

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

MA(C/ACT)02/KOB/2023

IN

TP(HC)64&65/CAA/2018

(Under Rule 11 of the NCLT Rules, 2016)

MA(C/ACT)/05/KOB/2023

IN

MA(C/ACT)/02/KOB/2023

(Under Rule 11 and Rule 32 of the NCLT Rules, 2016)

IA(C/ACT)/70/KOB/2023

IN

MA(C/ACT)/02/KOB/2023

(Under Rule 11 and Rule 32 of the NCLT Rules, 2016)

MA(C/ACT)/06/KOB/2023

IN

TP(HC)64&65/CAA/2018

(Under Rule 11 of the NCLT Rules, 2016)

IA(C/ACT)/95/KOB/2023

IN

MA(C/ACT)/06/KOB/2023

(Under Rule 11 and Rule 32 of the NCLT Rules, 2016)

IA(C/ACT)/96/KOB/2023

IN

MA(C/ACT)/06/KOB/2023

(Under Rule 11 and Rule 32 of the NCLT Rules, 2016)

IA(C/ACT)/07/KOB/2024

IN

MA(C/ACT)/06/KOB/2023

(Under Rule 11 and Rule 131 of the NCLT Rules, 2016)

IA(C/ACT)/20/KOB/2024

IN

MA(C/ACT)/06/KOB/2023

(Under Rule 11 of the NCLT Rules, 2016)

In the matter of:

M/S. GRAMOX PAPER AND BOARDS PRIVATE LIMITED

MEMO OF PARTIES:

MA(C/ACT)02/KOB/2023

M/S. CSON PAPER MILLS PRIVATE LIMITED,

Having its Regd. Office at Puthuppady P.O.

Muvattupuzha, Ernakulam District, Kerala -686

673, Represented by its Managing Director, Mr.

M.C. Joseph, Ph: 98466 50555

Email: cson.paper@gmail.com

... Applicant

-Vs-

M/S. GRAMOX PAPER & BOARDS LIMITED,

Having its Registered Office at Mollayil House,

Vazhappilly P.O., Changanacherry,

Kerala – 686 103, Ph: 98460 42174

Email: info@gramox.com

... Respondent

MA(C/ACT)/05/KOB/2023

M/S. GRAMOX PAPER & BOARDS LIMITED,
Having its Registered Office at Moolayil House,
Vazhappilly P.O., Changanacherry,
Kerala – 686 103

... Applicant

-Vs-

M/S. CSON PAPER MILLS PRIVATE LIMITED,
Having its Regd. Office at Puthuppady P.O.
Muvattupuzha-686 673, Ernakulam District

... Respondent

IA(C/ACT)/70/KOB/2023

M/S. GRAMOX PAPER & BOARDS LIMITED,
Having its Registered Office at Moolayil House,
Vazhappilly P.O., Changanacherry,
Kerala – 686 103

... Applicant

-Vs-

M/S. CSON PAPER MILLS PRIVATE LIMITED,
Having its Regd. Office at Puthuppady P.O.
Muvattupuzha-686 673, Ernakulam District

... Respondent

MA(C/ACT)/06/KOB/2023

M/S. GRAMOX PAPER & BOARDS LIMITED,
Having its Registered Office at Moolayil House,
Vazhappilly P.O., Changanacherry,
Kerala – 686 103

... Applicant

-Vs-

M/S. CSON PAPER MILLS PRIVATE LIMITED,
Having its Regd. Office at Puthuppady P.O.
Muvattupuzha-686 673, Ernakulam District

... Respondent

IA(C/ACT)/95/KOB/2023

M/S. GRAMOX PAPER & BOARDS LIMITED,
Having its Registered Office at Moolayil House,
Vazhappilly P.O., Changanacherry,
Kerala – 686 103

... Applicant

-Vs-

M/S. CSON PAPER MILLS PRIVATE LIMITED,
Having its Regd. Office at Puthuppady P.O.
Muvattupuzha-686 673, Ernakulam District

... Respondent

IA(C/ACT)/96/KOB/2023

M/S. GRAMOX PAPER & BOARDS LIMITED,
Having its Registered Office at Moolayil House,
Vazhappilly P.O., Changanacherry,
Kerala – 686 103

... Applicant

-Vs-

M/S. CSON PAPER MILLS PRIVATE LIMITED,
Having its Regd. Office at Puthuppady P.O.
Muvattupuzha-686 673, Ernakulam District

... Respondent

IA(C/ACT)/07/KOB/2024

M/S. GRAMOX PAPER & BOARDS LIMITED,
Having its Registered Office at Moolayil House,
Vazhappilly P.O., Changanacherry,
Kerala – 686 103

... Applicant

-Vs-

M/S. CSON PAPER MILLS PRIVATE LIMITED,

Having its Regd. Office at Puthuppady P.O.

Muvattupuzha-686 673, Ernakulam District,

... Respondent No.1

STATE TAX OFFICER,

Taxpayer Services Circle, Muvattupuzha, State GST

Department, Mini Civil Station, 2nd floor, Mudavoor

P.O., Muvattupuzha,

Ernakulam -686 669

... Respondent No.2

IA(C/ACT)/20/KOB/2024

M/S. GRAMOX PAPER & BOARDS LIMITED,

Having its Registered Office at Moolayil House,

Vazhappilly P.O., Changanacherry,

Kerala -686103

... Applicant

-Vs-

M/S. CSON PAPER MILLS PRIVATE LIMITED,

Having its Registered Office at Puthuppady P.O,

Muvattupuzha - 686 673.

... Respondent

Order delivered on: 02.05.2024

Coram:

Hon'ble Member (Technical)

Shri. Shyam Babu Gautam

Hon'ble Member (Judicial)

TMT. Justice T Krishna Valli

Appearances:

For the Applicant/Respondent

(For CSON)

: Mr. Isaac Thomas, Advocate

Joseph and Kurian Advocates.

For the Respondent/Applicant

(For Gramox)

: Mr. K V Krishnakumar, Advocate

Karunakaran And Associates.

ORDER

Per Coram

1. The Applicant/Respondent herein, **M/s. CSON Paper Mills Private Limited** is the **Resultant Company** in the Scheme of Arrangement (Demerger) in the demerger of M/s. Gramox Paper & Boards Limited. The Resultant Company is a Private Limited Company incorporated on 13.12.2011 under the Companies Act, 1956.
2. The Respondent/Applicant herein, **M/s. Gramox Paper & Boards Limited** is the **demerged Company** as per the Scheme of Arrangement of Demerger. The Demerged Company is a Public Limited Company, incorporated on 12.02.1992 under the Companies Act, 1956.
3. Since the matter in controversy in all the applications referred to above is the same arising out of the common questions of law and facts in furtherance to

an already decided case in the matter of demerger of M/s. CSON Paper Mills Private Limited and M/s. Gramox Paper & Boards Limited in **TP(HC)64&65/CAA/2018** and since all the applications have been heard together as they are interconnected to each other, and reserved for orders on the same date, they are being decided and disposed of by this common order of this Hon'ble Tribunal.

