

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT V**

**CA(CAA)/44/MB/2024**

In the matter of the Companies Act, 2013

And

In the matter of Sections 230 to 232 read with  
Section 52 of the Companies Act, 2013 and  
other applicable provisions;

And

In the matter of the **Scheme of Arrangement**  
amongst Mukand Sumi Metal Processing Lim-  
ited and Mukand Limited and their respective  
shareholders.

**Mukand Sumi Metal Processing Limited**

CIN: U27300MH2012PLC234000

Having its Registered Office at

3rd Floor, Bajaj Bhawan,

Jamnalal Bajaj Marg, 226, Nariman Point,

Mumbai, Maharashtra – 400021

*... Applicant Company No. 1/ Demerged Company*

**Mukand Limited**

CIN: L99999MH1937PLC002726

Having its Registered Office at

Bajaj Bhawan, Jamnalal Bajaj Marg,

226 Nariman Point

Mumbai, Maharashtra – 400021

*... Applicant Company No. 2/ Resulting Company*

(together referred to as '**Applicant Companies**')

**Order Dated:01.05.2024**

**Coram:**

Hon'ble Ms. Madhu Sinha  
Member (Technical)

Hon'ble Ms. Reeta Kohli  
Member (Judicial)

**Appearance:**

**For the Applicant Companies:** Mr. Hemant Sethi, Ms. Devanshi Sethi, Ms. Tanaya Sethi i/b Hemant Sethi & Co., Advocates.

**ORDER**

1. The Learned Counsel for the Applicant Companies states that the present Scheme of Arrangement is amongst Mukand Sumi Metal Processing Limited (**Demerged Company/ Applicant Company No. 1**) and Mukand Limited (**Resulting Company/ Applicant Company No. 2**) and their respective shareholders and creditors under the provisions of Sections 230 to 232 and 52 of the Companies Act, 2013. **Applicant Company No. 1 is a wholly owned subsidiary of the Applicant Company No. 2.**
2. The Learned Counsel for the Applicant Companies states that the resolution passed by the Board of Directors of the Applicant Company No. 1 and Applicant Company No. 2 in their respective meetings held on 7<sup>th</sup> February, 2024 and 8<sup>th</sup> February, 2024 respectively, approved the Scheme. The Appointed Date fixed under the Scheme is 1<sup>st</sup> April, 2024. Demerged Undertaking (Stainless Steel Cold Finished Bars and Wires Business as defined in Scheme) **shall be transferred by wholly owned subsidiary, the Demerged Company to its Holding Company, the Resulting Company.**
3. The Learned Counsel for the Applicant Companies further submits the **nature of business** of the Applicant Companies and **Rationale for the Scheme:** -

**Mukand Sumi Metal Processing Limited**

Applicant Company No. 1 is inter-alia, engaged in manufacturing, purchase, refinement, preparation, import, export, sale, and generally deals in iron & steel in all forms, and/or by-products thereof. It is also engaged in the business of Stainless Steel cold finished bars & wires and treasury & investment business.

**Mukand Limited**

Applicant Company No. 2 is a multi-division, multi-product conglomerate which mainly deals in manufacture of special alloy steel / stainless steel, billets, bars, rods, wire rods, EOT cranes, material handling equipment, other industrial machinery, comprehensive engineering services and construction/erection services.

**Rationale of the Scheme:**

This Scheme is expected to enable better realisation of potential of the businesses and yield beneficial results and enhanced value creation for the Applicant Companies, their respective shareholders, creditors, lenders, consumers and employees. The rationale and benefits of the Scheme are set out below:

- (a) *the proposed Demerger will result in consolidation of Stainless Steel Cold Finished Bars and Wires Business (defined hereinafter) in a single entity, Mukand, resulting in alignment of interest of all shareholders, concentrated management focus, integration of business operations, greater financial strength and maximise overall shareholders' value;*
- (b) *the Scheme will enable streamlining of business processes and eliminate complexities and redundancy of transactions between the Companies;*
- (c) *the Scheme will help in achieving and sustaining competitiveness and development of internal core competencies of Mukand in the long term;*

