IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH - II, CHENNAI

CP(CAA)/67 (CHE)/2022
in
CA(CAA)/16(CHE)/2022

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Scheme of Arrangement between*

NDR WARE HOUSING PRIVATE LIMITED
CIN:U63023TN1986PTC013278
Having Registered Office at,
No.54, B Block-103, Sreekaram Apartments,
Pallavan Nagar, Thiruvallur,
Maduravoyal, Chennai – 600 095.
Represented by Mr.Sandeep Jain,
Authorised Signatory.

... Petitioner Company-1 / Demerged Company

And

NASDA INFRA PRIVATE LIMITED
CIN:U45202TN2021PTC146344,
No.54, B Block-103, Sreekaram Apartments,
Pallavan Nagar, Thiruvallur,
Maduravoyal, Chennai – 600 095.
Represented by Mr.Sandeep Jain,
Authorised Signatory.

... Petitioner Company-2 / Resulting Company-1

And

NDR HOLDINGS PRIVATE LIMITED
CIN:U45309TN2021PTC146294,
No.54, B Block-103, Sreekaram Apartments,
Pallavan Nagar, Thiruvallur,
Maduravoyal, Chennai – 600 095.
Represented by Mr.Sandeep Jain,
Authorised Signatory.

... Petitioner Company-3 / Resulting Company-2

*Order Pronounced on **21st November 2022***

CORAM

Dr.DEEPTI MUKESH, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant(s):P.Sriram, PCS

ORDER

***Per:* Dr.DEEPTI MUKESH MEMBER (JUDICIAL)**

The present joint Company Petition has been filed by the Petitioner Companies above named for the purpose of the approval of the Scheme of Arrangement of **NDR WARE HOUSING PRIVATE LIMITED** (for brevity *"Demerged Company"*) and **NASDA INFRA PRIVATE LIMITED** (for brevity *"Resulting Company-1"*) and **NDR HOLDINGS PRIVATE LIMITED** (for brevity *"Resulting Company-2*) under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') (hereinafter referred to as the 'SCHEME') pursuant to the Scheme proposed by the Petitioner Companies and the said Scheme is also annexed as **'Annexure - 17'** with the Petition. An affidavit in support of the present petition sworn by **Mr.N.Amrutesh Reddy** on behalf all Petitioner Companies in the capacity of the authorized signatory and the corresponding Board Resolution dated 28.02.2022, has been filed with the petition.

2. 1ST MOTION APPLICATION – IN BRIEF

2.1. The Petitioner Companies have filed the First Motion Application vide CA(CAA)/16(CHE)/2022 sought directions for

dispensation of meeting of, Equity Shareholders of all Petitioner Companies, Unsecured Loan Creditors of both Resulting Companies 1&2 and Unsecured Trade Creditors of Resulting Company-2. It was further prayed for convening/holding meeting of, Secured Creditors, Unsecured loan & trade creditors of the Demerged Company. There are no secured creditors for Resulting Company 1&2, and there are no Unsecured trade Creditor for Resulting Company-1.

2.2. Based on such application moved under Sections 230-232 of the Companies Act, 2013; directions were issued by this Tribunal, vide order dated 29.04.2022, to convene the meeting of the secured Creditors, the Unsecured Loan & Trade Creditors of the Demerged Company. The Chairman submitted his Report for said meetings on 28.06.2022 and the Chairman's report is also annexed at "**Annexures:43-45**" with the Petition. Subsequently, the second motion petition was filed before this Tribunal by the petitioner companies on 02.07.2022 for sanction of the Scheme of Amalgamation by this Tribunal.

3. SCHEME SUMMARY:

The scheme provides for demerger of the Demerged Undertaking (defined in clause 1.8 at Part-A of the Scheme) of Demerged Company into Resulting Company-1; and Resulting Company-2, being a parent of Resulting Company-1 to issue equity shares to

shareholders of the Demerged Company as a consideration pursuant to the demerger.

4. **RATIONALE OF THE SCHEME**

The rationale and benefits of the Scheme is briefed as to,

(i) Facilitate Segregation of the Demerged Undertaking from the Demerged Company and thereby enhancing its potential for attracting strategic / financial investors having necessary ability, experience and interests in the business of the Demerged Undertaking, including by way of contribution of the Demerged Undertaking into a business trust.

(ii) Assist in rationalizing the corporate structure;

(iii) Enable the Demerged Company and the Resulting Companies to each have a focused strategy and specialization for sustained growth and profitability; and

The Scheme is in the interest of all the shareholders, creditors and other stakeholders of all Companies and is not prejudicial to the interest of the concerned shareholders, creditors or the public at large.

5. In the second motion Petition filed by the Petitioner Companies, this Tribunal vide order dated 27.07.2022 directed the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities viz. (i) Regional Director (Southern Region), (ii) RoC, Chennai, (iii) Reserve Bank of India, (iv) the Income Tax Department, with PAN details of all Petitioner companies and copy to the Chief Principal Commissioner Office as well as for paper publication to be made in

"Business Standard", English (All India Edition) and "Dinamani" Tamil (Tamil Nadu Edition).