4. The brief facts of all the applications are summarized under each of the following heads:

MA(C/ACT)02/KOB/2023 in TP(HC)64&65/CAA/2018

5. A Scheme of Arrangement of Demerger was proposed for the Respondent Company, M/s. Gramox Paper & Boards Limited, according to the provisions of Section 391 r/w Section 394 of the Companies Act, 1956. Subsequently, the Scheme of Arrangement for Demerger was prepared and was filed for approval before the appropriate forum at the time. The Scheme of Arrangement proposed to transfer and vest various properties and the business activities at Muvattupuzha of the Respondent Company, M/s. Gramox Paper & Boards Limited, to the Resulting Company, i.e. the Applicant Company M/s. CSON Paper Mills Pvt. Ltd.
6. The Demerged Company is a Public Limited Company, incorporated on 12.02.1992 under the Companies Act, 1956, having its Registered office at Moolayil House, Vazhappilly P.O., Changanacherry, Kerala 686103. The Resulting Company is a Private Limited Company incorporated on 13.12.2011 under the Companies Act, 1956, having its Registered Office at Puthupady P.O., Muvattupuzha, Kerala.

7. The main objects of the Demerged and Resulting Companies are to manufacture, produce, prepare, purchase, sell, import, and deal in paper and paper boards, as provided in their Memorandum of Association.
8. The Hon'ble High Court of Judicature at Ernakulam vide its order dated 06.04.2016 in MCA No. 18 & 19 of 2016, appointed Smt. Bindhu Antony as Advocate Chairman to convene the requisite meetings of the shareholders and the secured and unsecured creditors of the petitioner Companies in MCA No. 18 & 19 of 2016. The petitioner companies in MCA No. 18 & 19 of 2016 were also directed to make newspaper publications. The meeting was conducted and the Advocate Chairman filed the report dated 04.08.2016, stating that all the shareholders, secured and unsecured creditors of both companies have duly approved the scheme of demerger.
9. Thereafter, NCLT was established and the Application for approval of demerger was presented to NCLT, Chennai Bench which at the time was the jurisdictional Bench and the same was renumbered as TP(HC)/64&65/CAA/2018. Subsequently, an order was passed therein by NCLT, Chennai on 01.08.2018 sanctioning Annexure A1 Scheme of Arrangement of Demerger.
10. Annexure A1 Scheme of Arrangement was made in pursuance of a family arrangement between the members of the promoter family of the Respondent Company. As per Clause 5 of Annexure A1 Scheme, on the above Scheme being effective, the properties as mentioned in Annexure II of the demerged Company, i.e. Gramox, shall become the property of the resulting Company, i.e. the Applicant – CSON and the liabilities of the demerged Company will become the liability of the resulting Company.

11. As stated above, on sanction of Annexure A1 Scheme of Arrangement vide Annexure A2 order of NCLT, Chennai Bench, the properties mentioned in Annexure A2 of the Scheme of Arrangement were to be transferred immediately to the Resulting Company, i.e. the Applicant. In this regard, the Applicant Company had for the purpose of transfer of land measuring 5.28 acres in Sy. No. 1481, 1482 (with subdivisions) of Kothamangalam Village, Kothamangalam Taluk, Ernakulam District together with all improvements and land measuring 10 acres in Sy. No. 164, 165, 174 and 175 of Banchallihundi Village, Mysore District together with all improvements thereon, requested other promoters of the demerged Company, i.e. Respondent to sign the relevant transfer documents to effect the transfer of the said property considering Annexure A1 Scheme and Annexure A2 order of NCLT, Chennai Bench sanctioning the aforesaid Scheme.
12. However, the Respondent did not sign the transfer documents concerning the property in Mysore District. Thereafter, various verbal attempts were made to the Respondent to execute the transfer documents at the earliest and give effect to the Annexure A1 Scheme of Arrangement (Demerger) and Annexure A2 order; however, to date, the same has not been done even though the Applicant Company has been for several years requesting the Respondent to sign the transfer documents. The Respondent has refused to sign the transfer documents in complete violation of Annexure A1 Scheme and Annexure A2 Order.
13. Further, it is submitted that as per the Annexure A1 scheme, all costs and expenses incurred for implementing the scheme and matters incidental thereto are to be borne by both the Applicant company and the Respondent

company equally. However, the Applicant company has on its own covered all the costs and expenses incurred for implementing the scheme and matters incidental thereto total amounting to Rs. 35,14,790/-.

14. It is pertinent to mention that Para '12' of Annexure A2 order states as follows: *'the Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme'*. As per this direction, since the jurisdictional bench of NCLT is now NCLT, Kochi Bench as both the Companies are based in Kerala.
15. The Applicant is now left with no other alternate or equally efficacious remedy than to approach this Hon'ble Tribunal with this Application for a direction to the Respondent to sign and execute the transfer documents concerning the transfer of land measuring 10 acres in Sy. No. 164, 165, 174 and 175 of Banchallihundi Village, Mysore District together with all improvements thereon, as mentioned in Annexure-II of Annexure A1 Scheme of Arrangement (Demerger) and to give effect to Annexure A2 order of NCLT, Chennai Bench and to pay an amount of Rs. 17,57,395/- along with interest of 12% and other further legal expenses being the Respondent's share of the total costs and expenses incurred for implementing the scheme and matters incidental thereto. It is also submitted that the inaction on the part of the Respondent is a continuing cause of action and the present application is not barred by limitation.
16. The respondents filed their reply statement on 28.04.2023 and submitted that none of the reliefs as prayed for are liable to be granted by this Hon'ble Tribunal since the Applicant has suppressed relevant facts in the Application, has referred to documents without producing them (with the full knowledge

that such documents do not exist), and had played fraud on the Respondent as well as on this Hon'ble Tribunal. The Applicant has also withheld the fact that after the approval of the Scheme and the detection of the fraud played by the Applicant, the Parties had reached an agreement as to the limited implementation of the Scheme to give a quietus to the whole issue. Such a course of action was agreed to by the Applicant when the Respondent had moved to approach this Hon'ble Tribunal to annul the Annexure A1 Scheme and recall the Annexure A2 Order. The above move was not pursued by this Respondent only considering the plea of the Applicant to the Respondent not to pursue that course of action.

17. It is submitted that this Application is barred by limitation. The application is not maintainable due to the subsequent agreement and conduct of the parties. This Hon'ble Tribunal also lacks the jurisdiction to entertain and adjudicate this Application.
18. It is further stated that the Annexure A1 Scheme was conceived and agreed to by the Applicant and Respondent on the express understanding and agreement that there would be a family settlement encompassing the various elements of the Scheme and on the specific understanding that the various disclosures made were made with full transparency and nothing was concealed. However, it had come to the knowledge of the Respondent that there had taken place deliberate suppression and concealment and had kept quiet so far, and on the eve of the remedy becoming barred under the statute of limitation, has approached this Hon'ble Court with this instant application.
19. The Applicant has neither made any written request or oral requests for the transfer of the assets, as claimed in the Application.

