

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

CP No (CAA) No. 02/230-232/JPR/2024
Connected With
CA (CAA) No. 04/230-232/JPR/2023

M/S FASHION SUITINGS PVT. LTD.

**...Petitioner Company No. 1/
Demerged Company**

VERSUS

M/S RCM CONSUMER PRODUCTS PVT. LTD.

**...Petitioner Company No. 2/
Resulting Company**

Date:23.04.2024

SPEAKING TO MINUTES ORDER-IN-CHAMBERS

The scheme of Demerger was approved vide order dated 05.04.2024, in the instant matter and the order has been uploaded on the website. However, on perusal of the order, it is noted that the following clause had been inadvertently added to said order in para no. 15 (VI):

“On such certified copy being provided, the Transferor Companies shall be dissolved without undergoing the process of winding up.

Hence, by taking the suo-moto action under Rule 154 of the National Company Law Tribunal Rules, 2016, the aforementioned clause from the said order shall stand omitted as this is a case of Demerger. This order be uploaded and send by the Registry along with the main order.



(Rajeev Mehrotra)
Technical Member



(Deep Chandra Joshi)
Judicial Member

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

CP (CAA) No. 02/230-232/JPR/2024
Connected with
CA (CAA)No. 04/230-232/JPR/2023

Section: Section 230-232 r/w section 66 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

IN THE MATTER OF SCHEME OF ARRAGEMENT OF

**M/S FASHION SUITINGS PRIVATE LIMITED
(Petitioner Company No. 1/ Demerged Company)**

AND

**M/S RCM CONSUMER PRODUCTS PRIVATE LIMITED
(Petitioner Company No. 2/ Resulting Company)**

MEMO OF PARTIES

M/S FASHION SUITINGS PRIVATE LIMITED

CIN: U18108RJ1988PTC004383

R/o: RCM World, SPL-6, RIICO

Growth Centre Post- Swaroopganj,

via Hamigarh Bhilwara-311025

Rajasthan.

**...Petitioner Company No. 1/
Demerged Company**

AND

M/S RCM CONSUMER PRODUCTS PRIVATE LIMITED

CIN: U46909RJ2023PTC086369

R/o: RCM World, SPL-6, RIICO

Growth Centre, Village- Hamigarh,

Post- Swaroopganj, Bhilwara-

311025 Rajasthan.

**... Petitioner Company No. 2/
Resulting Company**





COUNSEL FOR THE APPLICANT(S): Sandeep Kumar Jain, PCS.

Order Pronounced on: 05.04.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Company Petition, is jointly filed by the Petitioner Companies, namely, *M/s Fashion Suitings Private Limited* ('Applicant No. 1'/'Demerged Company') and *M/s RCM Consumer Products Private Limited* ('Applicant No. 2'/'Resulting Company') in terms of Rule 15 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 ('Rules') for the sanctioning of the Scheme of Demerger ('Scheme') contemplated between *M/s Fashion Suitings Private Limited* and *M/s RCM Consumer Products Private Limited*. The registered offices of the Petitioner Companies are in the State of Rajasthan; thus, the jurisdiction of the Applicant Companies lies with the National Company Law Tribunal, Jaipur Bench.
2. From the records, it is seen that the first motion application, seeking the dispensation of meetings of the Equity Shareholders along with Secured and Unsecured Creditors of the Petitioner Companies, was filed before this Tribunal vide *CA (CAA) No. 04/230-232/JPR/2023* and based on such an application moved under Section 230 of the Companies Act, 2013, directions were issued by this Tribunal, wherein the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Companies were directed to be dispensed with *vide* Order dated 15.12.2023.

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3. Thereafter, the Petitioner Companies filed a second motion joint petition before this Tribunal on 17.01.2024 within the time prescribed. Consequently, the matter was listed on 31.01.2024, and the following order was passed:

- I. *The date of hearing of the Petition filed by the Petitioner Companies for the approval of the Scheme is fixed on 13.03.2024.*
- II. *Notice of the hearing shall be advertised in two Newspapers, one English and One vernacular, having wide circulation in Bhilwara, not less than 15 days before the aforesaid date fixed for the hearing.*
- III. *In addition to the above public notices, the Petitioner Companies shall serve the notice of the Petition on the following Authorities, namely, Income Tax Authorities (indicating the respective PAN Nos.), ROC concerned, Official Liquidator and Regional Director (North Western Region), sectoral regulators, if any, which may govern the working of the Company in the Scheme, at least thirty days before the date fixed for hearing of the above Petition.*
- IV. *The Petitioner Companies shall, at least seven days before the date of hearing of the Petition, file an affidavit of service concerning said publication effected as well as service of notice on the authorities mentioned above including Objectors, if any. An Affidavit mentioning the Statutory Authorities including Sectoral Regulators governing the operations of the Petitioner Companies shall also be filed.*
- V. *Objections, if any, to the Scheme, contemplated by the Authorities to whom notice has been given, may be filed on or before the date of hearing fixed herein, failing which it may be considered by this Tribunal that there is no objection on the part of the Authorities to the approval of the Scheme, by this Tribunal, subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and Regulations/Rules framed thereunder.*
- VI. *The next date of hearing is fixed on 13.03.2024 for the consideration of the approval of the Scheme of Arrangements as contemplated between the Petitioner Companies.*