- (d) *synergies in operational processes arising from the proposed Demerger are expected to bring greater productivity & cost savings in marketing, selling and distribution expenses, resulting in economies of scale to Mukand.*
4. The Learned Counsel for the Applicant Companies further submit that **the Demerged Company is a wholly owned subsidiary of the Resulting Company** and no shares of the Resulting Company shall be allotted to the Shareholders of the Demerged Company for the transfer of Demerged Undertaking.
5. The Learned Counsel for the Applicant Company No.1 further submits that there are **7 (Seven) Equity Shareholders in the Applicant Company No.1 and the consent affidavits of all the Equity Shareholders of the First Applicant Company** have been annexed as **Annexure 'N'** to the Joint Company Scheme Application. In view of the fact that all the Equity Shareholders of the Applicant Company No.1 have given their consent to the Scheme, the meeting of the Equity Shareholders of the Applicant Company No. 1 is hereby dispensed with.
6. The Learned Counsel for the Applicant Company No. 1 further submits that there are **no secured creditors** as on 31<sup>st</sup> December, 2023 **in Applicant Company No. 1** and therefore the question of issuing notices and convening of meeting of the secured creditors of the Applicant Company No. 1 does not arise. Chartered Account certificate certifying the position there is annexed at **Annexure-P** to the Joint Company Scheme Application.
7. The Learned Counsel for the First Applicant Company further submits that there are **28 (Twenty-Eight) Unsecured Creditors** of value Rs. 94,00,43,521/- (Rupees Ninety-Four Crores Forty-Three Thousand Five Hundred and Twenty-One Only) **in the Applicant Company No. 1** as on 31<sup>st</sup> December, 2023. **1 unsecured Creditors for value of Rs. 93,10,22,170/- constituting 99.04% of the total**

**value of unsecured creditors has consented to the present Scheme of Arrangement** annexed at **Annexure-R** to the Joint Company Scheme Application.

8. The Learned Counsel for the Applicant Companies submits that in any case the present Scheme is an arrangement between the Applicant Companies and their Shareholders as contemplated in Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013, as there is no compromise or arrangement with creditors as it does not affect the rights and interests of the unsecured creditors of the Applicant Company No. 1. Further, there is no diminution of liability of any of the unsecured creditors of the Applicant Company No. 1. Also, the unsecured creditors will be paid off in the ordinary course of business. In view of the fact that 99.04% of the unsecured creditors of Applicant Company No.1 have given their consent to the Scheme, the meeting of the unsecured creditors of the Applicant Company No. 1 is hereby dispensed with.
9. **Applicant Company No. 2 is listed on Bombay Stock Exchange Limited and National Stock Exchange Limited.** The Learned counsel submits that as regards the Applicant Company No. 2/ Resulting Company there are **49,809 (Forty-Nine Thousand Eight Hundred and Nine) Equity Shareholders** a list of which is annexed as **Annexure-M** to the Joint Company Scheme Application; and **2 (Two) Preference Shareholders** a list of which is annexed as **Annexure -O** to the Joint Company Scheme Application.
10. The Learned Counsel for the Applicant Company No. 2 further submits that there are **no secured creditors in Applicant Company No. 2** . Chartered Account certificate certifying the position there is annexed at **Annexure-Q** to the Joint Company Scheme Application. The Learned Counsel of the Applicant Companies submits that as on 31<sup>st</sup> December, 2023 there are **1,794 (One Thousand Seven Hundred and Ninety-Four) Unsecured Creditors in the Applicant Company No. 2/ Resulting Company** having outstanding value of Rs 4,57,40,80,092/- (Rupees

Four Hundred and Fifty-Seven Crores Forty Lakhs Eighty Thousand and Ninety-Two Only) a list of which is annexed as **Annexure-Q** to the Joint Company Scheme Application.

11. The Learned Counsel for the Applicant Company No.2/ Resulting Company respectfully further submits that the meeting of Equity shareholders and Preference shareholders and unsecured creditors of the Applicant Company No. 2/ Resulting Company be dispensed with basis the following reasons:
- i. **Applicant Company No.1 is a wholly owned subsidiary of Applicant Company No.2.** The entire share capital of the Applicant Company No. 1/ Demerged Company is directly held by the Applicant Company No. 2 / Resulting Company along with its joint shareholders. Thus, the entire economic interest of the Applicant Company No. 1/ Demerged Company is held by the Applicant Company No. 2 / Resulting Company;
  - ii. The shareholding pattern and other rights of the shareholders of Applicant Company No.2 will remain unaffected as no new shares will be issued and there will be no change in the capital structure. Accordingly, by virtue of the Scheme, there will be no change in control and management of Applicant Company No.2;
  - iii. The rights of the creditors of the Applicant Company No. 2/ Resulting Company are not affected since there will be no reduction in their claims and the assets of the Applicant Company No. 2/ Resulting Company, post-demerger, will be more than sufficient to discharge their claims;
  - iv. Net Worth of Applicant Company No.2 post Scheme coming into effect will continue to remain positive and its aggregate assets would be sufficient to meet all the aggregate liabilities including liabilities of Applicant Company No.1 in relation to the Demerged Company, in the ordinary course of business.
12. The Learned Counsel for the Applicant Company No. 2/ Resulting Company respectfully submits that in view of the above, no compromise or arrangement is

