

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (CAA) No.18/ALD/2022
(2nd Motion)**

Under Sections 230 and 232 of the Companies Act, 2013 read with Rule 15(1) of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of the Companies Act, 2013.

IN THE MATTER OF SCHEME OF DEMERGER OF:

P.R.R. ICE & COLD STORAGE PRIVATE LIMITED

**.... De-Merged Company/ Transferor Company
AND**

RAMVATIMURLI SHEETGRAH PRIVATE LIMITED

.... Resultant Company/Transferee Company

ORDER DELIVERED ON 7th May, 2024

CORAM:

Shri Praveen Gupta : Hon'ble Member (Judicial)
Shri Ashish Verma : Hon'ble Member (Technical)

Appearances:

Sh. Shahid Kazmi, Adv. : *For the Petitioner Companies*
Sh. Ajeet Kumar Singh, AOL : *For the OL Alld.*
Sh. Shivendra Bahadur Singh : *For the ROC*
CGSC
Sh. Niraj Kumar Singh, Proxy : *For the IT Deptt.*
Sh. Gaurav Mahajan, Sr. S.C.

ORDER

1. The present Joint Company Petition is filed by the above named Petitioner Companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, for sanction of the Scheme of Amalgamation (hereinafter referred to as the '**Scheme**') for De-merger of P.R.R. Ice And Cold Storage Private Limited (The Demerged Company) into Applicant Company No. 2, Ramvatimurli Sheetgrah Private Limited (The Resultant Company) (collectively referred to as '**Petitioner Companies**').
2. The Petition has now come up for final hearing. The Ld. Counsel for the Petitioner Companies submits as follows:

 - i. The proposed 'Scheme of Arrangement/ Demerger' has previously been approved by the Board of Directors of the Petitioner Companies in their respective Board Meetings held on 31/12/2020
 - ii. The factual position of the Authorized, Issued, Subscribed and Paid up Share Capital of the Petitioner Companies is described in the present Company Petition

iii. The rationale of the proposed Scheme of Amalgamation is elaborately described in the present Company Petition which may be summarized as under:

2.1 The Scheme of Arrangement provides for Demerger of the Transferor Company/Demerged Company, P.R.R. Ice and Cold Storage Private Limited will be demerged into the Transferee Company/ Resultant Company, Ramvatimurli Sheetgrah Private Limited.

Rationale for Demerger

The proposed Scheme of Arrangement/ Demerger is intended to provide greater business focus in all the Applicant Companies and that separation of business of preservation of potatoes with other businesses of Demerged Company would lead to significant benefits to all the businesses including:

- (i)** allowing each business to create a strong and distinctive platform which enables greater flexibility to pursue long- term objectives;
- (ii)** enabling accelerated growth of the Construction and building business and allowing the other businesses of P.R.R. Ice and Cold Storage Private Limited to explore suitable strategies to fund its growth plans;

- (iii) offering the shareholders, a clear focused investment opportunity in the preservation of potatoes business and thereby unlocking value of their holding;
- (iv) For synergetic effect and betterment of shareholders and other stakeholders.

3. The Petitioners have stated that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 as certified by the respective Auditors of the Petitioner Companies.
4. It has also been stated in the Petition that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013 are pending against any of the Petitioner Companies.
5. It has also been stated in the Petition that the Scheme is not prejudicial to the interest of the Shareholders and Creditors of the Petitioner Companies and the Petition is made *bona-fide* and is in the interest of all the Petitioner Companies and their respective Shareholders and Creditors as a whole and is just and equitable.
6. The Petitioner Companies have also annexed the Valuation Report dated 29/09/2019 given by Mr. Nitin Khandelwal,

Registered Valuer in relation to the Share Exchange Ratio. It is submitted that the issuance and allotment of equity shares, on the basis of Report on recommendation of Share Entitlement ratio of equity shares for the proposed demerger of the part of business of the Demerged Company into the resulting Company, shall be as follows:

