

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)

: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 05.04.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(CAA)/6/230/AMR/2023		230	Nithyasai Industries Limited (Transferor Company) & Nithyasai Properties Private Limited (Transferee Company)

ORDER

Mr. VBSS Prasad, Ld. Counsel for the Petitioners present. Orders pronounced. CP(CAA)/6/230/AMR/2023 is allowed and recorded vide separate sheets.

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**SANJAY PURI
MEMBER (TECHNICAL)**

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**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

**CP (CAA)/6/230/AMR/2023
Connected with
CA (CAA)/6/230/AMR/2023**

[In the matter of Section 230 to 232 of the Companies Act, 2013]

AND

In the matter of Scheme of Arrangement between Nithyasai Industries Limited (NSIL) (Demerged Company) and Nithyasai Properties Private Limited (NSPPL) (Resulting Company) and their Respective Shareholders (having its registered offices in Andhra Pradesh)

BETWEEN:

M/s.Nithyasai Industries Limited (NSIL),
Having its registered office at 101,
Aqua Towers, 6-20-20/3, East point Colony,
Visakhapatnam, Andhra Pradesh – 530017 India.

...1st Petitioner /Demerged Company

AND

M/s.Nithyasai Properties Private Limited (NSPPL),
incorporated under the Companies Act, 1956,
Having its registered office at Flat No. 101,
East point Colony, Waltair Ward Visakhapatnam
Vishakapatnam, Andhra Pradesh – 530017 India.

...2nd Petitioner/Resulting Company

Orders pronounced on: 05.04.2024

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**SHRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

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Appearance:

For the Petitioners : Mr. N. Vinish Raj, Advocate &
Mr. V B S S Prasad, PCS

ORDER

(Per: Bench)

1. The present Joint Company Petition has been filed by M/s.Nithyasai Industries Limited (NSIL), Demerged Company (1st Petitioner) and M/s. Nithyasai Properties Private Limited (NSPPL), Resulting Company (2nd Petitioner) under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Compromises, Arrangements and Amalgamations) Rules, 2016 seeking for sanctioning of the Scheme of Arrangement, for short 'the **Scheme**' between the respective companies.
2. The Demerged Company and Resulting Company registered offices are situated in the State of Andhra Pradesh and therefore, it is within the jurisdiction of this Tribunal.
3. The Petitioner Companies have jointly filed the first motion application bearing CA(CAA)/6/230/AMR/2023 before this Tribunal seeking for dispensation with convening the meetings of the Shareholders, Secured Creditors and Unsecured Creditors of both the Petitioner Companies.

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The first motion application was disposed of by Order dated 07.08.2023, the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of both the Petitioner Companies were dispensed with for the reasons mentioned in the aforesaid order.

4. Brief facts leading to the filing of the present case are as follows:
- i. M/s.Nithyasai Industries Limited (NSIL), 1st Petitioner/Demerged Company was incorporated as a Private Limited Company on 19.05.2004 and the Authorized Share Capital of the Company is Rs.2,50,00,000/- divided into 25,00,000 Equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,48,07,690/- divided into 24,80,769 fully paid-up equity shares of Rs.10/- each. The main objects of the 1st Applicant Company are to manufacture, trade, import, export or otherwise deal in all kinds of chemicals and bye products from coal tar, coal tar pitch, calcined petroleum coke, carbon paste, Naphthalene and all coal and coke related products and to act as technical consultants, advisors service agents in the field of chemicals, reagents, adhesives, petroleum sub products provide technical know-how, service repairs overhaul all kind of industrial process control equipments/instruments and machines and further to carry on in India or elsewhere the business of manufacturer, processor, importer, exporter, distributor, consigner, seller, buyer,

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reseller, transporter, stockiest, agent, sub-agent, broker, supplier, indenters, concessionaire or trader or otherwise to deal in all types of carbon paste, calcined petroleum coke, coal and coke related products.

