

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
COURT - V, MUMBAI BENCH**

**CP(CAA) No/ 208 /MB-V/2023
connected with
C.A.(CAA)No/72/MB-V/2023**

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Section 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder as in force from time to time;

And

In the matter of Scheme of Arrangement of **Tejal Merchantile Private Limited** (hereinafter referred to as "Demerged Company" or "TMPL" or "Petitioner Company 1") and **Minfinite Merchantile Private Limited** (hereinafter referred to as "Resulting Company" or "MMPL" or "Petitioner Company 2") and their respective shareholders

Tejal Merchantile Private Limited, a Company)
incorporated under Companies Act 1956 with Corporate)
Identification No. U65990MH1989PTC054694 having its)
registered office at Omkar 1973, Tower B, 5602,)
Pandurang Budhkar Marg, Near Neelam Centre, Worli,) ...Demerged Company / Petitioner
Mumbai - 400030) Company 1

Minfinite Merchantile Private Limited, a Company)
incorporated under the Companies Act, 2013 with)

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Corporate Identity No. U51909MH2022PTC382955)
having its registered office at 56th Floor, 5602, Omkar)
1973 Tower B, Pandurang Budhkar, Nr. Shani Mandir,) ...Resulting Company / Petitioner
Worli, Mumbai – 400030 Company 2

Order Dated:09.02.2024

Coram:

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

Appearances:

For the Petitioner(s) : PCS Kala Agarwal (VC)

For the Regional Director (WR): Rutuja Bankar, AROC (VC).

ORDER

Per: Madhu Sinha, Member, Hon'ble Member (Technical)

1. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme of arrangement and nor has any party controverted any averments made in the Petitions to the said Scheme.
2. The sanction of the Tribunal is sought under Sections 230 to 232 read with Section 66 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of arrangement between Tejal Merchantile Private Limited, the Demerged Company / petitioner Company 1 and Minfinite Merchantile Private Limited, the Resulting Company / petitioner Company 2 and their respective shareholders.

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3. The Petitioner Companies have approved the said Scheme of arrangement by passing the Board Resolutions dated 23rd November, 2022 which are annexed to the Company Scheme Petition.
4. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Company Scheme Petition have been filed in consonance with the Order passed by this Tribunal in the Company Scheme Application No. C.A. (CAA)- 72/MB/2022.
5. The Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai.
6. The Learned Counsel for the Petitioner Companies states that the Demerged Company / Petitioner Company 1 is currently engaged in the business of trading in goods and commodities and also have investment in shares and securities and that the Second Resulting / Company Petitioner Company 2 has been set up with an objective to engage, inter alia, in buying selling, reselling, importing, exporting, transporting, storing, promoting, marketing, supplying trading, broking dealing in any manner all types of good and commodities.
7. Learned Authorised Representative for the Petitioners states that in pursuance of the directions contained in order dated 8th May, 2023 passed by this Bench in the Company Application No. C.A. (CAA)- 72/MB/2022, the meeting of Equity Shareholders of the Petitioner Companies were dispensed in view of the Company Scheme Application, inter-alia stating therein that the consents of all the Equity Shareholders have been obtained.

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8. The Learned Authorised Representative for the Petitioners states there were no secured and unsecured creditors in both the petitioner Companies.
9. Learned Authorised Representative for the Petitioners further submits that the Petitioner Companies has complied with the direction of the Tribunal and have filed the compliance affidavit on 16th June, 2023.
10. The Learned Counsel for the Petitioner Companies submit that on 6th September 2023, the Company Scheme Petition was admitted and the date for hearing and final disposal was fixed as 27th October, 2023. The Petitioner Companies were directed to cause publication of the advertisement in 'Business Standard' in English language and translation thereof in Marathi language in 'Navshakti', at least 10 (ten) days before the date fixed for the next hearing. The Petitioner Companies have filed an Affidavit of Service on 27th October, 2023 evidencing the publication of said newspaper advertisements.
11. The Learned Counsel for the Petitioner Companies states that, the Petitioner Companies have served notice of hearing and final disposal of the captioned Company Scheme Petition on the Principal Chief Commissioner of Income Tax, Mumbai ("PCCIT"). The Petitioner Companies have filed an Affidavit of Service on 27th October, 2023 evidencing service of the said notice upon the PCCIT. No representations on the Scheme have been received from the PCCIT.
12. The rationale and benefits for the Scheme of Arrangement of the Petitioner Companies is :
 - a. The Scheme would be in the best interests of the shareholders of demerged Company, as it would result in enhancement of shareholder value, operational efficiencies and greater focus and would enable the management of each of the aforesaid companies to vigorously pursue revenue growth and expansion opportunities.