20. The Respondent places the following background facts which had persuaded the demerger: -

- i. On March 20 2011, the three brothers George C. Moolayil, Mathew C. Moolayil and Joseph C. Moolayil came to an unofficial agreement to split the assets in Respondent Company viz., Gramox Paper and Board (P) Ltd (hereinafter referred to as Gramox), and sister company M/s Canara Paper Mills (P) Ltd (hereinafter referred to as Canara) and other family properties effective March 31st 2010, based on the income streams from the three entities (viz., Gramox Unit I and Gramox Unit II - both of which were distinct divisions of Gramox and of Canara in respect of financial years 2007-2008, 2008-2009 and 2009-2010. The agreement was drawn up by Mr. Thomas Thomas (all Companies' auditor at that time).
- ii. Based on the above agreement, Mr. Joseph C. Moolayil and his family would have complete ownership of Gramox Unit I and some of the family properties. George C. Moolayil and Mathew C. Moolayil's families would have ownership of Gramox Unit II (in Nanjangud, Karnataka) and of Canara (in Changanacherry, Kerala) and some of the family properties. The finances of Gramox Unit I (managed by Joseph C Moolayil and family) and Unit II (managed by George C Moolayil and Mathew C Moolayil) were kept as separate cost centres and separate profit and loss statements and balance sheets were maintained for the said units. These financials were then combined at the year-end to file returns of Gramox.
- iii. However, to effect the partition, a demerger of Gramox Unit I was subsequently proposed on an "as is basis" in which the shares held by the Joseph C Moolayil family in Gramox would be transferred to George C Moolayil and Mathew C

Moolayil families and the demerged entity would be fully held by the Joseph C Moolayil family.

- iv. The demerger process was started in the year 2014 and was approved by the Hon'ble NCLT in 2018 whereby the demerged entity viz., CSON Paper Mills Private Limited, the Applicant herein was formed. The demerger was based on the declarations and indemnities given by the various management groups as relating to the respective books.
- v. However, after the approval of the Scheme by the Hon'ble NCLT, Chennai Bench, the Respondent, noticed certain disturbing trends surrounding the partition/demerger process of Gramox Unit I.
- vi. The details of which are given below:
 - a. Once it was decided to adopt the demerger route in 2014, the profits of Gramox Unit 1 decreased substantially during the period 2015 to 2018 when compared to prior years and after the demerger decision, the profits increased exponentially again in 2019 and 2020. On further scrutiny, the production figures were not materially different in each of these years to justify and substantiate the exponential variation in profits.
 - b. A trend like the one highlighted above was observed wherein profits reported in the period 2007-10 by Gramox Unit 1 (before the unofficial agreement) were substantially lower when compared to the period 2010-2012. The unofficial agreement formed the basis for the separation of assets. Since the income streams from Gramox Unit 1 were manipulated, the share of assets allocated to MC. Joseph's family (which controls CSON) was

disproportionate and far above what would have been fair, had the income streams been correctly reported.

- c. The Respondent and the management group of the Respondent believed that that the profits were intentionally suppressed during the periods 2007-2010 (i.e., years preceding the unofficial agreement) and then again during the period 2015-2018 (after the demerger route was adopted and up until the NCLT approval). The Respondent further believes that the said suppression was done by inflating purchases and expenses and, through the diversion of funds to the Joseph C Moolayil family which ended up with the demerged entity viz., CSon. The suppression of profits as outlined above caused loss to shareholders other than M.C Joseph's family (controlling CSon) due to the consequent impact on the reserves and surplus of Unit-I. The suppression of profits as outlined above had caused loss to the shareholders of the Respondent, whose shares in the demerged entity were transferred to the members of the MC Joseph Family as per the scheme of arrangement. The misreporting of shareholders' funds also adversely influenced the decision of the shareholders of the Respondent on the terms of the partition/demerger. Owing to the anomalies observed in the figures, the deed of family settlement was not executed at all as no cogent response was received from Gramox Unit I shareholders (the shareholders of the CSon), the Applicant herein.
- d. These anomalies were also pointed out repeatedly to the Applicant and its auditor. The Applicant and its auditor had assured the shareholders and the Respondent that every effort would be made to get to the bottom of the issue and the data relating to the said years would be made available. However,

neither the Applicant nor its auditor did provide the data. It is also pertinent to point out that, in the light of a lack of response on the anomalies, a tacit understanding had existed between the families that further claims would not be made on Gramox notwithstanding the terms of the Hon'ble NCLT Annexure A2 Order approving the Annexure A1 Scheme. It was on account of the above that the Applicant has never approached the Respondent for the transfer of the land as prayed for in their application. The Applicant was buying time and wanted to avoid the Respondent from approaching the Hon'ble Tribunal seeking the setting aside of the Annexure A2 order and the Annexure A1 Scheme on the grounds of fraud and suppression of material facts. Now that the period of limitation was fast expiring the Applicant has approached this Hon'ble Tribunal with this experimental Application.

- e. The Respondent strongly believes that the financials in the years 2007-2018 from Gramox Unit 1 have been intentionally misreported. Respondent has strong grounds to believe that the Applicant had waited for the statute of limitation to apply to the said financial reporting periods before approaching this Hon'ble Tribunal with this instant application, praying for a direction for mutation of the land in Nanjangud, Karnataka, and for claiming a portion of the demerger expenses. Had the facts and the background of the matter been any different, the Applicant would not have waited so long. The conduct of the Applicant itself reveals the subterfuge, suppression and outright fraud played by the Applicant.
- f. Furthermore, it is for the above reason that the Agreement of Family Arrangement dated 16.02.2016, referred to in the Annexure A1 Scheme was never concluded and the same is not produced in these proceedings. This

aspect is also suppressed by the Applicant, and the Applicant wants this Hon'ble Tribunal to pass further orders on the implementing the Scheme, when the Agreement Family Arrangement dated 16.02.2016, which formed the basis of the Scheme was never entered and had never existed.

- g. It is therefore that the Respondent petitioned the Hon'ble NCLT to order a forensic audit of CSON's (i.e. the accounts of the pre-demerged entity Gramox Unit 1) accounts for the period 2010-2018. The Respondent has also prayed in the IA for a direction to the Applicant to preserve its books of accounts and records (including the computer software data and back-ups of accounting data and allied software that Gramox Unit I (now CSON had used) from 2007-2018 as well as supporting documents and copies of VAT records and returns filed for each of the financial years 2007-2018 to conduct a forensic audit.
- vii. As the demerger was based on misrepresentation and fraud, which would be revealed on a forensic audit of the accounts as above, the Respondent submits that it is not liable to pay any portion of the costs, and more particularly the amount of Rs. 17,57,395/- along with interest of 12% and other further legal expenses as claimed by the Applicant, purported to be the Respondent's share of the total costs and expenses incurred for implementing the scheme and matters thereto.
21. The Registrar of Companies (ROC), Kerala also filed their report on 28.11.2023. The ROC, Kerala after examining the scheme documents, had forwarded a report to the Directorate viz. Regional Director, Southern Region, Chennai on the said Scheme of Arrangement (Demerger) vide his letter dated 28.12.2016.

