

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 07.05.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CA (CAA) No.12/230/2024
NAME OF THE COMPANY	Thermopads Pvt Ltd (demerged Co.) and Thermo Capital Pvt Ltd (Resulting Co.)
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	230 of Companies Act

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, COURT – II**

CA (CAA) No.12/230/HDB/2024

*[U/s 230 to 232 of the Companies Act, 2013
and other applicable provisions of the Companies Act, 2013]*

IN THE MATTER OF SCHEME OF ARRANGEMENT OF

**M/s.THERMOPADS PRIVATE LIMITED
(DEMERGED COMPANY)**

AND

**M/s.THERMO CAPITAL PRIVATE LIMITED
(RESULTING COMPANY)**

AND

THEIR RESPECTIVE SHAREHOLDERS

M/s. Thermopads Private Limited

Registered Office at Plot No.28,

Nagarjuna Hills, Punjagutta,

Hyderabad, Telangana,

PIN – 500082, India.

Represented by its Director, Mr.Nandkishore Ghurka.

....First Applicant Company/ Demerged Company

And

M/s. Thermo Capital Private Limited

Registered Office at Plot No.28,

Nagarjuna Hills, Punjagutta,

Hyderabad, Telangana,

PIN – 500082, India.

Represented by its Director, Mr.Chetan Ghurka.

....Second Applicant Company/ Resulting Company

Date of Order: 07.05.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Ms.Moulshri Shrivastava, Advocate

[**PER: BENCH**]

ORDER

1. This is a Joint Application filed on behalf of the Applicants, M/s.Thermopads Private Limited (Demerged Company) and M/s.Thermo Capital Private Limited (Resulting Company) under Sections 230-232 of the Companies Act, 2013, inter-alia seeking the following reliefs :

In case of the First Applicant Company:

- i. To dispense with the meeting of the Equity Shareholders of the First Applicant Company;
- ii. To dispense with the meeting of the Secured Creditors of the First Applicant Company;
- iii. To convene meeting of Unsecured Creditors of the First Applicant Company as may be suitable;
- iv. Publication of notices of the meeting of the Unsecured Creditors of the First Applicant Company in Business Standard and Nava Telangana newspapers;
- v. Appointment of Chairman & Scrutinizer for the meetings of the Unsecured Creditors of the First Applicant Company;
- vi. Sending notices of such meeting of the Unsecured Creditors of the First Applicant Company and inviting representations on the Scheme of Arrangement under Section 230(5) of the Companies Act, 2013, to Central Government through Regional Director, Registrar of Companies and Income Tax Authorities.

In case of the Second Applicant Company:

- i. To dispense with the meeting of the Equity Shareholders of the Second Applicant Company;

2. Details of the Applicant Companies :

I. First Applicant Company/ Demerged Company:

- i. **M/s.Thermopads Private Limited (First Applicant Company/ Demerged Company)** was incorporated on 29.01.1992 with CIN: U24110TG1992PTC013781.
- ii. The authorized, issued, subscribed and paid-up share capital of the First Applicant Company/ Demerged Company as on 29.02.2024 is as follows:

Particulars	Amount (Rs)
Authorized Share Capital	
20,00,000 Equity Shares of Rs.10 each	20,00,000
Issued, Subscribed and Paid-up	
8,02,530 Equity Shares of Rs.10 each	80,25,300

Subsequent to 29.02.2024, there is no change in the issued, subscribed and paid up capital of the First Applicant Company/ Demerged Company.

- iii. The main objects of the First Applicant Company/Demerged Company are:
 1. To continue to carry on in any part of India and elsewhere the trade, business, activities and/or other ventures of the partnership firm by the name and style of THERMOPADS having its principal place of business and factory at 28, Nagarjuna Hills, Punjagutta, Hyderabad 500082, Andhra

Pradesh, together with all or any of the properties, undertakings, factory, belongings, funds, assets, rights, privileges, liabilities, obligations and contracts of the said firm or in connection therewith.

2. To carry on the business of manufacturers, importers, exporters and otherwise deal or trade in the business of all types of heaters, apparatus and equipment, instruments, electronic control panels and accessories, adhesive taps, thermal insulations, heating systems, testing equipments, and electrical fittings of all kinds pertaining to the above said business.