“1 (one) fully paid Equity share of Ramvati Murli Sheetgrah Private Limited shall be allotted for every 2 (Two) fully paid up Equity shares of P.R.R. Ice and Cols Storage Private Limited. Thus, Ramvati Murli Sheetgrah Private Limited shall issue its 5,04,538 (Five Lakh Four Thousand Five Hundred Thirty-Eight only) fully paid up Equity Shares to the shareholders of P.R.R. Ice and Cols Storage Private Limited in the ratio of 1:2”

7. A perusal of the present Petition discloses that initially the Applicant Companies had filed a Company Application No. CA (CAA) No.07/ALD/2021 seeking directions of this Tribunal for dispensing of meeting of Equity Shareholders, Secured creditors and Unsecured creditors of the Applicant Companies and for the sanction of the Scheme of Arrangement/Demerger. Accordingly, the Bench by the Order dated 08/07/2021 allowed the above mentioned prayer by dispensing with such meetings.

- 8.** Notice of the Company Application along with the Scheme of Arrangement and related documents was also given to the Statutory Authorities viz. (a) the Central Government through the office of the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi (b) the Registrar of Companies, Uttar Pradesh, Kanpur (c) the Income-Tax Department having jurisdiction over the Petitioner Companies.
- 9.** The Tribunal vide its order dated 12.01.2023 directed to issue notice of hearing in respect of the present Company Petition to the Statutory Authorities and also to make paper publication in this respect in English and Hindi Newspaper, “Business Standard”, having wide Circulation in Hathras (U.P.)
- 10.** In compliance thereof, the Petitioner Companies have filed Affidavit of service of notice and publication of notice confirming that the notices have been duly published English and Hindi Newspaper, “Business Standard” in Delhi Edition, circulating in Agra on 13.02.2023. The Petitioner Companies have also served notice of the Company Petition to (a) Central Government through the office of regional Director, Northern Region, (b) The Registrar of Companies, Kanpur, Uttar Pradesh, (c) the Income Tax Department.

11. In response to the above stated notice the Regional Director, (Northern Region), Ministry of Corporate Affairs, New Delhi submitted its report by way of representation/ affidavit which did not contain any adverse observation or remark on the proposed Scheme of Arrangement.
12. Since it's a matter of Demerger, no report by the Official liquidator is required to be filed. However, it is noted that the report of the Regional Director has been filed through the Official liquidator.
13. In response to the service of Notice of Company Petition, the Income-Tax Department filed its Representation Affidavit in respect of the Petitioner Companies stating that no proceedings were pending against any of the Petitioner Companies. Further, there was no outstanding demand in respect of the Petitioner Companies.
14. On 04.04.2024, this Tribunal passed the following order:

“ORDER

Ld. Counsels representing their respective parties are present.

1. *The reports on behalf of ROC, RD/ Official Liquidator and Income Tax Department have already been filed.*

2. *Ld. Counsel representing the Petitioner Companies states that there is no necessity to file counter to that reports as there are no adverse observations with respect to the reports filed on behalf of the concerned authorities.*

3. *He further states that the affidavit of service has already been filed with respect to the publications made in the newspaper. The said affidavit has been filed on 27.02.2023. He also states that there is no adverse response received in pursuance of the publications so made in the two newspapers. Therefore, he seeks and is granted one-week time to file affidavit to that effect that no adverse response has been received in pursuance of the said publications made in the two newspapers.*

4. *Arguments heard. Order reserved.”*

15. Though the Ld. Counsel representing the Petitioner Companies had stated before this Tribunal that there is no adverse response so received in pursuance of the said publications made in the two newspapers, however, no such affidavit conveying that no adverse response has been received in pursuance of the said publications made in the two newspapers, has been received by this Tribunal from the Ld. Counsel representing the Petitioner Companies.