- ii. M/s.Nithyasai Properties Private Limited (NSPPL), 2nd Petitioner/Resulting Company was incorporated as a Private Limited Company on 31.10.2022 and the Authorized Share Capital of the 2nd Applicant Company is Rs.10,00,000/- divided into 1,00,000 Equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 fully paid-up equity shares of Rs.10/- each. The main objects of the 2nd Applicant Company are to carry on the business activities relating to Real-estate business activities, and other allied activities.
- iii. According to the Applicant Companies, the Composite Scheme of Arrangement is for demerger of the Open land of NSIL with NSPPL as the main object of NSPPL is Real estate similar to the Company Business, so that it can carry on the business more effectively and efficiently. The main object of the NSIL is Chemical and Pharma and the objects of the Company are similar to the existing business.
- iv. According to the Petitioner Companies, the Scheme of Arrangement (Demerger) of the Petitioner Companies would help that as the pharmaceuticals and real-estate business are

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two different activities, the management believes that demerger of the real estate business with different entity will enable it to give desired attention and help to achieve greater focus on the dealing with the specified users which will result in better and more efficient management of the housing divisions and the scheme would bring synergy of operations and lead to greater internal control on business processes and facilitate ease in decision making and the demerger of the Land Division undertaking in NSPPL will unlock the potential value of the Division and help attracting new investors, strategic partners, leaders and stakeholders and the NSIL will continue with its main objects of Pharma Division Undertaking. The Board of Directors of both the Petitioner Companies have considered it desirable and expedient to demerge the Demerged Undertaking of the 1st Petitioner Company and vest the same with the 2nd Petitioner Company. Such demerger is expected to be in the best interest of both companies, their respective shareholders, creditors, employees and other stakeholders.

- v. The Board of Directors of both the Petitioner Companies, in their respective Board Meetings held on 26.04.2023 have approved the Scheme of Arrangement with appointed date as 01.04.2023.

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- vi. The Petitioner Companies have given their declaration that no investigation or proceedings have been instituted or are pending in relation to both the Petitioner Companies and also given their consideration that upon this scheme becoming effective, the Board of Directors of Demerged Company shall determine the Record Date which shall be later than the Effective Date, for issue and allotment of fully paid-up equity shares by the Resulting Company to the members of Demerged Company and 1st Petitioner Company shall provide their list of shareholders to the 2nd Petitioner Company as on the Record Date and the 2nd Petitioner Company shall, in consideration of the transfer of the Demerged Undertaking, without further application, issue and allot to the equity shareholders of 1st Petitioner Company as on the Record Date, 4.5 equity shares of face value of Rs.10/- (credited as fully paid-up) for every 1 fully paid-up equity shares of Rs.10/- each held by them in 1st Petitioner Company as on the Record Date.
- vii. The 2nd Petitioner undertaking that all the assets and liabilities of the Demerged Undertaking shall be recorded at their book value and shall credit its Share Capital Account with the aggregate face value of the equity shares issued to the shareholders of the 1st Petitioner Company pursuant to Clause 4 of this scheme and the amount representing the surplus of assets and liabilities of the Demerged Undertaking over the aggregate face value of the share capital issued shall be

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adjusted against the Security Premium Account in the books of 1st Petitioner Company shall be correspondingly allocated and credited to the Security Premium Account in the books of 2nd Petitioner Company; and the balance amount, if any, shall be credited to the Capital Reserve and the amount representing the deficit, if any, of the assets and liabilities of the Demerged Undertaking over the aggregate face value of the share capital issued to the shareholders of the 1st Petitioner Company shall be treated as goodwill and the same may be dealt in any manner as may be determined by the Board of Directors of the 2nd Petitioner Company.

5. In the second motion proceedings, certain directions were issued by this Tribunal, vide order dated 01.09.2023 and the same were complied with by filing a memo by dairy No.6290 dated 20.09.2023. The notice of hearing was published in Business Standards (English Daily) and Andhra Jyothi (Telugu Daily) on 05.09.2023. It has also stated in the memo that the copies of notices were served upon the (a) Regional Director (SER), Hyderabad, MCA; (b) Registrar of Companies, AP, MCA, (c) Income Tax Department by way of DTDC Courier and all the acknowledgment receipts evidencing the delivery of notices are also attached to the memo.
6. The Regional Director (RD) filed reports dated 15.11.2023, 07.12.2023 and raised the following objections and the Petitioner Companies replied to the same as detailed below:

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S. No.	RD's Observations	Reply of the Petitioner Companies by way of affidavit
1	<p>The Directorate has received letter dated 14.09.2023 from the ROC, Andhra Pradesh by pointing out certain observations as under:-</p>	<p>Undertaking given by the Petitioner Companies:</p>
	<p>(a) The Regional Director (RD) sought this Tribunal to direct the Petitioner Companies to preserve its books of accounts and papers and records and shall not be disposed of without the prior permission of the Central Government in terms of Section 239 of the Companies Act, 2013.</p>	<p>The Petitioner Companies given undertaking to preserve the books of accounts and records of the Petitioner Companies in terms of Section 239 of the Companies Act, 2013.</p>
	<p>(b) The Regional Director (RD) sought this Tribunal to direct the Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme the Petitioner companies shall not be absolved for any of its statutory liabilities in any manner.</p>	<p>The Petitioner Companies given their undertaking that the Petitioner Companies comply with all statutory requirements of applicable laws. Further, the Petitioner Companies shall not be absolved from any</p>