6. In compliance to the said directions issued by this Tribunal, the Petitioner Companies filed an affidavit of service before the Registry of this Tribunal on 21.06.2022 and have effected paper publications as directed by the Tribunal in "Business Standard" (All India Edition) in English and "Dinamani" (Tamil Nadu Edition) in Tamil on 21.05.2022. Notices have been served to (i) Regional Director, Southern Region, Chennai on 10.08.2022, (ii) Registrar of Companies Chennai on 10.08.2022, (iii) Reserve Bank of India on 10.08.2022, (iv) Income Tax Department on 10.08.2022 and the proof of the same by way of affidavits have been enclosed with the separate typed set. Pursuant to the service of notice of the petition the following statutory authorities have responded as follows:

7. STATUTORY / REGULATORY AUTHORITIES

7.1. REGIONAL DIRECTOR

The Regional Director, Chennai to whom the notice was issued in the first motion itself, has filed his Report before this Tribunal on 12.09.2022 and has stated that as per the report of RoC, Chennai, the Demerged Company and the Resulting Company 1 & 2 have filed their statutory returns up to 31.03.2021. Further, report of RoC stated that there is no prosecution/complaint/inspection or investigation is pending

against the Companies involved in the Scheme of arrangement (demerger) considering the above RD has expressed no objection to the Scheme proposed by the Petitioners.

7.2. Income Tax Department

Despite notice having been served, there is no representation from the Department of Income Tax and this Tribunal in terms of Section 230(5) of the Companies Act, 2013 presumes that the Department of Income Tax does not have any objection to the sanction of the Scheme.

7.3. Reserve Bank of India

In relation to the Reserve Bank of India, to whom notice has been issued, neither they have filed any reply nor raised any objections to the Scheme and in the circumstances, this Tribunal presumes that they do not have any objection to the sanction of the Scheme.

8. Accounting Treatment

The Certificates issued by the Statutory Auditors certifying the Accounting Treatment of all the Petitioner Companies are placed as '**Annexure 4**', of the Affidavit of Service filed on 23.08.2022.

9. Valuation Report

The Valuation Report obtained from Registered Valuer dated 26.02.2022, and the Certified True Copy of the of the Valuation Report is placed at **Annexure - 26** with the main Company

Petition. Wherein independent Registered Valuer reported as follows, "*Based on the information and explanation provided to us, we believe that the following share entitlement ratio as proposed by the Management of NDR and NDR Hold Co, would be fair and reasonable*;

For Equity Shareholders of NDR	1 (one) fully paid up equity share of Rs.10 each of the Resulting Company-2 to be issued and allotted for every 21 (Twenty-One) fully paid up equity shares held in Demerged Company of Rs.100 each."

10. It is submitted by the Petitioner that no investigation proceedings are pending against the Demerged or Resulting Companies under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings against the petitioner companies for oppression or mismanagement have been filed before this Tribunal or erstwhile Company Law Board.

11. OBSERVATIONS OF THIS TRIBUNAL

11.1. This Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* not, in any way detrimental to the interest of the shareholders of the Company. In view of the absence of any other objections from regulatory authorities and statutory authorities and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of

Arrangement appended as Annexure "17" with the Petition as well as the prayer made therein.

11.2. 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 will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

11.3. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

12. THIS TRIBUNAL DO FURTHER ORDER:

(i) That all properties, rights and interests of the Demerged Company shall, pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Resulting Company-1 in terms of the Scheme.

(ii) That all the liabilities, powers, engagements, obligations and duties of the Demerged Company shall pursuant to Section 232(3) the Companies Act,

2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Resulting Company-1 in terms of the Scheme.

(iii) That the Appointed date for the Scheme shall be **01.01.2022** as mentioned in clause 1.2 of Part A of the Scheme.

(iv) The 'Effective date' shall be the last of the dates on which the certified copies of this order of sanctioning the scheme is filled with ROC Chennai as mentioned in clause 1.9 of Part A of the Scheme.

(v) That all the permanent employees of the Demerged Undertaking of the Demerged Company in service on date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Resulting Company-1 without any break or interruption in their service with all the benefits.

(vi) The Resulting Company-2 do without further application allot fully paid-up equity shares to such members of the Demerged Company, as have not given such notice of dissent, as is required by Clause 13 of Part B of the Scheme to which they are entitled, in the ratio as mentioned in valuation report as under "*1 (one) fully paid up equity share of Rs.10 each of the Resulting Company-2 to be issued and allotted for every 21 (Twenty-One) fully paid up equity shares held in Demerged Company of Rs.100 each.*".

(vii) That the Resulting Companies shall file the revised Memorandum and Articles of Association with the Registrar of Companies, Chennai and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Resulting Companies after setting off the fees paid by the Demerged Company.

(viii) That all the Petitioner Companies, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Demerged Company undertaking shall be deemed to be transferred; and

(ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

12. Accordingly, the Company Petition stands **allowed** on the aforementioned terms.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

Dr.DEEPTI MUKESH
MEMBER (JUDICIAL)

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