22. The Regional Director after examining the Scheme had made some observations on 5 aspects and vide letter dated 30.12.2016 had communicated the same to the ROC, Kerala and conveyed that the Central Government does not have any objection and informed the same to the Hon'ble High Court of Kerala that the scheme may be decided on merits. Accordingly, ROC, Kerala has filed its report in Company Petition Nos. 44 of 2016 & 45 of 2016 before the Hon'ble High Court of Kerala. After the transfer of the petitions to the NCLT Chennai Bench, a notice was issued to ROC Kerala, vide order dated 21.06.2018, to send its report to explain whether the deficiencies are made good or not.
23. That the ROC, Kerala vide its letter dated 04.07.2018 has informed the order dated 21.06.2018 of Hon'ble NCLT, Chennai Bench to the Regional Director, Southern Region, Chennai. The Regional Director vide his letter dated 24.07.2018 had directed the ROC, Kerala to file his report before the Hon'ble Tribunal stating that the subject companies have complied with the 5 observations made earlier satisfactorily and hence Regional Directorate has no objection in approving the Scheme of the companies.
24. It is submitted that the Hon'ble NCLT, Chennai Bench vide order dated 01.08.2018 has sanctioned the Scheme of Arrangement (Demerger) between the petitioner company and respondent company and the appointed date of the said Scheme was with effect from 01.10.2015.

Connected MA's and IA's:

**MA(C/ACT)/05/KOB/2023 in MA(C/ACT)/02/KOB/2023 in
TP(HC)64&65/CAA/2018**

25. This Interlocutory Application is filed by the Applicant herein under Rule 11 and Rule 32 of NCLT Rules, praying for an order for a **forensic audit** of the accounts of the Respondent by an independent Chartered Accountant, for the periods 2013-14 to 2017-2018, to see if there was any suppression of profits or manipulation of production figures by the Respondent (former Gramox Unit 1).
26. The applicant submits that this has become necessary as the Respondent which was reporting loss and marginal profits for the periods 2013-2014 to 2017-18, had suddenly started reporting huge profits after the demerger, especially when the Respondent (former Gramox Unit 1) was being managed by the same persons.
27. The Respondent herein is the Applicant in MA/02/KOB/2023 and filed its counter-statement to this present IA on 15.09.2023. the respondent submitted that the present IA is not maintainable and ought to be dismissed in limine. Further, IA/96/KOB/2023 filed in MA/06/KOB/2023 is filed by the Applicant herein seeking identical reliefs as the present IA. This itself would show that the Applicant's intentions are malafide and the Applicant is only trying to delay the proceedings and cause hindrance to the main relief sought in MA/02/KOB/2023 by the Respondent herein for transfer of land. The Respondent failed to understand the logic adopted by the Applicant in filing two Interim Applications seeking identical reliefs in the same matter.

28. This present M.A. has been filed in the above MA/02/KOB/2023 seeking for a forensic audit of the books of accounts of the Respondent, C Son Paper Mills Pvt. Ltd. which is completely beyond the scope and purview of the said MA/02/KOB/2023, or for that matter the original *lis viz.* TP(HC)/64&65/CAA/2018, the same has already been concluded. The present IA is also totally barred by limitation and in fact, merely a counterblast on the part of the Applicant and therefore, the same deserves to be dismissed at the outset.
29. Further, a mere perusal of the reliefs would show that a preservation of documents for forensic audit of the books of account of the Respondent is sought from the years 2013-14 to 2017-18 which is clearly beyond the scope of the present MA which was only filed for implementation of Annexure A2 Order.
30. It is stated that the Applicant has arrived at this absurd conclusion by taking note of the Respondent's financial performance after demerger. This proposition is totally unfounded and can have no bearing on these applications since any improvement in the financials of the Resultant Company, i.e. this Respondent after demerger cannot be questioned by the Applicant's original Company. In any view of the matter, to rake up these issues which were considered and decided by this Hon'ble Tribunal by Annexure A2 order is arbitrary and raised with malafide intent to frustrate Annexure A1 Scheme of Demerger. Further, it is stated that the relief sought is completely arbitrary, and illogical and cannot be granted.

IA(C/ACT)/70/KOB/2023 in MA(C/ACT)/02/KOB/2023 in
TP((HC)64&65/CAA/2018

31. This Interlocutory application was filed by the applicant under Rule 11 and Rule 32 of NCLT Rules, praying for an order for the **preservation of documents/data** to enable a forensic audit of the accounts of the Respondent for the periods 2013-14 to 2017-2018 to see if there was any suppression of profits or manipulation of production figures by the Respondent (former Gramox Unit 1).
32. The applicant submitted that this has become necessary as the Respondent which was reporting loss and marginal profits for the periods 2013-2014 to 2017-18, had suddenly started reporting huge profits after the demerger, especially when the Respondent (former Gramox Unit 1) was being managed by the same persons.
33. The Applicant had already filed an application for the appointment of an independent Chartered Accountant to conduct a forensic audit of the books of the Respondent. Hence, for the effective audit, it is necessary that the records/data of the Respondent needs to be ordered to be preserved, more specifically,
 - a. purchase orders,
 - b. vendor agreements,
 - c. Goods Received Notes,
 - d. weighbridge slips, Weight
 - e. anomaly and weight reduction records,
 - f. vehicle movement
 - g. annual production and yield data

h. copies of VAT records and returns filed for each of the financial years 2013-14 to 2017-2018.

34. The Respondent herein is the Applicant in MA/02/KOB/2023 and filed its counter to this present IA on 15.09.2023. At the outset, it is submitted that the present IA is not maintainable and ought to be dismissed in limine. Also, IA/95/KOB/2023 filed in MA/06/KOB/2023 is filed by the Applicant herein seeking identical reliefs as the present IA. This itself would show that the Applicant's intentions are malafide and the Applicant is only trying to delay the proceedings and cause hindrance to the main relief sought in MA/02/KOB/2023. The Respondent failed to understand the logic adopted by the Applicant in filing two Interim Applications seeking identical reliefs in the same matter. On this ground alone both the IAs deserve to be dismissed in limine.
35. This present M.A. has been filed in the above MA/02/KOB/2023 seeking the preservation of documents for forensic audit of the books of accounts of the Respondent (CSon) which is completely beyond the scope and purview of the said MA/02/KOB/2023, or for that matter the original *lis viz.* TP(HC)/64&65/CAA/2018, the same has already been concluded. Furthermore, the present IA is also totally barred by limitation and in fact, merely a counterblast on the part of the Applicant.
36. Further, a mere perusal of the reliefs would show that a preservation of documents for forensic audit of the books of account of the Respondent is sought from the years 2013-14 to 2017-18 which is clearly beyond the scope of the present MA which was only filed for implementation of Annexure A2 Order.