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		statutory liabilities and hereby undertake to discharge those liabilities as and when demand to pay the same would arise.
(c)The Regional Director (RD)	The Petitioner sought this Tribunal to direct the Petitioner Companies, involved in the scheme to comply with Rule 17(2) of Companies (Compromise, Arrangement and Amalgamation) Rules, 2013 with respect to filing of order for confirmation of scheme to be filed in Form No.INC-28 with the concerned office of RoC by the Petitioner Companies.	The Petitioner Companies given their undertaking that they would comply with the provisions of the Companies Act, 2013 and file final order passed by Hon'ble Tribunal in INC-28 in accordance with Rule 17 (2) of the Companies(Comprises, Arrangements and Amalgamations) Rules, 2013 for confirmation of Scheme with the Registrar of Company.
(d) The Regional Director (RD)	The Petitioner Transferee Company sought this Tribunal to direct the	The Resulting Company undertakes that if any valid

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	<p>to file an application with RoC indicating the revised authorised capital and proof of paying prescribed fees due on revised capital after setting of that fee already paid by Transferor Companies.</p>	<p>demand arises in future with respect to the Demerged Company (in relation to the Demerged Undertaking) and Resulting Company, the Resulting Company will pay such dues to the Income Tax Authorities as per law.</p>
2	<p>The Regional Director (RD) sought this Tribunal to direct the 2nd Petitioner Company to furnish an undertaking stating specially to file e-form SH-7 with payment of requisite fees as applicable. It is observed that as per Clause 4 of the Scheme, it is stated that the authorized capital of the Resulting Company is not sufficient for issue of shares, upon approval of the scheme, the resulting company shall increase the authorized capital and file</p>	<p>The 2nd Petitioner/Resulting Company given their undertaking that they would company the same.</p>

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	requisite forms with ROC for such increase.	
3	<p>The Regional Director (RD) sought this Tribunal to direct the Petitioner Companies to file an affidavit stating that include the list of assets of the 1st Petitioner to be transferred to the 2nd Petitioner. It is observed that the scheme as well as the petition are silent about the details of assets and liabilities of the 1st Petitioner to be transferred to the 2nd Petitioner.</p>	<p>The Petitioner Companies has complied with the same along with their reply filed before the RD (SER).</p>
4	<p>The Regional Director (RD) sought this Tribunal to direct the 1st Petitioner Company to furnish an undertaking stating that the transactions are at arm's length and complied with the provisions of section 188 of the Act. It is observed that the 1st Petitioner Company has related party transactions during the last two years.</p>	<p>The 1st Petitioner Company given their undertaking that they would comply the same.</p>

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5	<p>The Regional Director (RD) sought this Tribunal to direct the 1st Petitioner Company to furnish the detailed clarification stating the accounting treatment of remaining assets and liabilities in the books of the 1st Petitioner Demerged Company on post sanction of the scheme by this Tribunal. It is observed that the scheme is silent about the Accounting Treatment in the books of accounts of the 1st Petitioner Company on post arrangement, since net-worth of the Demerged Company shall be transferred to the Resulting company on post approval which consideration shall be going to the shareholders of the Demerged company. In this regard, Demerged company may be directed to furnish the detailed clarification stating the Accounting Treatment of remaining assets and liabilities in</p>	<p>The 1st Petitioner Company has complied with the same in their reply stating that the Book value of Assets transferred by the 1st Petitioner Company to the 2nd Petitioner Company will be reduced from the fixed assets of the 1st Petitioner Company on the Assets side and the same amount will be reduced from the Reserves and Surplus Account appearing in the Balance sheet of the demerged company as on 31.03.2023.</p>
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	the book of Demerged company on approval of the scheme.	
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7. The Regional Director (RD), after considering the said replies by the Petitioners, did not raise any further objection against accepting the Scheme of Arrangement of the Petitioner Companies.
8. We have heard the Ld. Counsel for the Petitioner Companies and perused the record.
9. Supreme Court in *Miheer H. Mafatal V/s Mafatal Industries Ltd JT 1996 (8) 205* while considering the scope of the jurisdiction of the Company Court in respect of matters of sanction of the Scheme of Amalgamation as per the provisions of Section 391 read with Section 393 of the Companies Act, 1956, observed as under:

“It is commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom by the creditors and

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members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Courts jurisdiction to that extent is peripheral and supervisory and not appellate.”

