

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
COMPANY PETITION (CAA) NO. 60 OF 2023
CONNECTED WITH
COMPANY APPLICATION (CAA) NO. 35 OF 2023

**IN THE MATTER OF SECTION 230-232 READ WITH OTHER RELEVANT
PROVISIONS OF THE COMPANIES ACT, 2013**

AND

IN THE SCHEME OF ARRANGEMENT

AMONGST

MARS PACKAGING PRIVATE LIMITED

...DEMERGED COMPANY/PETITIONER COMPANY NO.1

AND

MARS PACKWELL PRIVATE LIMITED

...RESULTING COMPANY/PETITIONER COMPANY NO. 2

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Order Delivered on: 07.02.2024

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)**

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

PRESENT:

For the Applicant : Mr. Yashoraj Guglani, Mr. Manish Kumar, CS
Mr. Saurabh Agarwal, CS Mr. Narender Thakur,
CS, Mr. Sachin Khurana, CS
For the RD : Ms. Shankari Mishra, Adv.
For the IT Department : Mr. Parth Semwal Standing Counsel,
Mr. Utkarsh, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This petition has been jointly filed by the petitioner companies herein, M/s Mars Packaging Private Limited (hereinafter referred to as Demerged Company/Petitioner Company No. 1) and M/s Mars Packwell Private Limited (hereinafter referred to as Resulting Company/Petitioner Company No. 2) jointly under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013

read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement (hereinafter referred to as the "SCHEME") proposed between the applicants.

2. The Demerged Company/ Petitioner Company No. 1 i.e., M/s Mars Packaging Private Limited is a private limited company which was incorporated on 21st March, 1991, under the provisions of the Companies Act, 1956 bearing CIN: U74899DL1991PTC043599, having its registered office at 106, First Floor, Aradhana Bhawan Commercial Complex, B-24, Naniwala Bagh, Azadpur, New Delhi-110033. The Authorized Share Capital of the Demerged Company/Petitioner Company No. 1 is Rs. 2,60,00,000 divided into 26,00,000 Equity shares of Rs. 10/- each; Rs. 50,00,000 divided into 50,000 (8%) Non-Cumulative Redeemable Preference Shares of Rs. 100/- each. The Issued Share Capital is Rs. 2,54,97,000 divided into 25,49,700 Equity Shares of Rs. 10/- each; 47000 (8%) Non-Cumulative Redeemable Preference Shares of Rs. 100/- each. The Subscribed and Paid-up Share Capital is Rs. 2,04,77,000 divided into 20,47,700 Equity Shares of Rs. 10/- each.
3. The Resulting Company/Petitioner Company No. 2 i.e., M/s Mars Packwell Private Limited is a private limited company which was incorporated on 15th June, 2022, under the provisions of the Companies Act, 2013 bearing CIN: U36999DL2022PTC400029, having its registered office at 106, First Floor, Aradhana Bhawan Commercial Complex, B-24, Naniwala Bagh, Azadpur, New Delhi-110033. The Authorized Share Capital of the Resulting Company/Applicant Company No. 2 is Rs. 5,00,000 divided into 50,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 5,00,000 divided into 50,000 Equity Shares of Rs. 10/- each.
4. The Petitioner Companies submit that the proposed scheme would have the following benefits: -

The Demerged Company is operating its business through two different factories/units which bifurcated as:

Mars Packaging Private Limited operating through Unit-I: E-293, Riico Industrial Area, Phase-I, Bhiwadi-301019 (Rajasthan).

Mars Packaging Private Limited operating through Unit-II: B-1126, Riico Industrial Area, Phase-II, Bhiwadi-301019 (Rajasthan).

Further, in order to segregate the individual undertaking business, it is intended to demerge the **“Unit I Undertaking”** (hereinafter referred to as the **“Demerged Undertaking”**) of the Demerged Company on going concern basis to the Resulting Company.