4. The Affidavit of Compliance by Authorised Signatory of the Applicant Companies was filed *vide* Diary No. 584/2024 dated 05.03.2024 along with copies of newspapers cuttings evidencing publication of notice by the Applicant Companies separately in 'The Indian Express' (Bhilwara Edition) in English 'Dainik Navajyoti' (Bhilwara Edition) in Hindi, both dated 21.02.2024. Copies of proof of service of notice to the Statutory Authorities by the Applicant Companies sent separately, namely (a) Registrar of Companies, Jaipur; (b) Regional Director, NWR; and (c) Income Tax Authorities have also been annexed.
5. The Regional Director ('RD') had filed its report *vide* Diary No. 572/2024 dated 05.03.2024 along with the report of the Registrar of Companies, Jaipur ('ROC'). The Report of the RD seeks directions against the Applicant Companies for compliance with Section 232(3)(i) of the Companies Act, 2013 and to pay fees accordingly. Further, various other averments were raised by the RD. It is submitted that the report of RoC states there are no complaints/ inquiry/ inspection/ investigation/ prosecution against the Applicant Companies or against the scheme of demerger of the Companies. The Official Liquidator has filed its Report *vide* Diary No. 2979/2023 dated 15.12.2023. The report on behalf of the Income Tax Department was filed *vide* Diary No. 712/2023 dated 21.03.2024 wherein no objections to the scheme have been laid out. The Applicant Companies *vide* Diary No. 632/2024 dated 12.03.2024 replied to the observations of the RD and

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undertook to comply, if any, with the provisions of the Companies Act, 2013. Further, with respect to the dues of the Income Tax Department, the Resulting Company undertook to make payment of due demand as and when arisen by the Department through Affidavit vide Diary No. 633/2024 dated 13.03.2024.

6. In compliance with proviso to Sub-Section (7) of Section 230 of the Companies Act, 2013, the Resulting Company and the Demerged Company have placed on record certificates of Chartered Accountant both dated 24.06.2023, confirming that the Scheme is in conformity with the applicable Accounting Standards specified under Section 133 of the Companies Act 2013 for such transfer. The Resulting Company is a wholly owned subsidiary of the Demerged Company and does not hold any shares in the Demerged Company. Further, it is submitted that no proceedings have been instituted and/or pending in relation to the Demerged Company. Also, the Scheme does not propose any Corporate Debt Restructuring or buy back of shares, however, the Scheme provides for cancellation of existing issued capital of Rs. 1,00,000/- (Rupees One Lakh Only) of the Resulting Company. Also, the Audited Financial Statement of the Demerged as on 31.03.2022 has been annexed as Annexures – 3 of the First Motion Application.



7. We have heard the Learned Counsel for Petitioner Companies and perused the Application, Affidavits, Replies along with the documents placed on record.
8. Upon considering the approval accorded by the Members and Creditors of the Petitioner Companies to the proposed Scheme and the affidavits/ no objection filed by the respective regulatory authorities, there appears no impediment in sanctioning the present Scheme. The Petitioner Companies shall, however, remain bound to comply with the statutory requirement in accordance with the law, including, but not limited to, Section 232(3)(i) as pointed out by the Regional Director.
9. As per the Scheme, the appointed date shall mean 01.04.2023 or any other date as maybe determined by the Appropriate Authority. The effective date, as stated in the Scheme, is reproduced below:

“Effective Date” means the last of the dates on which the conditions referred to in clause 22 of this Scheme have been fulfilled. All references in this Scheme to the date of “coming into effect of this Scheme” or “effectiveness of this Scheme” or “Scheme taking effect” shall mean the Effective Date.

10. The Scheme involves Demerger of the Demerged Company i.e. *M/s Fashion Suitings Private Limited*. Under the Scheme, it is proposed to demerge Direct Selling and Textile Business Undertaking of *M/s Fashion Suitings Private Limited* (Demerged Company) to *M/s RCM Consumer Products Private Limited* (Resulting Company). Upon coming into effect of the Scheme and with effect from the Appointed Date and pursuant to the

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provisions of Section 230 to 232 and other applicable provisions of the Act, if any, the Undertaking of the Demerged Company shall, without any further act, instrument or deed, be and stand transferred to and/or vested in or be deemed to have been and stand transferred to or vested in the Resulting Company as a going concern so as to become as and from the Appointed Date, the Undertaking of the Resulting Company by virtue of and in the manner provided in the Scheme.