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- b. To achieve the family arrangement so as to have concentrated focus on specific business activities by respective family members and achieve more effective and efficient management of all its business activities.
- c. To get more focus and greater visibility on the performance of individual businesses by the management of the Demerged Company and the Resulting Company.
- d. Further, under the Scheme, there is no arrangement proposed to be entered into with the creditors, unsecured creditors of the Demerged Company and/or Resulting Company. No compromise is offered under this Scheme to any of the creditors of the Demerged Company and/or Resulting Company. The liability towards the creditors of the Demerged Company and/or Resulting Company is neither being reduced nor being extinguished and such liability with respect to Demerged Undertaking shall be assumed and discharged by the Resulting Company in its ordinary course of business. There are no secured creditors in both the Companies.

13. The Regional Director has filed his Report dated 27th October, 2023 *inter-alia* making the following observations in Paragraphs 2 (a) to (g) which are reproduced hereunder :

Para	Observation by the Regional Director	Undertaking of the Petitioner Company/ Rejoinder
2(a)	In compliance of AS-14 (IND AS-103), the demerged Company and Resulting Company shall pass such accounting entries which are	<i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(a) of the said report of Regional Director</i>

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	<p>necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.</p>	<p><i>concerned, the Petitioner Companies undertakes to pass such accounting entries in connection with the Scheme as per AS-14 (IND AS-103) as well as to comply with other applicable accounting standards AS-5 (IND AS-8) etc. to the extent applicable. The accounting entries as per the applicable accounting standard is also provided in clause no. 8 of the Scheme.</i></p>
2(b)	<p>As per Definition of the Scheme,</p> <p>"Appointed Date" for the purpose of this scheme shall the 1st day of October, 2022 or such other date as the NCLT or other competent authority as may otherwise direct/ fix being the date from which this scheme shall be deemed to be effective, in the manner described in clause 4 of part I of the scheme; and</p> <p>And</p> <p>"Effective Date" shall means the later dates on which certified</p>	<p><i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(b) of the report of Regional Director concerned, as provided under the Scheme, the Petitioner Companies clarifies that, the Scheme shall be effective from the Appointed Date which is a specific date i.e., October, 01, 2022. Accordingly, the Scheme is in conformity with the circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>

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	<p>copy (ies) of the Order(s) of the NCLT confirming / sanctioning the scheme of Arrangement is filed with Registrar of Companies, Mumbai Maharashtra by the demerged Company and the resulting Company.</p> <p>Any references in the Scheme to the words “upon the Scheme becoming effective” or “effectiveness of the Scheme” or “date of coming into effect of the Scheme” or “Scheme coming into effect” shall mean the Effective Date.</p> <p>In this regard it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspects may be decided by the Hon,ble Tribunal taking into accounts of</p>	
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	<p>its inherent powers</p> <p>The Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
2(C)	<p>Hon'ble Tribunal may kindly seek the undertaking that this scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230 (1) read with section sub section (3) to (5) of Section 230 of the act and minutes thereof duly placed before the tribunal.</p>	<p><i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(c) of the report of Regional Director concerned Petitioner Companies states that all the members of the petitioner companies have given their consent in writing to the scheme by way of affidavit and same were filed before the Hon'ble Tribunal alongwith the joint Company application filed for admission of the scheme. Further, there were no creditors in both the petitioner Companies as per the provisional financial statement as at 30th September,2022 submitted before the Hon'ble tribunal alongwith the Joint Company application.</i></p>