The Demerged Company would demerge its **‘Unit I’** undertaking (hereinafter referred to as the Demerged Undertaking) to the Resulting Company and it would continue to run and operate the remaining business (hereinafter referred to as the Remaining Undertaking). The underlying business rationale and objectives are as follows: -

- i. The Demerged Undertaking and the Remaining Undertaking have their own set of strengths and dynamics in the form of nature of risks, competition, challenges, opportunities and business methods, leading to different growth potentials. Hence, segregation of the undertakings would enable a focused management to explore the potential business opportunities effectively and efficiently;
- ii. The demerger would result in achieving efficiency in operational processes by designing and implementing independent strategies specifically designed for the businesses and in optimizing profitability. This would in turn enhance the shareholders’ wealth.
- iii. Targeting and attracting new investors with specific focus and expertise in the separate business’s units, thereby providing the necessary funding impetus to the long-term growth strategy for each undertaking.

- iv. The demerger will help in growth of Demerged Company and Resulting Company by providing scope of independent collaboration and expansion.
 - v. Pursuant to the Scheme, the existing shareholders of the Demerged Company would hold the shares of two entities after the Scheme becoming effective. Such shareholders would then be able to choose whether they want to remain invested in either or both the businesses/operations of the Demerged Company, giving them flexibility in managing their investment in the two businesses having different dynamics.
5. The appointed date as specified in the Scheme is 1st April, 2023 or such other date as may be approved by the Tribunal.
 6. A perusal of the petition discloses that initially the First Motion application, seeking dispensation from convening the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Companies, was filed before this Tribunal, vide Company Application CA(CAA)35/(ND)/2023 and based on such joint application, moved under Sections 230-232 of the Companies Act, 2013, the Tribunal vide its order dated 31.07.2023 dispensed with the requirement of convening/holding meeting of Equity Shareholders and Unsecured Creditors of Demerged Company and Equity Shareholders of the Resulting Company. There were nil Secured Creditors of the Demerged Company therefore the requirement of holding/convening the meeting of Secured Creditors of the Demerged Company did not arise. There were nil Secured Creditors and Unsecured Creditors of the Resulting Company therefore the requirement of holding/convening the meeting of Secured Creditors and Unsecured Creditors of the Resulting Company did not arise.
 7. Vide order dated 12.09.2023 passed by this Tribunal, the Petitioner Companies were directed to carry out publication in two newspapers namely “Business Standard” (English Delhi Edition) and in “Jansatta” (Hindi Delhi Edition) and to serve notices to the (i) Regional Director,

Northern Region), Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department and any such other Sectoral Regulators or Authorities. It is seen from record that the petitioner companies have filed an affidavit dated 26.09.2023 affirming compliance and disclosing that the applicants have effected publication in “Business Standard” (English Delhi Edition) and “Jansatta” (Hindi Delhi Edition) both dated 25.09.2023. In addition to the public notice, notices were also served by hand and email to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, and the Income Tax Department.

8. Pursuant to the notice issued, the Regional Director have filed their respective report and participated in the proceedings.
9. The Regional Director in its affidavit report dated 06.11.2023 had made certain observations with regard to the Scheme of Demerger among the Petitioner Companies. The Petitioner Companies had filed reply dated 17.11.2023 in response to the observations made by the Regional Director, under wherein the Petitioner Companies gave clarification to the observations made by the Regional Director. The details of which are given below:

Observations	Observations made by Regional Director in its affidavit report dated 06.11.2023	Reply made by the Petitioner Companies dated 17.11.2023
1.	It is mentioned in the Scheme in Clause No. 4 that the Scheme shall be effective from the effective date, however as per section 232(6) of the Act, the Scheme shall be effective from the appointed date. Petitioner Companies may be asked to clarify the same.	<p>The Scheme shall be effective from the Appointed Date (i.e., 01.04.2023) only in terms of the provisions of section 232(6) of the Companies Act, 2013.</p> <p>Clause 3 (Date when this scheme comes into operation) of the Scheme is re-produced as below for ready reference: -</p> <p>The Scheme set out herein in its present form or with modifications, approved or imposed or directed by the NCLT, although <u>operative from the Appointed Date</u>, shall be effective from the Effective Date.</p> <p>Further, clause 1.8 (EFFECTIVE DATE) of the Scheme defined the effective date</p>