- 16.** We have gone through the reports of the Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, Ld. Registrar of Companies, Uttar Pradesh, Kanpur, Income-Tax Department having jurisdiction over the Petitioner Companies and after perusing the same and hearing the submissions made by the Ld. Counsel representing the Petitioner Companies, we find that there appears to be no objection to grant sanction to the Scheme of Arrangement and we are of the view that the sanction of the present Scheme of Arrangement is not against public policy, nor it would be prejudicial to the public interest at large.
- 17.** In addition to above, all the statutory compliances seem to have been complied with by the Petitioner Companies, therefore, the present Company Petition deserves to be allowed in terms of its Prayer Clause.
- 18.** As a result, the proposed Scheme of Arrangement/Demerger, which is annexed to the Company Petition stands approved and sanctioned and the same shall be binding on all the Shareholders, Creditors and other Stakeholders of the above-named Petitioner Companies and also on the Petitioner Companies with effect from the 'Appointed Date'. The Petitioner Companies are required to

act upon as per the terms and conditions of the sanctioned Scheme of Arrangement.

19. While approving the Scheme as above, it is clarified that the order should not be construed as, in any way, granting exemption from payment of stamp duty (if any is applicable), taxes (including income tax, (GST or any other charges, if any are applicable) 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.

20. THIS TRIBUNAL DO FURTHER ORDER:

- i. Upon the Scheme becoming effective, all the property, rights and powers pertaining to the 'preservation of food and vegetable business undertaking' ('Demerged Undertaking') of the Transferor Company / Demerged Company be transferred, without any further act or deed, to the Transferee Company / Resulting Company and accordingly, the same shall, pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company / Resulting Company for all the estate and interest of the 'Demerged Undertaking' of the Transferor Company / Demerged Company therein but subject

nevertheless to all charges now affecting the same; and

- ii. Upon the Scheme becoming effective, all the liabilities and duties pertaining to the 'Demerged Undertaking' of the Transferor Company / Demerged Company be transferred, without further act or deed, to the Transferee Company / Resulting Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company / Resulting Company; and
- iii. Upon the Scheme becoming effective, all the employees of the 'Demerged Undertaking' of the Transferor Company / Demerged Company, in service on the Effective Date, shall be transferred to and shall become the employees of the Transferee Company / Resulting Company as provided in the Scheme of Arrangement;
- iv. Upon the Scheme becoming effective, all proceedings now pending by or against pertaining to the 'Demerged Undertaking' of the Transferor Company / Demerged Company be continued by or against the Transferee Company / Resulting Company. Both transferor company/ demerged company and transferee company/ Resulting

company shall comply with the provisions of section 170 A of Income Tax Act, 1961 in filing of modified returns of income, if any required, pertaining to the year in which demerger has taken place.

- 21.** The Petitioner Company No. 1 is directed to file the Schedule of Assets in respect to demerged undertaking in the form as prescribed in Form No. CAA 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of the order to be registered with the Registrar of Companies, Kanpur, Uttar Pradesh.
- 22.** The Transferee /Resulting Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration
- 23.** The Petitioner Companies shall supply legible print outs of the Scheme of Arrangement and the Schedule of Assets in acceptable form to the Registry and the Registry will append such print outs, after verification, to the certified copy of the Order.
- 24.** Certified copy of this Order be supplied, if applied for, subject to compliance with usual formalities.

- 25.** That the Resulting Company shall deposit an amount of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) in favour of “The Ministry of Corporate Affairs” within a period of four weeks from the date of receipt of the certified copy of this order and file affidavit of compliance thereof
- 26.** All concerned regulatory authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Designated Registrar, National Company Law Tribunal, Allahabad Bench, Prayagraj.
- 27.** Any person interested shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.
- 28.** Accordingly, the present Company Petition bearing **CP (CAA) No.18/ALD/2022** is allowed and stands disposed of.

-Sd-

ASHISH VERMA
MEMBER (TECHNICAL)

Date; 7th, May 2024

-Sd-

PRAVEEN GUPTA
MEMBER (JUDICIAL)