petitioner Company No. 2 i.e., **M/s KG Auro Ventures Private Limited** is a Private Limited Company incorporated on 11.03.2022 under the provisions of the Companies Act, 2013 vide CIN: U70100DL2022PTC39497, the registered office of the Company is situated at 37, Okhla Industrial Estate, Phase III, New Delhi-110020. Thus, the registered office of the Petitioner Company No.2 is under the jurisdiction of this Tribunal. The authorized share capital of the Petitioner Company No. 2 is Rs. 15,00,000/- divided into 1,50,000 Equity Shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the Petitioner Company No. 2 is Rs. 10,000/- divided into 1,000 equity shares of Rs. 10/- each.
4. The Petitioner Companies have submitted that the proposed scheme of arrangement of Demerger of the Petitioner Companies would have the following benefits: -
 - (i) Under the Scheme, the Real Estate Division of Petitioner Company No. 1 will be demerged from Petitioner Company No. 1 and transferred, vested with and into Petitioner Company No. 2, as a going concern, so as to become the business and undertaking of Petitioner Company No. 2 with effect from the Appointed Date, i.e. 01 April, 2022.
 - (ii) The Scheme would be in the best interests of the shareholders, creditors, employees and other stakeholders of the Petitioner Companies, as it would result in enhancement of shareholder value and operational efficiencies, by creating a separate and distinct entity housing the Real Estate Division.
 - (iii) The demerger would facilitate dedicated and specialised management focus on the specific needs of the Real Estate Division by and through Petitioner Company No. 2, in order to enable further growth of the Real Estate Division. It would help

in optimal exploitation, monetization and development of the Real Estate Division.

- (iv) The demerger would also allow Petitioner Company No. 1 to have greater focus on its core business activity of gas compressors and pumps and would enable the management to vigorously pursue revenue growth and expansion opportunities, while the non-core business of real estate is managed and carried out separately by a company which is into a similar line of business.
 - (v) The demerger would also benefit Petitioner Company No. 2 which will have the benefit of the combined and additional resources of the Real Estate Division.
5. The appointed date as fixed for the proposed scheme of arrangement in the nature of Demerger is 1st April, 2022 or such other date as may be directed by this Tribunal.
 6. From the records, it is seen that the First Motion joint application was filed before this Tribunal vide CA(CAA)109/ND/2022 and Vide order dated 23.02.2022, this tribunal has dispensed with the requirement of convening and holding separate meetings of the equity shareholders and secured creditors of the Petitioner Companies and the meeting of the unsecured creditors of petitioner company no. 2, for the consideration and approval of the said scheme. However, this tribunal directed the holding and convening of the meeting of the unsecured creditors of the petitioner company no. 1 for consideration of proposed scheme of demerger.
 7. Therefore, in terms of order dated 23.02.2023, notices issued to unsecured creditors and public notice also published on 'Financial Express' and 'Jansatta'. Delhi NCR Editions. Pursuant to that, a meeting of Unsecured Creditors of Petitioner Company no. 1 convened on 06.05.2023 which was chaired by Ms. Archana Arora, chairperson and the scheme was approved by 100% voting in value of unsecured creditors, without modifications. Hence, the proposed scheme has been

approved by all the equity shareholders, the secured creditors and the unsecured creditors of the petitioner companies.

8. The Tribunal had directed the petitioner companies vide order dated 11.07.2023 to issue individual notices to the (i) Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) Income Tax Department, (iii) Registrar of Companies NCT of Delhi and Haryana, and (iv) Official Liquidator.
9. The Petitioner Companies were also directed by the Tribunal to carry out publication in the newspapers. It is seen from the records that the Petitioners have filed an Affidavit affirming compliance of the same and disclosing that the applicants have affected publication in 'Financial Express' (English, Delhi edition) as well as 'Jansatta' (Hindi, Delhi edition), both dated on 20.07.2023. In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, the Income Tax Department, Registrar of Companies, NCT of Delhi and Haryana and to the other relevant sectoral regulators. Affidavit of service was filed by the Petitioner Companies are placed on record.
10. Pursuant to the notice issued to the Regional Director, Official Liquidator and Income Tax Department, they have filed their response/reply in the matter.
11. It is seen from the Regional Director (RD's) report dated 17.08.2023 vide affidavit dated 22.08.2023, the RD had raised certain observations with regard to the proposed scheme of Arrangement by Demerger and in response to the same, the Petitioner Companies had filed reply dated 28.10.2023 & 26.12.2023 wherein the Petitioner Companies gave clarification and undertaking to address the observations made by the Regional Director. The details of the same are summarised below:

Observation of the Regional Director as per Clause 36 of	Reply of the Petitioner Companies dated 28.10.2023 & 26.12.2023
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<p>the ROC Report dated 17.08.2023</p>	
<p>“1. As per the auditor’s report of Demerged Company for the year ended 31.03.2022, refer annexure A (point no. vii) there is a demand of service tax amounting Rs. 558.21 lacs for the F.Y 2008-09 to 30.06.2017, against which company has filed a Writ Petition in the Hon’ble High Court.”</p>	<p>“In reply dated 28.10.2023, It was stated that the service tax demand of Rs. 558.21 lakhs for the FY 2008-2009 to 30.06.2017 against the Demerged Company i.e., Indian Compressors Ltd., is already sub judice and pending before the Hon’ble High Court. In any event, the Demerged company would continue to exist and in operations, post the demerger and no prejudice would be caused to the concerned governmental authority.”</p> <p>“In reply dated 26.12.2023, it was stated that the Demerged Company/Petitioner Company No. 1 undertakes that it shall deposit the requisite service tax for the FY 2008-2009 to 30.06.2017 as may be found due and payable by the Demerged Company/Petitioner Company No. 1 i.e., Indian Compressors Ltd.”</p>
<p>“2. Schedule of Assets & Liabilities of Demerged undertaking not given in the Scheme.”</p>	<p>In reply dated 28.10.2023, Petitioner company placed on record the Schedule of Assets and Liabilities of Petitioner Company No. 1/Demerged Company, forming part of the Real Estate Division (as defined in the scheme) as on the Appointed date i.e. 01.04.2022, which shall be transferred and vested with and into the Petitioner Company No. 2/Resulting Company in terms of the said scheme.</p>
<p>“3. As per Note 8 of the financial statements for the year ended 31.,03.2022 there are MSME dues amounting INR 452.85 lacs outstanding less than 1 year. However, as</p>	<p>“In reply dated 26.12.2023, it was stated that in terms of Specified Companies (Detailed information regarding payment to micro and small enterprise suppliers) Order, 2019 issued under Section 405 of the Companies Act, 2013, no MSME Form-1 was required to be filed as</p>

per MCA record no MSME-1 form has been filed by the demerged company in this regard.”	there was no outstanding payment or delay in payment to any MSME vendor for a period exceeding forty-five (45) days, by the Demerged Company/Petitioner Company No. 1.”
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12. We have heard Ld. Counsel for the Petitioner Companies as well as the Ld. Counsel for RD. The Regional Director (RD) in its report dated 17.08.2023 filed on affidavit dated 22.08.2023 had made certain observations with regard to the proposed scheme of Arrangement among the petitioner companies. It has been recorded in order dated 20.03.2024 that “Ld. Counsel on behalf of the RD is present. We have perused their observations in respect of liability to the Service Tax. Ld. Counsel on behalf of the Petitioner submitted that they have also given undertaking in respect of payment of Service Tax.” The RD has made observation with respect to payment of service tax amounting to Rs. 558.21 Lacs for the F.Y 2008-09 to 30.06.2017, for that the Petitioner has clarified in its reply dated 28.10.2023 & 26.12.2023. After consideration of the reply of the Petitioner Companies, filed in response to the observation made by the Regional Director, the observations made by the Regional Director stand clarified.