(A copy of the Memorandum and Articles of Association of the First Applicant Company/ Demerged Company is at Annexure-A - page Nos.36 to 61 of the Application).

iv. **NATURE OF BUSINESS**

The First Applicant Company is engaged in the business of manufacturing and dealing in industrial, commercial, and domestic heating products and financial & treasury business.

(A Copy of the audited statements of accounts as on 31st March 2023 and a provisional statement of accounts as on 29th February 2024 are at Annexure -B1 & B2 - page Nos. 62-107 & 108-144 of the Application).

II. The Applicant Company/Resulting Company:

- i. **M/s.Thermo Capital Private Limited (Second Applicant Company/ Resulting Company)** was incorporated on 25.04.2023 with CIN: U64990TS2023PTC172313.
- ii. The authorized, issued, subscribed and paid-up share capital of the Second Applicant Company/Resulting Company as on 29.02.2024 is as follows:

Particulars	Amount (Rs)
Authorized Share Capital	
21,00,000 Equity Shares of Rs.10 each	2,10,00,000
Issued, Subscribed and Paid-up	
20,00,000 Equity Shares of Rs.10 each	2,00,00,000

Subsequent to 29.02.2024, there is no change in the issued, subscribed and paid up capital of the Second Applicant Company/ Resulting Company.

- iii. The main objects of the Second Applicant Company/ Resulting Company are:
1. To carry on the business as investment company and to acquire, hold, sell, buy or otherwise deal in any shares, units, stocks, debenture-stock, bonds, mortgages, obligations and other securities both for investments and / or for trading purpose by original subscription, tender, purchase or otherwise and to subscribe for the same, either conditionally or otherwise, and to underwrite, sub underwrite or guarantee the subscription thereof to purchase and sell above mentioned securities.
 2. To promote body corporate or any other entities and to take or to otherwise hold, dispose, acquire, subscribe shares, debentures or stocks or other securities of any other body corporate or any other entity having objects altogether and to carry on any business capable of being conducted so as directly or indirectly to benefit the company.

(A copy of the Memorandum and Articles of Association of the Second Applicant Company/Resulting Company is at Annexure-C - page Nos.145 to 170 of the Application).

iv. **NATURE OF BUSINESS:**

The Second Applicant Company is registered as a Non-deposit accepting, Type – I Non-Banking Financial Company, with Reserve Bank of India (RBI) and is engaged in the business of the financial and investment business.

(A Copy of the provisional statement of accounts as on 29th February 2024 of the Second Applicant Company are at Annexure D1- page Nos. 171-181 of the Application).

3. The Board of Directors of the Applicant Companies at their respective Board Meetings held on 02.03.2024, have approved the Scheme of Arrangement of M/s.Thermopads Private Limited (Demerged Company) with M/s.Thermo Capital Private Limited (Resulting Company) and their respective Shareholders with appointed date as 01.04.2024.

(Certified copies of the Board Resolutions passed by the Board of Directors of the Applicant Companies approved the Scheme of Arrangement are at Annexures-E1, E2 & E3 respectively - page nos.182 – 186, 187-191 & 192-214 of the Application).

4. **RATIONALE FOR THE PROPOSED SCHEME:**

- a. Thermopads primarily operates in two business segments through separate business divisions:
- b. In light of the above, both the businesses of Thermopads have opportunities for individual investment and are also capable of strategic partnerships resulting into better fund raising and growth opportunities.
- c. Segregation of businesses will enable investors to separately hold investment which best suit their investment strategies and risk profile;
- d. It is believed that the proposed scheme will create enhanced value for shareholders and allow a focused strategy and specialization for

- sustained growth, which would be in the best interest of all the stakeholders and the persons connected with the companies involved;
- e. It will also lead to more focused management and greater visibility on the performance of individual businesses;
 - f. Enables the management to independently review performance of the Demerged Undertakings;
 - g. As an overall objective, the scheme will lead to formation of dedicated/focused legal entities, i.e., Demerged Company and Resulting Company, having greater ability to monetize their businesses and help in conducting its operations more effectively and efficiently.
5. The salient/material features of the proposed Scheme of Arrangement are detailed in page Nos.8 to 20 of the Application.
6. **CONSIDERATION:**
- 6.1 The Consideration for the Demerger of the Demerged Undertaking shall be furthered by the Resulting Company as follows:
- a. Share Exchange Ratio of Demerged Undertaking:

Upon the Scheme becoming operative and in consideration of the transfer and vesting of the Demerged Undertaking, the Resulting Company shall, without any further application or deed, issue and allot shares credited as fully paid up to the extent indicated below, to all the classes of the shareholders of the Demerged Company as on the Demerger Record Date holding fully paid up shares and whose names appear in the register of members or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title, as may be recognized by the Board of Directors of the Demerged Company:

"1 (One) equity shares of Thermo Capital Private Limited of face value INR 10 each fully paid up shall be issued for every 1 (One) equity shares of INR 10 each fully paid up held in Thermopads"

- 6.2 The issue and allotment of shares by the Resulting Company as provided in this Scheme, is an integral part thereof and shall be deemed to have been carried out without requiring any further act by the Demerged Company, the Resulting Company or any other person as if the procedure laid down under Section 62(1)(c) of the Act and any other applicable provisions of the Act, and such other statutes and regulations as may be applicable, were duly complied with.
- 6.3 The approval of this Scheme by the shareholders of Resulting Company shall be deemed to be due compliance of the provisions of section 62 of the Act and other relevant and applicable provisions of the Act for the issue and allotment of new shares by Resulting Company to the shareholders of Demerged Company, as provided in this Scheme.

7. **ACCOUNTING TREATMENT:**

- 7.1 Upon the Scheme becoming effective and with effect from the Appointed Date, Demerged Company shall account for the demerger of the Demerged Undertaking, in accordance with applicable Indian Accounting Standards prescribed under Section 133 of the Act read with relevant rules issued thereunder and Resulting Company shall account for the demerger as per applicable accounting standards prescribed under the Act.
- 7.2 The demerger of the Demerged Undertaking shall be effective from the Appointed Date but shall be operative from Effective Date. Therefore, for all regulatory and tax purposes the demerger would be effective from the Appointed Date of the Scheme. Notwithstanding the above, the accounting treatment to be adopted, and the date from which to give effect, to the provisions of the Scheme would be in

consonance with Indian Accounting Standards 103 ("Ind AS 103") in the books of Demerged Company and as per applicable Accounting standards in the books of Resulting Company. The mere adoption of such accounting treatment will not in any manner affect the vesting of the Demerged Undertaking from the Appointed Date.

7.3 In the books of the Demerged Company

- i. The value of all the assets and liabilities pertaining to the Demerged Undertaking which are being transferred to the Resulting Company which cease to be the assets of the Demerged Company shall be reduced by the Demerged Company at their carrying values; and
- ii. The difference, i.e., the excess or shortfall, as the case may be, of the value of the transferred assets over the transferred liabilities pertaining to the Demerged Undertaking shall be adjusted to the Capital Reserve of the Demerged Company.
- iii. Notwithstanding the above, the Board of Directors of the Demerged Company is authorized to modify such accounting treatment so as to comply with applicable accounting standards and the clarifications/ guidance provided by the Institute of Chartered Accountants of India as at the Effective Date.

7.4 In the books of Resulting Company

- i. The Resulting Company shall, upon the Scheme becoming effective, record the assets and liabilities of the Demerged Undertaking of the Demerged Company vested in it pursuant to this Scheme, at the respective book values, as appearing in the books of the Demerged Company at the close of business on the day immediately preceding the Appointed Date.
- ii. The Resulting Company shall credit its Share Capital Account in its books of accounts with the aggregate face value of the new shares issued to the shareholders of Demerged Company pursuant to Clause 11.1 of this Scheme.