37. It seems the Applicant has arrived at this absurd conclusion by taking note of the Respondent's financial performance after the demerger. This proposition is totally unfounded and can have no bearing on these applications since any improvement in the financials of the Resultant Company, i.e. this Respondent after demerger cannot be questioned by the Applicant's original Company. In any view of the matter, to rake up these issues which were considered and decided by this Hon'ble Tribunal by Annexure A2 order is arbitrary and raised with malafide intent to frustrate Annexure A1 Scheme of Demerger. It is submitted that the relief sought is, therefore, completely arbitrary, and illogical and hence, cannot be granted.
38. The applicant has also filed its rejoinder to the above reply statement filed by the respondents on 23.01.2024.

MA(C/ACT)/06/KOB/2023 in TP(HC)64&65/CAA/2018

39. This Miscellaneous Application bearing No. MA(C/ACT)/06/KOB/ 2023 was filed by the respondent to **recall the Annexure A2 order dated 01.08.2018 of the Hon'ble NCLT, Chennai Bench in TP((HC)64&65/CAA/2018 and to declare the Annexure A1 Scheme of Demerger as invalid and void.**
40. It is submitted that the Applicant and the Respondent Company had entered into a Scheme of Arrangement of Demerger dated 01.10.2015 of the Applicant Company M/s. Gramox Paper & Boards Pvt. Ltd. The Scheme of Arrangement proposed to transfer and vest various properties and the business activities at Muvattupuzha of the Applicant Company (Gramox) to the Resulting Company, i.e., the Respondent Company (CSON). The Scheme of Arrangement for Demerger was prepared and was submitted for approval before the Hon'ble High Court of Kerala as MCA No.18 of 2016, which was filed by the Respondent

herein and MCA No.19 of 2016 which was filed by the Applicant herein. The Hon'ble High Court of Kerala was the appropriate forum at that time to entertain and adjudicate such applications.

41. The Hon'ble High Court of Kerala vide its order dated 06.04.2016 in MCA Nos. 18 and 19 of 2016, appointed Smt. Bindhu Antony as Advocate Chairperson to convene the requisite meetings of the shareholders and the secured and unsecured creditors of the Petitioner Companies in MCA No. 18 and 19 of 2016. The Petitioner Companies in MCA No. 18 and 19 of 2016 were also directed to make newspaper publications. The meetings were conducted and the Advocate Chairperson submitted the report dated 04.08.2016, stating that all the shareholders, secured and unsecured creditors of both the companies had duly approved the scheme of demerger.
42. Later, the Hon'ble NCLT was established and the Application for approval of demerger was transferred to NCLT, Chennai Bench which at the time was the jurisdictional Bench, where it was renumbered as TP(HC)/64&65/CAA/2018. Thereafter, NCLT, Chennai Bench Vide Order dt. 01.08.2018 was pleased to sanction Annexure-A1 Scheme of Arrangement of Demerger.
43. The Respondent herein has now filed MA/2/KOB/2023 in the aforesaid matter praying for directions to execute the Order dated 01.08.2018 in TP(HC)/64&65/CAA/2018 and to recover an amount of Rs. 17,57,395/- (Rupees Seventeen Lakhs Fifty-seven thousand three hundred and ninety-five only).
44. It is submitted that the Annexure A1 Scheme was conceived and agreed to by the Applicant and Respondent on the express understanding and agreement that there would be a family settlement encompassing the various elements of

the Scheme and on the specific understanding that the various disclosures were made with full transparency and nothing was concealed. However, it had come to the knowledge of the Applicant that the Respondents had deliberately suppressed and concealed the actual financials of the Applicant Company's unit at Muvattupuzha which was then being managed by the family group which now manages the Respondent Company.

45. It is submitted that on 20.03.2011, the three brothers George C. Moolayil, Mathew C. Moolayil and Joseph C. Moolayil came to an unofficial agreement to split the assets in Applicant Company viz., Gramox Paper and Board Pvt. Ltd. ("Gramox"), and sister company M/s Canara Paper Mills (P) Ltd ("Canara") and other family properties effective 31.03.2010, based on the income streams from the three entities (viz., Gramox Unit I and Gramox Unit II - both of which were distinct divisions of Gramox and of Canara in respect of FYs 2007-2008, 2008-2009 and 2009-2010. The agreement was drawn up by Mr. Thomas Thomas (all Companies' Auditor at that time). It is stated that based on the above agreement, Mr. Joseph C. Moolayil and his family would have complete ownership of Gramox Unit I and some of the family properties. George C. Moolayil and Mathew C. Moolayil's families would have ownership of Gramox Unit II (in Nanjangud, Karnataka) and of Canara (in Changanacherry, Kerala) and some of the family properties. The finances of Gramox unit I (managed by Joseph C Moolayil and family) and Unit 2 (managed by George C Moolayil and Mathew C Moolayil) were kept as separate cost centres and separate profit and loss statements and balance sheets were maintained for the said units. These financials were then combined at the year-end to file returns of Gramox.

46. However, to effect the partition, a demerger of Gramox Unit I was subsequently proposed on an "as is basis" in which the shares held by the Joseph C Moolayil family in Gramox would be transferred to George C Moolayil and Mathew C Moolayil families and the demerged entity would be fully held by the Joseph C Moolayil family. The demerger process was started in the year 2014 and was approved by the Hon'ble NCLT, Chennai in 2018 whereby the demerged entity Viz., C Son, the Respondent herein was formed.
47. However, after the approval of the Scheme by the Hon'ble NCLT, Chennai the Applicant, noticed certain anomalies with regarding the partition/demerger process of Gramox Unit 1. More importantly, the family settlement which was to form the basis of the Scheme of demerger, was not executed by the Respondent's management group. Therefore, the very foundation for the demerger scheme was a document which never came into existence.
48. In the light of the lack of response on the anomalies, a tacit understanding had existed between the families that further claims would not be made on Gramox notwithstanding the terms of the Hon'ble NCLT Order dated 01.08.2018 approving the Annexure-A1 Scheme. It was on account of the above that the Respondent has never approached the Applicant for the transfer of the land. The Respondent was buying time and wanted to avoid the Applicant herein from approaching this Hon'ble Tribunal seeking the setting aside of the Annexure A-1 Scheme on the grounds of fraud and suppression of material facts.
49. The Applicant strongly believes that the financials in the years 2007-2018 from Gramox Unit 1 have been intentionally misreported. It is submitted that had the facts and the background of the matter been any different, the

Respondent would not have waited so long to file MA(C/ACT)/02/KOB/2023 in the aforesaid matter. The conduct of the Respondent itself reveals the subterfuge, suppression and outright fraud played by the Respondent.