In view of the above Supreme Court Judgment, this Tribunal is not supposed to examine the commercial wisdom of the shareholders and creditors.

10. On the basis of the above facts and submissions made by the learned counsel and by considering the entire facts and circumstances of the aforesaid company petition and on perusal of the Scheme and the proceedings, reports of the Regional Director and reply/undertakings of the Petitioner Companies thereon and the documents produced on record, the Scheme of Arrangement appears to be fair and reasonable and is not contrary to public policy and not in violation of any provisions of law, it appears that the requirements of the provisions of Sections 230 and 232 are satisfied by the Petitioner Companies. We are of the considered view that the proposed Scheme of Demerger is bona fide and in the interest of the shareholders and creditors.
11. In the result, the Company Petition is allowed with the following directions:-
 - i. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal to the

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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.

- ii. While approving the Scheme as above, it is further clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
- iii. The Scheme of Arrangement (Copy of the Scheme enclosed at Page No.174 to 202 of the Petition) is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies and their respective Shareholders and Creditors, Employees and all concerned under the Scheme.
- iv. The Scheme shall become effective from the Appointed Date i.e., **01.04.2023** and shall be made operational from the date of filing of the orders with the Registrar of Companies.
- v. All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Investment Undertaking along with all the assets and liabilities of the Demerged Undertaking shall stand transferred to and vest in

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the Resulting Company, without any further act or deed. The Resulting Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Resulting Company.

- vi. All the liabilities of the Investment Undertaking of the Demerged Company be transferred, without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Sections 230 and 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company.
- vii. All contracts, agreements, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Investment Undertaking of the Demerged Company, shall stand transferred to and vested in the Resulting Company and be in full force and effect in favour of the Resulting Company and may be enforced by or against it as fully and effectually against the Resulting Company.
- viii. All taxes paid or payable by the Investment Undertaking of the Demerged Company including existing and future incentives, un-availed credits and exemptions, benefit of carried forward losses and other statutory benefits, shall be available to and vest in the Resulting Company.

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- ix. All proceedings now pending by or against the Investment Undertaking of the Demerged Company, if any, shall be continued by or against the Resulting Company.
- x. All employees in the service of the Investment Undertaking of the Demerged Company shall be deemed to have become the employees and the staff of the Resulting Company on date on which the scheme finally takes effect on the basis that their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer and on terms and conditions no less favourable than those on which they were/ are engaged, as on the Effective Date.
- xi. The Petitioner Companies are directed to preserve their books of accounts and papers and records and not to dispose of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
- xii. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately.
- xiii. The Petitioner Companies are further directed to file a copy of this order along with the copy of the Scheme with the Registrar of Companies, Andhra Pradesh electronically,

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along with e-form INC-28 in addition to physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry as per relevant provisions of the Act.

- xiv. Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and if it is found that the Scheme of Arrangement ultimately results in tax avoidance or is not in accordance with the applicable provisions of Income Tax Act, then the Income Tax Department shall be at liberty to initiate appropriate course of action as per law. Any sanction of the Scheme of Arrangement under Sections 230-232 of the Companies Act, 2013 shall not adversely affect the rights of Income Tax Department or any past, present or future proceedings and the sanction of the scheme shall not come in its way for the appropriate course of action as per law for the tax liabilities, if any.
- xv. The Petitioner Companies are directed to issue newspaper publication with respect to approval of Scheme of Arrangement, in the same newspaper in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.

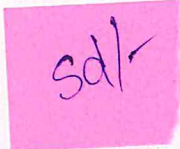
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- xvi. The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Arrangement under the provisions of the Act.
- xvii. The Petitioner Companies are also directed to strictly comply with all the Undertakings given by them including those with regard to payment of due taxes and other statutory dues as mentioned in foregoing paragraphs of this order.
- xviii. The Petitioner Companies are directed to strictly adhere to the above directions and applicable provisions of the Companies Act.
- xix. Any person aggrieved shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

12. Accordingly, the Scheme stands sanctioned and the Company Petition bearing CP (CAA)/6/230/AMR/2023 connected with CA(CAA)/6/230/AMR/2023 is allowed and stands disposed of, in terms of the above order.


SANJAY PURI
MEMBER (TECHNICAL)


RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Swamy Naidu (PS)