11. Upon approval of the Scheme, the Resulting Company shall issue and allot Equity Shares to all the Shareholders of the Demerged Company in the proportion to their shareholding in the Demerged Company, as consideration for the transfer of the Demerged Undertaking. Following the issue and allotment of the New Equity Shares by the Resulting Company to the Equity Shareholders of the Demerged Company, the existing shareholding of the Demerged Company will stand cancelled, extinguished and annulled to the extent of fresh issue of shares which shall be regarded as reduction of share capital of the Demerged Company.

12. The share exchange ratio under the Scheme has been determined in accordance with the report of *Mr. Sandeep Kumar Jain*, Registered Valuer. The Share Exchange Ratio as mentioned in the Report enunciates that in consideration for the demerger of Demerged Undertaking, the Resulting Company proposes to issue One (1) Equity Share having face value of INR 100 (Rupees Hundred) each credited as fully paid up, for every One (1) fully

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paid up equity share of INR 100 (Rupees Hundred) each of the Demerged Company.

13. The Scheme is hereby approved and the same is declared to be binding on all the Shareholders and Creditors of the Petitioner Company and all concerns. While approving the Scheme, it is clarified that this Order should not be constructed as an Order in any way granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.
14. Notwithstanding the above, if there is any deficiency found or violation committed *qua* any enactment, statutory rules, regulations, the sanction granted by this Tribunal to the Scheme will not come in the way of action being taken, *albeit*, in accordance with the law, against the concerned persons, directors and officials of the Petitioners.
15. **THIS TRIBUNAL FURTHER ORDERS AS BELOW:**

- I. The Demerged Company is engaged into different type of business activities viz. Direct Selling and Textiles, Real Estate, Investment and Renewable Power. Through this Scheme, it is proposed to transfer Direct Selling and Textile Business undertaking along with related assets and liabilities. The Demerged Undertaking, means business, properties, activities, operations and liabilities of whatsoever nature and in favour of the

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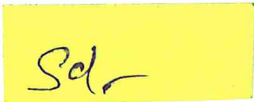
undertaking of the Demerged Company pertaining to the Direct Selling and Textile Business as a going concern.

- II. The Demerged Undertaking of the Demerged Company, shall, in accordance with section 2(19)AA of the IT Act and in pursuance to Section 230-232, with any further act, instrument or deed be demerged from the Demerged Company and stand transferred to together with all the assets, permits, contracts, liabilities, loan, duties and obligations therein and stand vested in or be deemed to be transferred to and vested in Resulting Company as a going concern so as to become as and from the Appointed Date, the assets, permits, contracts, liabilities, loan, duties and obligations of the Resulting Company by virtue of operation of law, and in the manner provided in this Scheme.
- III. The cancellation and reduction in paid up share capital of the Resulting Company shall be effected as an integral part of the Scheme in accordance with the provisions of Section 230 to 232 read with Section 66 of the Act and any other applicable provisions of the Act. The procedure under Section 66 of the Act shall not be applicable in view of the explanation to Section 230(12) of the Act. The reduction would not involve either a diminution of liability in respect of the unpaid share capital, if any or payment to any shareholder or any unpaid share capital.

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- IV. Immediately following the issue and allotment of the New Equity Shares to the equity shareholders of the demerged company as provided in clause 8 of the Scheme, and pursuant to provisions of Section 230-232 of the Act, the existing shareholding of the Demerged Company and its nominees in the Resulting Company (“Resulting Company Cancelled Shares”) shall stand cancelled, extinguished and annulled, which shall be regarded as reduction of share capital of the Resulting Company, pursuant to Sections 230 to 232 of the Act as an integral part of the Scheme, without any further act, instrument or deed. The Equity shares of the Resulting Company forming part of the Demerged Undertaking shall stand cancelled without any further act, instrument or deed.
- V. The fee, if any, paid by the Demerged Company on its Authorised Share Capital shall be set off against any fees payable by the Resulting Company on its Authorised Share Capital subsequent to the sanction of the Scheme.
- VI. The Petitioner Companies, within 30 days after the receipt of the certified copy of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies for registration. On such certified copy being provided, the Transferor Companies shall be dissolved without undergoing the process of winding up.

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The Scheme will become effective upon filing the certified copy of this Order with the concerned Registrar of the Company.

- VII. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- VIII. The Resulting Company shall deposit an amount of Rs. 25,000/- (Rupees Twenty-Five Thousand) to be paid in favour of “The Prime Minister’s National Relief Fund”, Rs. 25,000/- (Rupees Twenty-Five Thousand) to be paid in the Online Miscellaneous fee account of the Ministry of Corporate Affairs within a period of four weeks from the date of receipt of the certified copy of this Order.
- IX. The Copy of Scheme of Demerger filed on Page 31-60 of the Petition shall form an integral part of this Order.
16. As per the above directions, Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioners on the filing of the Schedule of Property, i.e. (i) freehold property of the Demerged and Resulting Companies; and (ii) leasehold property of the Demerged and Resulting Companies by way of affidavits of the Demerged and Resulting Companies respectively.

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17. Copy of this Order is to be communicated to the Counsel for the Applicant Companies.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,
TECHNICAL MEMBER**