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	<p><i>Further, Hon'ble Tribunal vide its order dated 8th May, 2023 has dispensed with the holding of meetings of the members of the petitioner companies in view of the consent given by all the members of the petitioner companies by way of affidavit.</i></p>										
2(d)	<p><i>It is submitted that the Demerged company and Resulting company be directed to place on record of this Tribunal the list of assets to be demerged with complete details of assets and valuation.</i></p> <p><i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(d) of the report of Regional Director concerned complete list of assets to be demerged by the demerged Company to the resulting Company and valuation as on the appointed date are given hereby in below :</i></p> <table border="1"><thead><tr><th>List of Assets to be demerged as per the scheme as on the appointed date 1st October,2022</th><th>Amount / Value (Rs. In Lakhs)</th></tr></thead><tbody><tr><td>Investment in Alternate Investments</td><td>4,083</td></tr><tr><td>Investment in Fixed Income Securities</td><td>9,033</td></tr><tr><td>Investment in Listed Equity Instruments</td><td>10,549</td></tr><tr><td>Investment in Non-Equity Oriented Mutual Fund</td><td>11,076</td></tr></tbody></table>	List of Assets to be demerged as per the scheme as on the appointed date 1st October,2022	Amount / Value (Rs. In Lakhs)	Investment in Alternate Investments	4,083	Investment in Fixed Income Securities	9,033	Investment in Listed Equity Instruments	10,549	Investment in Non-Equity Oriented Mutual Fund	11,076
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	Investment in Subsidiary Companies	3
	Investments in Unlisted Preference Shares	758
	Total (Investments)	35,503
	Other Assets:	
	Stock in Trade	2,330
	Cash and Cash Equivalents	19
	Total (Other Assets)	2,349
	Grand Total	37,852
	<p>*Note: The value of assets is as of the appointed date, same may vary at the time of actual transfer of assets as per the scheme, once it become effective.</p>	
2(e)	The Hon'ble Tribunal may kindly direct the Demerged Company and Resulting Company to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.	<i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(e) of the said report of Regional Director concerned, the Petitioner Companies undertakes that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</i>
2(f)	<i>It is submitted that the Demerged company and Resulting company have stated that the scheme is in compliance of Section 2(19AA), in this regard, petitioner company</i>	<i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(f) of the said report of Regional Director concerned, the Petitioner</i>

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	<p><i>may be directed to place on record that as how this scheme is in compliance of Section 2(19AA) of the Income Tax Act, 1961;</i></p>	<p><i>Companies state that, it is specified in the Scheme that, the Scheme is in compliance of Section 2(19AA) of the Income tax Act, 1961 and inter alia provides for the demerger, transfer and vesting of the Demerged Undertaking (as defined in the Scheme) from the First Petitioner Company into the Second Petitioner Company on a going concern basis.</i></p> <p><i>The Petitioner Companies further state that, the Scheme is in compliance with all the conditions specified in Section 2(19AA) of the Income Tax Act, the said conditions are also mentioned in the clause "F" of the scheme.</i></p>
2(g)	<p><i>1. That on examination of the report of the Registrar of Companies, Mumbai dated 29.03.2023 (Annexed as Annexure A-1)) that the Demerged Company and Resulting Company fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or</i></p>	<p><i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(g) of the said report of Regional Director concerned the verbatim reply of the petitioner companies are as follows :</i></p> <p><i>1. As far as the observation of ROC at para 2(g)(1) is</i></p>