50. It is submitted that the Respondents have resorted to arbitrary acts and thereby caused unlawful loss to the Applicant and it has also resulted in unlawful gain to the Respondents. The Respondents by filing MA(C/ACT)/02/KOB/2023 in the aforesaid matter have also concealed material facts and is trying to mislead this Hon'ble Tribunal. The Annexure A1 Scheme has given liberty to the parties therein to approach this Hon'ble Tribunal for further orders should a need arise. As fraud has been played on the Applicant as well as on this Hon'ble Tribunal, it is just and necessary that this Hon'ble Tribunal sets aside the Annexure A1 Scheme in toto, as fraud vitiates all solemn action.
51. The Respondent (CSON) filed its counter to the M.A. on 15.09.2023. At the outset, it is submitted that the present M.A. is not maintainable and ought to be dismissed in limine.
52. It is submitted by the respondents that reliefs sought are hopelessly barred by limitation and cannot be raised in such a proceeding. Annexure A1 scheme of demerger was sanctioned by the Hon'ble NCLT by the annexure A2 order dt. 01.08.2018. The scheme of demerger was prepared in accordance with the law and on the consent of all the parties involved and thereafter the annexure A2 order confirming the said scheme was passed. No provisions in the Companies Act or any other statute for the matter permit the recall of an Order especially the recall of an order confirming the scheme of demerger.

53. The only remedy available to the applicant at that time was to approach by way of an appeal. The applicant has not approached the Appellate Tribunal at that time and now cannot seek relief by way of an M.A. for recalling the said order in 2023 which was an order passed in 2018.
54. The respondent has filed the MA(C/ACT)/02/KOB/2023 as there was difficulty in implementing the said order because the applicant was refusing to transfer a portion of land to the Respondent (Cson).
55. It is further submitted that the present application filed by the applicants is nothing but a counterblast to the application filed by the respondent and is only filed with the intention of delaying the proceedings further.
56. The Applicant also filed its rejoinder to the counter filed by the respondent on 07.11.2023.

IA(C/ACT)/95/KOB/2023 IN MA(C/ACT)/06/KOB/2023

57. This IA is submitted by the Applicant herein praying for an order to **preserve documents/data** to enable a forensic audit of the accounts of the Respondent for the periods 2013-14 to 2017 2018 to see if there was any suppression of profits or manipulation of production figures by the Respondent (former Gramox Unit 1).
58. This has become necessary as the Respondent which was reporting loss and marginal profits for the periods 2013-2014 to 2017-18, had suddenly started reporting huge profits after the demerger, especially when the Respondent (former Gramox Unit 1) was being managed by the same persons.
59. The Respondent filed its reply to this present IA on 15.09.2023. It is respectfully submitted that the present IA is not maintainable and ought to be

dismissed in limine. The IA/70/KOB/2023 in MA/02/KOB/2023 is filed by the Applicant seeking identical reliefs similar to the present IA. This itself would show that the Applicant's intentions are malafide and the Applicant is only trying to delay the proceedings and cause hindrance to the main relief sought by the Respondent in MA/02/KOB/2023. The Respondent failed to understand the logic adopted by the Applicant in filing two IAs seeking identical reliefs in the same matter.

60. This present IA has been filed in the above MA/06/KOB/2023 seeking the preservation of documents for a forensic audit of the books of accounts of the Respondent, (CSon) which is completely beyond the scope and purview of the said MA/02/KOB/2023, or for that matter the original *lis viz.* TP(HC)/64&65/CAA/2018, the same has already been concluded. Furthermore, this present IA is also totally barred by limitation and is merely a counterblast on the part of the Applicant.
61. Further, a mere perusal of the reliefs would show that the Applicant seeks the preservation of the documents of the Respondent from the years 2013-14 to 2017-18 which are already in possession of the Applicant itself and not in the possession of the Respondent because they pertain to the period before the demerger and can only be kept at the registered office of the Applicant, Gramox.
62. It seems the Applicant has arrived at this absurd conclusion by taking note of the Respondent's financial performance after the demerger. This proposition is totally unfounded and can have no bearing on these applications since any improvement in the financials of the Resultant Company, i.e. this Respondent after demerger cannot be questioned by the Applicant's original Company.

63. In any view of the matter, to rake up these issues which were considered and decided by this Hon'ble Tribunal by Annexure A2 order is arbitrary and raised with malafide intent to frustrate Annexure A1 Scheme of Demerger. Therefore, it is submitted that the relief sought is completely arbitrary, and illogical and cannot be granted.
64. The applicant has also filed its rejoinder to the above reply statement filed by the respondents on 28.11.2023.

IA(C/ACT)/96/KOB/2023 IN MA(C/ACT)/06/KOB/2023

65. This IA was filed by the Applicant herein, under Rule 11 and Rule 32 of the NCLT Rules, 2016 praying for an order for a **forensic audit** of the accounts of the Respondent by an independent Chartered Accountant, for the periods 2013-14 to 2017-2018 to see if there was any suppression of profits or manipulation of production figures by the Respondent.
66. This has become necessary as the Respondent which was reporting loss and marginal profits for the periods 2013-2014 to 2017-18, had suddenly started reporting huge profits after the demerger, especially when the Respondent was being managed by the same persons.
67. The respondent filed its counter on 15.09.2023. It is submitted that this IA is not maintainable and ought to be dismissed in limine. The MA/05/KOB/2023 filed in MA/02/KOB/2023 has been filed by the Applicant herein seeking identical reliefs as the present IA. This itself would show that the Applicant's intentions are malafide and the Applicant is only trying to delay the proceedings and cause hindrance to the main relief sought in MA/02/KOB/2023.

68. The present IA is a counterblast to the MA/O2/KOB/2023. It is completely illogical to allege that Annexure A1 Scheme of Demerger violates family arrangement. It is submitted that the Applicant has arrived at this absurd conclusion by taking note of the Respondent's financial performance after demerger.

**IA(C/ACT)/07/KOB/2024 IN MA(C/ACT)/06/KOB/2023 in
TP((HC)64&65/CAA/2018**

69. The applicant herein has already filed IA praying for the preservation of documents of the 1st respondent to enable a forensic audit of the accounts of the 1st respondent for the periods of 2013-2014 to 2017-2018 to ascertain whether there was any suppression of profits or manipulation of production figures by the 1st respondent.

70. The 1st respondent had filed a counter stating that the books of accounts for the relevant period are not with the 1st respondent but with the applicant herein. The above arguments of the respondent are wrong and misleading. Even before the demerger, Gramox unit 1 tell under the jurisdiction of the Kerala VAT authorities and periodical KVAT returns were filed before the jurisdiction authority in Kerala (the applicant Gramox unit 2 tell under the jurisdiction of Karnataka VAT authorities). After the demerger, the GST returns are being filed before the State GST authorities in Kerala. All the records are required to be maintained in the Kerala unit till demerger and thereafter in the respondent unit.