13. The Petitioner Company No. 1 has filed an affidavit dated 28.10.2023 wherein at Para-4, it is stated that the Deputy Commissioner, Income Tax has stated that there is an outstanding income tax demand (in aggregate) of Rs. 20,01,730 against Petitioner Company No. 1 i.e. he Demerged Company, with respect to Assessment Year 2020-2021 and 2021-2022. The Deputy Commissioner, Income Tax has further stated that there are pending proceedings under Section 270A of the Income Tax Act against Petitioner Company No. 1 with respect to Assessment Years 2017-2018 and 2018-2019. Moreover, in reply dated 26.12.2023, the Petitioner Company also undertakes to deposit requisite amounts toward income tax as may found due and payable by the Demerged Company/Petitioner Company No. 1.

14. The Petitioner Company No. 1 has stated that the demand of Rs. 20,01,730 against the Petitioner Company is sub-judice and applications for rectification under Section 154 of the Income Tax Act are pending before the Assessing Officer. Further, the Demerged Company would continue to exist and would honour its obligations upon the final outcome of the proceedings and no prejudice would be caused to the concerned authority. Further, it also undertakes to comply with Section 72A of the Income Tax Act in so far the same is applicable to Petitioner Company No. 1. In Para-7, the Petitioner Company have reproduced the observation of Deputy Commissioner, Income Tax as *“this office has no objection regarding above cited arrangement of the companies.”*
15. The Petitioner Company No. 2 has filed its reply dated 28.10.2023 wherein in Para 4 it is stated that the Deputy Commissioner, Income Tax has stated in Para 13 and 14 of the representation that there are no proceedings pending against and also that there are no demands against the Petitioner Company No. 2. Further, in Para 5, it is stated that in Para 15 of the representation, the Petitioner Company No. 2 has already given an undertaking with respect to its obligations towards payment of taxes and undertakes to comply with Section 71A of income tax act in so far as applicable.
16. The Income Tax Department before this Tribunal in order dated recorded that *“Ld. Counsel on behalf of the Income Tax Department is present and submitted that on the basis of this affidavit they have no further objection, if the scheme is approved.”* Hence, this Tribunal, in view of the reply of the petitioner companies wherein they undertake the liability toward the taxes which are due to Income Tax Department and the submissions made by the Income Tax Department, the Income Tax Department have no objection on approval of proposed scheme.
17. Petitioner placed on record the affidavit affirming 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.

18. Certificates of Statutory auditor of the petitioner companies, has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Arrangement in the nature of Demerger 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 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.
19. The shareholders of the petitioner companies are the best judges of their interest, being fully conversant with the market trends. Therefore, this Tribunal is not supposed to go into the commercial decisions taken by the companies. It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Companies including their shareholders, creditors, employees and all concerned.
20. In view of the foregoing, upon considering the reply of the Petitioner Companies, the undertaking of the Petitioner Companies with respect to the observations and clarifications and upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.
21. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -
 - (i) The Appointed Date has been proposed to be fixed for the proposed Scheme of Arrangement in the nature of Demerger is 01.04.2022 or such other date as may be directed by this Tribunal. In view of the facts that accounts are to be drawn and audited annually and the time taken in disposal of the instant application, this Tribunal deems it fit to fix the Appointed Date

as 01.04.2023 for the proposed scheme of Arrangement of Demerger of Petitioner Companies.

- (ii) The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.
- (iii) Notwithstanding the sanction, 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 in accordance with the law, against the concerned persons, directors and officials of the petitioners.
- (iv) 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.

22. This Tribunal further directs with respect to all the Petitioner Companies, that:

- (i) That all properties, rights and powers of Demerged Undertaking be transferred without further act or deed to the Resulting Company and accordingly, the same shall pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and vested in the Resulting Company for all intents, purposes and interest of the Demerged Undertaking subject nevertheless to all changes now affecting the same; and
- (ii) That all the liabilities, (if any) and powers, engagements, obligations and duties of the Demerged Undertaking shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to the Resulting Company and accordingly the same become the liabilities and duties of the Resulting Company; and

- (iii) That all proceedings now pending by or against the Demerged Undertaking shall be continued by or against the Resulting Company; and
- (iv) That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause certified copy of this Order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Demerged Undertaking shall be deemed to be transferred; and
- (v) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

23. The petition stands allowed on the above terms.

Let copy of the order be served to the parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)