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<p><i>representation regarding proposed scheme of Amalgamation / arrangement has been received against the Demerged Company / Resulting Company. Further, the Demerged Company (Resulting company was newly incorporated on 19th May, 2022) have filed Financial Statements up to 31.03.2022 further observations in ROC report are as under: -</i></p> <p><i>i. That the ROC Mumbai in his report dated 20.10.2023 has stated that no Inquiry, inspection, investigation, prosecutions, Technical Scrutiny, Complaints under CA, 2013 is pending against the petitioner companies.</i></p> <p><i>ii. That the ROC Mumbai in his report dated 20.10.2023 (copy enclosed) has pointed out certain issues of non – compliances in schedule III of the CA, 2013. The petitioner Companies may please be directed to submit</i></p>	<p><i>concerned the petitioner companies states that the same are self-explanatory do not require any response.</i></p> <p><i>2. As far as the observation of ROC at para 2 (g) (1) (i) is concerned, the petitioner companies states that the same are self-explanatory do not require any response</i></p> <p><i>3. As far as the observation of ROC at para 2 (g) (1) (ii) is concerned, it is stated that the Demerged Company/ petitioner Company1 has sold its strategic Long Term Investment in ZCL Chemicals Limited (A wholly owned subsidiary) on 9th March 2021 i.e. due to this an one time substantial income was generated / accounted in the profit & loss account prepared for the FY 2020-21 by the Demerged Company. The investment in the erstwhile subsidiary company was accounted at cost in line</i></p>
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<p><i>a reply on the observations reported by ROC, Mumbai & decide the matter on merits of the case and if required, the Hon,ble Tribunal may direct the ROC, Mumbai to file a supplementary RoC report in, light of Companies reply.</i></p> <p><i>The ROC Mumbai further observation are as under :</i></p> <p><i>-</i></p> <p><i>a) Demerged & Resulting Companies have not filed e-form GNL-1 with, this office.</i></p> <p><i>b) As per the Provisions of Section 232 (3) (i) of the Companies Act, 2013, where the transferor is dissolved, the fee, if any, paid by the transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee company on its authorized capital subsequent to the</i></p>	<p><i>with IND AS 27 – ‘Separate Financial Statements’ read with IND AS 109.</i></p> <p><i>The profit generated from the aforementioned sale of investments was reported as income in the company's Profit and Loss account, and the corresponding sales value impact was also reflected in the Cash Flow Statement. Due to this strategic investment sale, the income of the demerged company for the fiscal year 2020-21 cannot be directly compared with other financial years, namely 2018-19, 2019-20, and 2021-2022."</i></p> <p><i>Furthermore, surplus income from the sale of investments was strategically deployed by petitioner Company 1, which includes profitable ventures like commodities trading in line with the company's objectives. The</i></p>
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	<p><i>amalgamation therefore, remaining fee, if any after setting- off the fees already paid by transferor company on its authorised capital, must be paid by the transferee company on the increased authorised capital subsequent to the amalgamation</i></p> <p>c) <i>The interests of creditors should be protected.</i></p> <p>d) <i>May be decided on its merits.</i></p>	<p><i>resulting revenue from these activities is accurately presented in the financial statements, adhering to applicable accounting standards. Hence, the company has Complied the requirements of Schedule III of the Companies Act, 2013, with all necessary disclosures accurately reflected in the financial statements and has been submitted before the Registrar of Companies (ROC) in a timely manner by the Demerged Company."</i></p> <p>4. <i>As far as the observation of ROC at para 2 (g) (1) (ii) (a) is concerned, the petitioner company 1 and Company 2 states that they have filed the e-form GNL-1 with the office of ROC on 29.08.2023 vide SRN F63638530 and F63638720 respectively, the copy of the challan is attached as annexure 1 & 2 to this affidavit.</i></p>
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		<p>5. <i>As far as the observation of ROC at para 2 (g) (1) (ii) (b) is concerned, the petitioner companies states that the present scheme being the scheme of demerger the Provisions of Section 232 (3) (i) of the Companies Act, 2013 are not applicable and the question of set off fees if any paid on authorised share capital by the transferor Company against any fees payable by the transferee Company / demerged Company of does not arise.</i></p> <p>6. <i>As far as the observation of ROC at para 2 (g) (1) (ii) (c) is concerned, the petitioner companies states that there are no creditors in the Company, the petitioner Companies undertake to protect the interest of creditors and all the creditors in the normal course business will be paid as and when due.</i></p>
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14. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 11 above.
15. From the material on record, the Scheme of arrangement appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
16. Ms. Rutuja Bankar, AROC representative of the RD (WR) MCA, present at the time of hearing via video conferring has submitted that the explanations and clarifications given by the Petitioner Companies are found to be satisfactory and stated that they have no objection for approving the Scheme by this Tribunal.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 208 of 2023 is made absolute in terms of Point 32 clauses (a) to (f) of the said Company Scheme Petition
18. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-form INC-28 within 30 days from the date of receipt of the Order, duly certified by the Joint Registrar or the Assistant Registrar, as the case may be, of this Tribunal.
19. The Petitioner Companies to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Joint Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified Order.
20. All concerned regulatory authorities to act on a copy of this Order duly

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certified by the Registrar of Tribunal, along with a copy of the Scheme.

21. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
22. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
23. Ordered Accordingly. CP (CAA) No. 208 of 2023 is Allowed and Disposed of.

SD/-
Madhu Sinha
Member (Technical)
/Aakansha/

SD/-
Reeta Kohli
Member (Judicial)