proposed by the Applicant Company No. 2/ Resulting Company either with its shareholders or with its creditors, and thus, it does not require to hold either shareholders meeting or secured creditors meeting or unsecured creditors meeting for approval of the proposed Scheme. The Learned Counsel for the Applicant Company No. 2 further submits that the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of **Reliance Industries Ltd. V. Registrar of Companies [Company Appeal (AT) No. 109 of 2023]** dated 11<sup>th</sup> May, 2023 wherein Hon'ble NCLAT, Principal Bench, New Delhi held that the transfer of demerged undertaking from the wholly owned subsidiary into the parent/ transferee company by way of demerger is akin to merger of wholly owned subsidiary with parent company & directed that convening and holding of meetings of Equity Shareholders, Secured and Unsecured Creditors of the Parent Company was dispensed with and further consent affidavits of 90% of the total value of shareholders and secured creditors and all unsecured creditors will not be necessary at this stage. The Hon'ble National Company Law Appellate Tribunal in the case of **DLF Phase-IV Commercial Developers Limited & Ors**, In Company Appeal (AT) No. 180 of 2019, **Ambuja Cements Limited**, In Company Appeal (AT) No. 19 of 2022, and **Eurokids India Private Limited** in CSA No. 911 of 2014 passed by SJ Kathawalla, J of Bombay High Court in the similar facts have taken similar view. The facts in the present case are similar to the facts of the above cases, therefore, the Learned Counsel prayed that the meetings of shareholders, and Creditors of the Applicant Company No. 2 / Resulting Company be dispensed with. The rights of secured creditors and unsecured creditors of the Applicant Company No. 2 / Resulting Company are not affected as there is no compromise or arrangement with them. There is no issue and allotment of shares by the Resulting Company. The present Scheme is an arrangement between the Applicant Company No. 2 / Resulting Company and its shareholders as contemplated under section 230(1)(b) of the Companies Act 2013 and not in accordance with the provisions of section 230(1)(a) of the Companies Act 2013 as there is no compromise of arrangement with any class of Creditors.

13. Based on the above, this Bench is of the view that the meeting of the Equity Shareholders and Preference Shareholders and unsecured creditors of the Applicant Company No. 2/ Resulting Company are hereby dispensed with **since the Applicant Company No. 1/ Demerged Company is wholly-owned subsidiary of the Applicant Company No. 2/ Resulting Company** and view of ratio laid down in the aforesaid judgements.
14. The Applicant Companies are directed to serve notice along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the-
- (i) concerned Income Tax Authorities within whose jurisdiction the Applicant Company's assessments are made i.e., for the Applicant Company No. 1, having PAN – AAECT3291P and address at Circle 3(2)(1), Room No. 608, 6<sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400020 and for the Applicant Company 2, having PAN – AAACM5008R and address at Circle 3(2)(1), Room No. 608, 6<sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400020; along with the Nodal Office at CCIT Mumbai, 3<sup>rd</sup> floor, Aaykar Bhawan, Maharashi Karve Marg, Mumbai 400020 ([cmumbaipccit@incometax.gov.in](mailto:cmumbaipccit@incometax.gov.in) ).
  - (ii) the Central Government through the office of Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra;
  - (iii) Registrar of Companies, Mumbai, Maharashtra;
  - (iv) Securities and Exchange Board of India (For Applicant Company No. 2)
  - (v) National Stock Exchange (For Applicant Company No. 2)
  - (vi) Bombay Stock Exchange (For Applicant Company No. 2)
  - (vii) The concerned GST Department.



15. The aforementioned Notices shall be served through by Registered Post-AD/ Speed Post/ Hand Delivery and email along with copy of Scheme and state that “If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme”. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the notice.
16. The Applicant Companies to file Affidavit of Service to report to this Tribunal that the direction regarding the issue of notices have been duly complied with as per the applicable Rules of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
17. Accordingly, CA(CAA)/44/MB/2024 is **allowed** and **disposed of**.

**SD/-**

**Madhu Sinha**

**Member (Technical)**

/Abhay/

**SD/-**

**Reeta Kohli**

**Member (Judicial)**