71. Now the applicant has reliably learned that the 1st respondent herein has submitted the books of accounts with the period of 2014-15 to 2017-18 for completing the VAT and/or GST assessment before the 2nd respondent. Under

the relevant rules relating to the VAT/GST, the 1st respondent is required to maintain the relevant records within the area of jurisdictional officer and to produce them for final assessment and audit.

72. The 2nd respondent is the jurisdictional authority for the tax assessment of the 1st respondent for the relevant period. The 2nd respondent will be able to answer whether the 1st respondent has submitted returns and the books of accounts for the above purpose for the assessment for audit for the relevant years.
73. The applicant therefore submits that, if there is a direction by this Hon'ble Tribunal to the 2nd respondents to produce the VAT/GST assessment orders for the periods 2014-15 to 2017-18 herein with VAT No.32150256175 and GST No.32AABCG2366B1Z9, then the malafide intentions of the 1st respondent in pleading that the relevant records are not available with the 1st respondent and that they are with the applicant, will be revealed.
74. The counsel for the respondent submitted that he has decided not to file any reply on the present IA and the same may be decided on merits.

**IA(C/ACT)/20/KOB/2024 in MA(C/ACT)/06/KOB/2023 in
TP((HC)64&65/CAA/2018**

75. As per this I.A., it is submitted that the case of the Respondent herein as stated by them in Paragraph 10A of the CP No.44 of 2016 in MCA No.18 of 2016 filed before the Hon'ble High Court of Kerala was that the aforesaid scheme of demerger was made in pursuance of a Family Arrangement dated 16.02.2016 between members of the promoter family of the Gramox Paper & Boards Ltd. The specific case of the Applicant herein is that there is no Memorandum of

Family Arrangement dt. 16.02.2016. The said scheme of demerger was obtained by fraud by the Respondent, and the Respondent refused to enter into the said Agreement.

76. Even though the Respondent specifically States that there was a Family Arrangement dt. 16.02.2016, the Respondent to date has not produced the said document in any of the proceedings before the Hon'ble High Court of Kerala or the Hon'ble NCLT, Chennai bench or this Hon'ble Tribunal. Whereas the Applicant herein had produced the non-executed Draft Family Settlement Agreement as Annexure-A2 in the Rejoinder filed in IA(C/Act)/95/KOB/2023.
77. Further, not producing a relevant document would show the mala fides of the Respondent and reveal the fraud played by the Respondent in obtaining the scheme of demerger, after obtaining an order to its advantage, refusing to enter into the Agreement which was the foundation of the Scheme.
78. Therefore, this instant IA is submitted praying that this Hon'ble Tribunal be pleased to issue directions to the Respondent to produce the Memorandum of Family Arrangement dated 16.02.2016. It is stated by this Applicant that the Respondent has suppressed the said aspect and the Scheme of Arrangement for Demerger was obtained by fraud by the Respondent.
79. The counsel for the respondent submitted that he has decided not to file any reply on the present IA and the same may be decided on merits.

FINDINGS

80. Heard the Learned Counsels for both parties at length and perused all the available case records/documents. This Hon'ble Tribunal finds it necessary

and convenient to decide and dispose of all the above applications by this common order.

81. All these applications have been filed under Rule 11 read with Rule 32 of the NCLT Rules of 2016. Rule 11 and Rule 32 reads as follows:

“Rule 11. Inherent Powers. -

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

“Rule 32. Interlocutory applications. -

Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.”

82. In addition to the above, Rule 34(1) of Part IV of the NCLT Rules, 2016 deals with the General Procedure, which reads as follows:

“Rule 34. General Procedure. -

In a situation not provided for in these rules, the Tribunal may for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.”

83. As per **MA(C/Act)/02/KOB/2023**, the Scheme of Arrangement of Demerger was proposed for the Respondent/applicant Company, M/s. Gramox Paper & Boards Limited, according to the provisions of Section 391

r/w Section 394 of the Companies Act, 1956. The initial proceedings happened before the High Court of Judicature at Ernakulam. Later, an order was passed by the NCLT, Chennai Bench sanctioning the Annexure A1 Scheme of Arrangement of Demerger on 01.08.2018. The scheme shall become effective from the Appointed date viz., 01.10.2015. It was stated that the above-said Scheme of Arrangement of Demerger was based on a family arrangement and with the consent of all the parties therein. Now, the jurisdictional bench of NCLT to entertain this present matter is the NCLT, Kochi Bench.

84. It is seen that even though the scheme was sanctioned, the Respondent/Applicant (Gramox) has not yet executed the required documents concerning the transfer of land measuring 10 acres in Sy. No. 164, 165, 174 and 175 of Banchallihundi Village, Mysore District together with all improvements thereon, as mentioned in Annexure-II of Annexure A1 Scheme of Arrangement (Demerger) to the Applicant/Respondent (CSOs). It is a clear inaction from the side of the Respondent/Applicant (Gramox) and is a case of contempt of the court's order in not transferring the land to the Applicant, which is legally entitled to the applicant.
85. As per the Annexure A1 scheme, all costs and expenses incurred for implementing the scheme and matters incidental thereto are to be borne by both the Applicant company and the Respondent company equally. However, the Applicant company has on its own covered all the costs and expenses incurred for implementing the scheme and matters incidental thereto total amounting to Rs. 35,14,790/-. Hence, the Respondent/Applicant is also liable to pay an amount of Rs. 17,57,395/- towards the legal expenses being the

Respondent's share of the total costs and expenses incurred for implementing the said scheme. Thereby, the application **MA(C/Act)/02/KOB/2023** stands allowed.

86. The application **MA(C/Act)/06/KOB/2023** was filed by the Respondent/Applicant (Gramox) to recall the Order dt. 01.08.2018 passed by the NCLT, Chennai Bench. Prima facie this application is belated. Moreover, the order sanctioning the Scheme of Arrangement of Demerger was passed based on the consent of the parties from the very beginning, which was also prepared in accordance with the applicable laws. If the Applicant (Gramox) herein had any issues/disputes concerning the said order, they could have appealed the same before the Appellate Tribunal at that time itself. Now, there is no point in filing a belated application before this Tribunal, after the lapse of several years, invoking the inherent powers of this Tribunal under Rule 11. The conduct of the Respondent/Applicant (Gramox) is highly objectionable and is to stall the implementation of the scheme.
87. As per the inherent powers envisaged under Rule 11 of the NCLT Rules, 2016, allow the Tribunal to recall a judgment. The NCLT may exercise its power to recall a judgment based on various grounds, including any procedural error committed in delivering the earlier judgement and/or on the ground of fraud played on the Court in obtaining judgment from the Court or violation of principles of natural justice. In this instant case, from the initial stages of the proceedings before the High Court to this date, this Tribunal finds no such discrepancies. Hence, at this point of time, it is not viable for this Hon'ble Tribunal to recall its own order passed in the year 2018 without any strong grounds for the same.