		<p>and which means the date on which the last of the conditions mentioned in clause 22.2 of the Scheme is fulfilled and the Scheme is made effective with effect from the Appointed Date. Any references in this Scheme to the “date of coming into effect of this Scheme” or “Effectiveness of the Scheme” or “Scheme taking effect” shall mean the Effective Date;</p> <p>Therefore, based on the above facts it has been cleared that the scheme shall be effective from the Appointed Date only and not from the effective date and same is in compliance with section 232(6) of the Companies Act, 2013.</p>
2.	The Demerged Company has not filed form MGT-6 in respect of shareholdings by HUF.	<p>Extract of the relevant provisions of section 89 (Declaration in Respect of Beneficial Interest in any Share) of the Companies Act, 2013 is reproduced as below:</p> <p>Section 89 (1): Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name other particulars of the person who holds the beneficial interest in such shares.</p> <p>Pursuant to the aforesaid provision, Form MGT-6 is required to be filed when the registered members do not hold beneficial interest in that particular share.</p> <p>In present case, certain shares are held by HUF in the Demerged Company and HUF itself holding the registered and beneficial interest in those shares and there are no separate beneficial holders in the shares held by the HUF, thus MGT-6 is not required to be file in respect of the shares held by the HUF as the registered and beneficial shareholder.</p>

3.	The Demerged Company and Resulting Company has not filed form BEN-2 in respect of more than 10% shareholding by the body corporates.	<p>It is submitted that the Demerged Company has only one Body Corporate Shareholder namely "Reetu Finlease Private Limited" holding 12.82% equity shares. Further, none of the individual shareholders holding majority shares in such members Company therefore Reporting in form BEN-2 is not applicable in the Demerged Company.</p> <p>Further, Mars Packwell Private Limited (Resulting Company) is the Wholly Owned Subsidiary of the Demerged Company and entire shareholding of the Resulting Company is hold by the demerged company but being a private Company, such Company has minimum number of two shareholders therefore the Demerged Company nominate Mr. Devang Jain as its nominee to comply with the provisions of the Act and to maintain the minimum numbers of the shareholders in the Demerged Company. therefore, to the best understanding of the Applicable provisions the Resulting Company is also not required to file form BEN-2.</p> <p>In the light of the aforesaid facts both the Applicant Companies are not required to file form BEN-2.</p>
4.	The Resulting Company has not filed its Annual Return and Balance Sheet yet, as it was incorporated on June 15, 2022.	<p>It is submitted that the Resulting Company was incorporated on June 15, 2022 therefore, the first financial year shall be completed on March 31, 2023 and pursuant to the first proviso to section 96 of the Companies Act, 2013, the first Annual General Meeting of the Company shall be held within a period of nine months from the date of closing of the first financial year of the Company.</p> <p>Extract of the relevant provisions of section 96(1) of the Companies Act, 2013 is reproduced as below: - Section 96 (Annual General Meeting)</p>