- iii. The difference between the amount of the net assets/ (liabilities) of the Demerged Undertaking transferred and vested in the Resulting Company (being the difference between the value of assets and value of liabilities of the Demerged Undertaking, as recorded in the books of the Resulting Company as per Clause i above) and the value of shares issued pursuant to Clause ii would be adjusted to/ against the Profit and Loss Account.
 - iv. Notwithstanding the above, the Board of Directors of the Resulting Company is authorized to modify such accounting treatment so as to comply with applicable accounting standards and the clarifications/ guidance provided by the Institute of Chartered Accountants of India as at the Effective Date.
8. An independent valuation report obtained from registered valuer Budabulla Srinu, Registered Valuer - Securities and Financial Assets, recommending the consideration for the demerger is at **Annexure F - page No215-221 of the Application.**
 9. A certificate from the Auditors of the Applicant Companies confirming the compliance of the accounting treatment followed in the Scheme with the applicable accounting standards as prescribed under Section 133 of the Companies Act, 2013 is at **Annexure G1 & G2 - page Nos.222-225 of the Application.**
 10. **CONSENTS OF EQUITY SHAREHOLDERS:**
 - i. As on 29th February 2024, there are 5 (five) equity shareholders in the First Applicant Company.
(A copy of the list of shareholders of the First Applicant Company certified by the Chartered Accountant is at Annexure H1- page Nos.226-227 of the Application).

It is submitted that the Shareholders of the First Applicant Company have given their consent affidavits stating their no objection to the proposed Scheme of Arrangement.

(Copies of no objection affidavits received from such shareholders are at Annexure H1.1 to H1.5 - page Nos.228-237 of the Application).

- ii. As on 29th February 2024, there are 5 (five) equity shareholders in the Second Applicant Company.

(A copy of the list of shareholders of the Second Applicant Company certified by the Chartered Accountant is annexed hereto as Annexure I1 at page Nos.238-239 of the application).

It is submitted that the Shareholders of the Second Applicant Company have given their consent affidavits stating their no objection to the proposed Scheme of Arrangement.

(Copies of no objection affidavits received from such shareholders are at Annexure I1.1 to I1.5 - page Nos.240-249 of the Application).

11. SECURED AND UNSECURED CREDITORS:

- i. As on 29th February 2024, there are 2 (two) Secured Creditors amounting to INR 14,51,60,369 (Rupees Fourteen Crores Fifty One Lakhs Sixty Thousand Three Hundred and Sixty Nine only) and 241 (two hundred and forty one) Unsecured Creditors amounting to INR 28,32,92,102 (Rupees Twenty Eight Crores Thirty Two Lakhs Ninety Two Thousand One Hundred and Two only) in the First Applicant Company.

(A certificate by the Chartered Accountant confirming the list of Secured Creditors and Unsecured Creditors is at Annexure J1 - page Nos.250-257 of the Application).

It is submitted that the Secured Creditors of the First Applicant Company has given its consent affidavit stating it's no objection to the proposed Scheme of Arrangement.

(Copies of the no objection affidavits received from Secured Creditors are at Annexure J1.1 to J1.2 -Page Nos.258-275 of the Application).

ii. As 29th February 2024, there are Nil Secured and Unsecured Creditors in the Second Applicant Company.

(A certificate by the Chartered Accountant confirming the same is at Annexure J2 - page Nos.276-277 of the Application).

12. In view of the above factual matrix, the Applicants, therefore, pray that this Hon'ble Tribunal may be pleased to:

A) In case of the First Applicant Company:

- a) To dispense with the meeting of the Equity Shareholders of the First Applicant Company;
- b) To dispense with the meeting of the Secured Creditors of the First Applicant Company;
- c) To convene meeting of Unsecured Creditors of the First Applicant Company as may be suitable;
- d) Publication of notices of the meeting of the Unsecured Creditors of the First Applicant Company in Business Standard and Nava Telangana newspapers;
- e) Appointment of Chairman & Scrutinizer for the meetings of the Unsecured Creditors of the First Applicant Company;
- f) Sending notices of such meeting of the Unsecured Creditors of the First Applicant Company and inviting representations on the Scheme of Arrangement under Section 230(5) of the Companies Act, 2013, to Central Government through Regional Director, Registrar of Companies and Income Tax Authorities.

B) In case of the Second Applicant Company:

To dispense with the meeting of the Equity Shareholders of the Second Applicant Company;

13. We have heard the Learned Counsel and have seen the consent Affidavits filed by the equity shareholders of the Applicant Companies. We have also seen the certificates given by the Chartered Accountant

and Company Secretaries certifying the list of Equity Shareholders, Preference shareholders, Secured and unsecured creditors of the Applicant Companies and perused the documents.