88. Given the above, this Tribunal finds no merit to recall the Annexure A2 order dated 01.08.2018 of the Hon'ble NCLT, Chennai Bench in TP((HC)64&65/CAA/2018 or to declare the Annexure A1 Scheme of Demerger as invalid and void. Hence, the application **MA(C/Act)/06/KOB/2023** stands dismissed.
89. This Tribunal also found that the Respondent (Gramox) herein has filed multiple IAs and MAs subsequent to the filing of MA(C/Act)/2/KOB/2023 by the applicant (CSONs), just to delay the proceedings before this Tribunal. All these applications are totally misconceived and devoid of any merits.
90. In **MA(C/ACT)/05/KOB/2023** the applicant (Gramox) has sought a forensic audit of the accounts of the Respondent (CSONs) for the periods 2013-14 to 2017-2018, to investigate the suppression of profits or manipulation of production figures by the Respondent. In **IA(C/ACT)/70/KOB/2023** the applicant (Gramox) has sought the preservation of documents/data to enable the above said forensic audit of the accounts of the Respondent for the periods 2013-14 to 2017-2018.
91. This Bench is of the view that the Applicant has arrived at an irrational conclusion by taking note of the Respondent's financial performance post-demerger. Any improvements in the financials of the Resultant Company (Respondent company), post-demerger cannot be questioned by the Applicant's original Company. Hence, the reliefs sought for are irrelevant and dismissed.
92. Similarly, **IA(C/ACT)/96/KOB/2023** and **IA(C/ACT)/95/KOB/2023** have been filed by the applicant seeking the identical reliefs as sought in both the above applications, respectively. After careful perusal of the above

applications, this Bench is of the view that the applicant has just bombarded this Tribunal with multiple applications seeking similar reliefs just to delay the proceedings in the main M.A. Hence, these IAs are dismissed in limine.

93. Further, new IAs namely, **IA(C/ACT)/07/KOB/2024** was filed to direct the 2nd respondent (State Tax Officer) in the application herein to produce the VAT/GST assessment orders for the periods 2014-15 to 2017-18 herein with VAT No.32150256175 and GST No.32AABCG2366B1Z9, and **IA(C/ACT)/20/KOB/2024** was filed by the applicant (Gramox) to direct the respondent to produce the Family Arrangement dated 16.02.2016. It is evident from the facts of the case that the Applicant has sought for the above documents which were already in their possession itself as these are the documents specifically for the periods of 2014-15 to 2017-18 i.e., before the sanction of the demerger. These documents can only be kept at the registered office of the Applicant, Gramox.
94. Further, after the hearing, this Bench for further clarification on the issue of Family arrangement, listed the entire matter again on 20.03.2024 and the same was de-reserved. On the said date of hearing the respondents in IA(C/ACT)/20/KOB/2024 were directed to produce the Family Arrangement dated 16.02.2016.
95. In compliance with the order dated 20.03.2024, the respondents filed their affidavit and submitted that despite vehement efforts, the said family arrangement dt.16.02.2016 could not be located. Respondents further submitted that the copy of the said Family Arrangement was retained by the petitioners herein as they spearheaded the demerger application, with the cooperation of the respondents. Thus, the respondents stated that they are

unable to produce the family arrangement as they are not in possession of the same.

96. The applicant filed their reply affidavit to the above affidavit filed by the respondent and denied the above statements by the respondents and stated that the respondents have made false submissions to mislead this Hon'ble Tribunal. It is submitted that the said Family arrangement had been printed on Rs.500/- Stamp Paper No. D810920 and was ready for execution. But due to certain anomalies it couldn't be executed. Further, it is the specific case of the applicant that there exists no such memorandum of family arrangement.
97. After perusal of the above documents, this Bench is of the view that at this juncture, there is no point in stressing much on the said Family Arrangement dated 16.02.2016. From the very beginning, it is being stated that there was a family arrangement which was based on the consent of all parties. The High Court and even the NCLT, Chennai Bench has already sanctioned the scheme of arrangement of demerger based on this consented family arrangement and decided the matter. If at all, any of the parties had any disputes regarding the same or relating to the scheme, they could have objected that well before the appropriate forums. Raising bald allegations of fraud on a matter concluded on merits cannot be entertained by this Hon'ble Tribunal at this very belated stage.
98. After considering all the above applications, this Tribunal is of the view that all the above-mentioned connected IAs and MAs filed by the Respondent (Gramox) above in the main MA(C/Act)/02/KOB/2023 are nothing but a delaying tactic played by the Respondent. The respondent (Gramox) has also

sought similar reliefs by filing multiple applications and this Tribunal finds no merit in entertaining the same.

99. Given the above, all the interlocutory and miscellaneous applications filed above and in connection with the main MA(C/Act)/02/KOB/2023 have now become infructuous and stand dismissed.

ORDER

100. In view of all the above, **the Miscellaneous Application bearing no. MA(C/Act)/02/KOB/2023 is hereby allowed.**

101. For the effective implementation of the scheme and in the interest of justice, the Respondent (Gramox) in **MA(C/Act)/02/KOB/2023** is hereby directed to sign and execute the documents concerning the transfer of land measuring 10 acres in Sy. No. 164, 165, 174 and 175 of Banchallihundi Village, Mysore District together with all improvements thereon, to the applicant herein, as mentioned in Annexure-II of Annexure A1 Scheme of Arrangement (Demerger) and to give effect to Annexure A2 Order of NCLT, Chennai Bench.

102. Further, the respondent (Gramox) in **MA(C/Act)/02/KOB/2023** is directed to pay an amount of Rs.17,57,395/-, within 30 days of receipt of this Order, towards the legal expenses being the Respondent's share of the total costs and expenses incurred for implementing the scheme and the matters incidental thereto, failing which the respondent (Gramox) will be liable to pay an interest of 12% p.a. from the date of filing of this M.A.

103. **All the other connected applications bearing nos.' MA(C/ACT)/05/KOB/2023, IA(C/ACT)/70/KOB/2023, MA(C/ACT)/06/KOB/2023, IA(C/ACT)/95/KOB/2023, IA(C/ACT)/96/KOB/2023,**

IA(C/ACT)/07/KOB/2024, IA(C/ACT)/20/KOB/2024 are hereby dismissed.

104. Accordingly, all the applications are hereby disposed of by this common order.

105. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and to take necessary steps.

106. Let the certified copy of the order be issued, if applied, upon compliance with the requisite formalities.

107. File be consigned to records.

Sd /-

SHYAM BABU GAUTAM

(MEMBER TECHNICAL)

Sd /-

T. KRISHNA VALLI

(MEMBER JUDICIAL)

Signed on this the 02nd day of May, 2024

Leona/LRA