		<p>“(1) Every Company other than a one-person company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:</p> <p>Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year...”</p> <p>In light of the above provisions, the first financial year of the Resulting Company shall be closed on March 31, 2023 and the Company may convene its first annual general meeting (AGM) within nine months from the close of its first financial year (i.e., on or before December 31, 2023) and the Resulting Company is yet to convene its first AGM.</p> <p>Further, in terms of the provisions of Section 137 and 92 of the Companies Act, 2013, Audited Financial Statements and Annual Return is required to be filed within thirty days and sixty days respectively from the date on which the AGM.</p> <p>As the Resulting Company will convene its first Annual General Meeting on or before December 31, 2023, in compliance with Section 96 of the Companies Act, 2013 and file its financial statements and Annual Return within due course of time.</p>
5.	No disclosure provided for outstanding dues of creditors other than MSME’s by the Demerged Company (Mars Packaging Private Limited).	It is submitted that the Demerged Company (Mars Packaging Private Limited) has disclosed the total outstanding dues of creditors other than MSMEs under the heading of the trade creditors in the Audited Financial

		statements as on 31 st March, 2022 and the provisional financial statements as on 31 st October, 2022 as part of Note 8 with the detailed ageing in terms of the applicable provisions. Therefore, the said observation may kindly be dismissed by the NCLT.
6.	The Scheme refers to usage of trademark by both the companies. The Companies may be asked to comply with the provision related to assignment of trademarks under the Trademarks Act, 1999, including the requirement of making necessary filing with trademark registry.	It is submitted that the Applicant companies will comply with the provisions related to assignment of trademarks under the Trademark Act, 1999, including the requirement of making necessary filing with trademark registry.
	It is further submitted by the applicant companies that both the Companies i.e., Demerged Company and the Resulting Company will remain in existence after the approval of the said scheme by the NCLT, New Delhi Bench. It is hereby confirmed that whatever compliances are due, if any from the applicant companies, the same shall be complied in terms of the applicable provisions and the approval of the said scheme shall not affect the said compliances in any manner.	

No further observations have been made by the RD after considering the above replies of the Petitioner Companies.

10. It is noticed that despite several opportunities, no comments were received from the Income Tax Department with respect to any of the Petitioner Companies. As per the provisions of Section 230(5) of the Companies Act, 2013, on the expiry of 30 days from the date of the notice it may be presumed that the Income Tax Department does not have any comments on the proposed Scheme of Amalgamation.
11. Certificates of respective Statutory Auditors of both the petitioner companies, have been placed on record to the effect that Accounting Treatment proposed in the Scheme 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.
12. The Petitioner Companies in its affidavit dated 24.03.2023 affirming that any inquiry/investigation/inspection is neither pending nor received any notice of initiation of any such inquiry/investigation/inspection by any of the regulatory bodies.

13. The Petitioner Companies in its affidavit dated 31.03.2023 affirming that all material facts relating to the company, such as the latest financial position of the company been disclosed and there are no material changes subsequent to the financial statements disclosed in the Scheme; the Scheme is not per se related to or proposed for the Reduction of Capital, however the same is applicable to the extent of cancellation of existing shares held by the Demerged Company in the Resulting Company; and the Scheme is not a corporate debt restructuring scheme and hence a creditor's responsibility statement and other requirement under the said section is not applicable to the present case.
14. Considering the reply of the Petitioner Companies and further, the undertakings of the Petitioner Companies, we find no legal impediment in approving the present scheme of arrangement.
15. It has also been affirmed in the petition that the Scheme is not prejudicial to the interest of equity shareholders and creditors of the Petitioner Companies. It is further submitted that the proposed Scheme of Arrangement will be beneficial to the Petitioner Companies and their respective shareholders and creditors. In view of the foregoing, 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.
16. 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 as specified in the Scheme of Arrangement is 1st April, 2023 or such other date as may be approved by the Tribunal. We approve the Appointed Date so proposed by the petitioners i.e. 1st April, 2023.
 - ii. The Petitioners shall always remain bound to comply with the statutory requirements in accordance with 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.

17. This Tribunal do further order: -

- a. 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
- b. 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
- c. That all proceedings now pending by or against the Demerged Undertaking shall be continued by or against the Resulting Company; and
- d. 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

- e. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
18. The petition stands disposed of in the above terms.
19. Let copy of the order be served to the parties.

Sd/-

**DR. SANJEEV RANJAN
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**