14. All the shareholders of the Applicant Companies have given consent affidavits, agreeing to the proposed Scheme of Amalgamation. Hence, we order convening meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies, i.e. Demerged Company and Resulting Company as prayed for (**as detailed in para 12 above**).
15. **Meetings of Demerged Company/First Applicant Company and the Second Applicant Company/Resulting Company:**
 - i. We appoint CS **Dr.Ahalada Rao Vemmenthala, PCS**, Mobile Number:9849027041, having email: cs.ahaladarao@gmail.com as Chairperson with IBBI/IPA-002/IP-N00074/2017-2018/10172 valid upto 26th September, 2024 and Sri M.Vijaya Kumar, PCS, Mobile Number: 9705221231 with e-mail:vijaysanathana@gmail.com as Scrutinizer for convening the meetings of the Equity Shareholders, Preference Shareholders, Secured and Unsecured Creditors of the Amalgamated Company/First Applicant Company, Amalgamating Company/Second Applicant Company and Resulting Company/Third Applicant Company (**as detailed in para 12 above**). The Fee fixed for Chairperson is Rs.1,50,000/- and Rs.1,00,000/- for Scrutinizer for the above meetings.
 - ii. Meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Demerged Company/First Applicant Company and

Resulting Company/Second Applicant Company will be held on **18/05/2023 at 11.00 AM** at the Registered Office of the Resulting Company at Plot No.28, Nagarjuna Hills, Punjagutta, Hyderabad, Telangana – 500 082.

- iii) The Secured and Unsecured Creditors, be permitted to exercise their vote at the meeting either in person or through proxies.
16. The notice of Meetings of the Secured and Unsecured Creditors of Applicant Companies shall be published in “Business Standard” (English Daily) and in “Nava Telangana” (Telugu Daily) newspapers.
17. The Applicant Companies or its authorized Signatories are directed to issue notices to secured and unsecured creditors by ordinary post; or Air Mail or email or hand delivery to their last known address 30 clear days before the said meetings as per Form No. CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuring convening the said meetings of the Applicant Companies. Further directed to intimate day, date and time, a copy of Explanatory Statement, pursuant to be sent under Section 230 of the Companies Act, 2013 and Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014.
18. The Resulting Company to serve notices upon the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 if no response is received by the Tribunal from the Regional Director within 30 days of the date of receipt of the notice,

it will be presumed that Regional Director and/or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

19. The Resulting Transferee Company to serve the notice upon the Registrar of Companies Hyderabad pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises Arrangement and Amalgamations) Rules, 2016 and if no response is received by the Tribunal from the Registrar of Companies, Hyderabad within 30 days of the date of receipt of the notice, it will be presumed that Registrar of Companies, Hyderabad has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.
20. The Resulting Transferee Company to serve notice upon the Income Tax Authority, within whose jurisdiction the Applicant Company's Assessment is made, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice, it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016.

21. The Resulting Transferee Company to serve notice upon the Official Liquidator pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Official Liquidator within 30 days of the date of receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016.
22. The Chairpersons shall have all powers under the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 in relation to the conduct of the meetings (s) including, deciding the procedural questions that may arise before or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person (s).
23. The voting shall be in person or by proxy or authorized representative, provided that the proxy, in the Form No. MGT-11, is duly authorized by the person entitled to attend and vote at the meeting. The form is to be filed with the Transferee Company at its Registered Office, not later than, forty eight hours before the aforesaid meeting in accordance with Rule 10 of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016.
24. The Chairpersons to file affidavit within 7 days from the date of the said meetings to this Tribunal that the direction regarding convening and issuance of notice (s) to all the necessary parties have been duly complied with in conformity with the relevant provisions of the

Companies Act, 2013 r/w Companies (Compromise, Arrangement and Amalgamation) Rules, 2016. The Chairpersons shall report the conclusion of the aforesaid meetings as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

Sd/-

(Sanjay Puri)
Member (Technical)

Sd/-

(Rajeev Bhardwaj)
Member (Judicial)

Vinod