

**THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH**

**Order Delivered on: 10.01.2018**

**CO. APPL.(M) 144(ND)/2017**

IN THE MATTER OF:

Air Trax Polymers Private Limited .....Applicant No.1/Transferor  
Company

**AND**

Capstone Polyweave Private Limited ...ApplicantNo.2 /Transferee  
Company

Through: Mr. Rajeev Kumar, Advocate  
Mr.Mahesh Agarwal, Advocate

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**MR. S.K. MOHAPATRA, MEMBER (TECHNICAL)**

## ORDER

### PER SMT. INA MALHOTRA, MEMBER (J)

This is a joint petition filed by way of a 1<sup>st</sup> Motion under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as 'the Act') by Air Trax Polymers Private Limited (Applicant No. 1/ Transferor Company) and Capstone Polyweave Private Limited (Applicant No.2/Transferee Company) in connection with the Scheme of Arrangement (hereinafter referred to as 'the Scheme') for demerging the business of the Transferor Company with the Transferee Company.

2. As per averments, the registered offices of both the Applicant Companies are situated in the National Capital Territory of Delhi, falling within the jurisdiction of this Court.

3. The Applicant No. 1 Company / Transferor Company was incorporated under the Act on 5<sup>th</sup> May, 1997 having CIN U 19201 DL1997 PTC 087073. Its authorized share capital is 2,00,00,000/- while its paid up capital is Rs. 1,90,86,780 divided into 19,08678 equity shares of Rs.10/- each.

4. The main objects of Applicant No. 1 Company/Transferor Company was to carry on the business of purchase, sale, import, export, manufacture, repair or otherwise deal in all types of footwear, their parts and other polymer goods.

5. The Applicant No. 2 Company / Transferee Company was incorporated under the Act on 20<sup>th</sup> March, 2017 having CIN U74999 DL2017 PTC 314732. Its authorized share capital is rs. 7,50,00,000/- while its paid up capital of Rs. 6,60,90,000 divided into 66,09,000 equity shares of Rs. 10/- each.

6. The object of the Transferee Company is to carry on the business of manufacturers, producers, processors, importers, exporters, buyers, sellers and dealers in all kind of polymers and additives products which include all type of woven fabric and films, bags, woven bags, etc.

7. Copies of the Memoranda of Association and Articles of Association along with their audited Balance Sheets, as on 31.03.2017 and reports of the auditors of both the Applicant Companies have been filed on record. Further, the latest Provisional Accounts of both the Applicant Companies for the period ended September, 30 2017 filed on record.

The Memorandum and Articles of Association of each company provides for a entering into a Scheme of such Arrangement.

8. It has been stated on behalf of the Applicant Companies that the Scheme of Arrangement is necessitated and justified on grounds of:-

- a. The Demerger will engage the Transferee Company to focus on Demerged Business and enable investment from specific

- set of investors and strategic partners who can bring relevant experience for the growth of Demerged Business;
- b. The demerger will enable both Transferor and Transferee Company to achieve and fulfill their objectives more efficiently and offer opportunities to the management of both the companies to vigorously pursue growth and expansion opportunities;
  - c. The demerger will allow the shareholders of the transferor Company to expand their business interests in the Demerged Undertaking by consolidating the same with the Transferee Company;
  - d. The demerger will enable investors/ shareholders to separately hold investments which best suit their investment strategies and risk profiles;
  - e. The demerger will enable better and more efficient management, control and running of the Demerged Undertaking;
  - f. The demerger will create value for shareholders of the Transferor Company by acquiring ready to use assets; reducing time to market; availability of infrastructure leading to logistical efficiency;
  - g. The demerger will enable the Transferor Company to focus and enhance its remaining business resources by streamlining operations and cutting costs.
9. With a view to achieve greater management focus and keeping in mind the paramount and overall interest of the shareholders, the Board of Directors of the Transferor Company



held a meeting on 25th October, 2017 and unanimously approved the proposed Scheme of Arrangement with the Transferee Company. The Transferor Company has 13 shareholders who have given their consent affidavits to the proposed Scheme of Arrangement. The Transferor Company has 1 secured creditor who has given its consent vide an affidavit. The Transferor Company does not have any unsecured creditor.

**10.** Similarly, the Board of Directors of the Transferee Company in their separate meeting held on 25<sup>th</sup> October, 2017 has unanimously approved the proposed Scheme. The Transferee Company has 3 shareholders and 2 Unsecured creditors who have given their consent vide their affidavits. The Transferee Company does not have any secured creditor.

**11.** The details pertaining to the Secured/ Unsecured Creditors have been duly certified by the Statutory Auditors.

Copies of the separate Resolutions dated 25<sup>th</sup> October, 2017 by the Board of Directors of each of the Applicant Companies, approving the scheme have been filed with the application and the same are on record.

**12.** So far as the Share Exchange Ratio is concerned, in terms of scheme, it has been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 30<sup>th</sup> September, 2017, issued by S.C Vasudeva & Co., Chartered Accountants, New Delhi, as per the settled principles of valuation.

**13.** The proposed scheme provides for all assets and liabilities (except Excluded Assets and Excluded Liabilities) of Air Trax Business (the Demerged Business) of the Transferor Company to be transferred to vest in the Transferee Company.

**14.** All the employees of the Transferor Company employed in the activities relating to the Demerged Business, in service on the Effective Date shall become the employees of the Transferee Company on and from such date without any break or interruption in service and upon terms and conditions not less favorable than those applicable to them in the Demerged Business of the Transferor Company, from the Effective Date.

The copy of the Scheme has been filed along with the application.

**15.** That the Applicants submits that the provisions relating to the accounting treatment for the proposed Demerger, as contained in the Scheme of Arrangement, is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The Statutory Auditors of the Transferor and Transferee Company have confirmed the same.

**16.** The said written consents Affidavits have been placed on record of all the Shareholders and the Secured Creditor of the



Transferor Company and have been examined and found to be in order.

**17.** The pray of the applicants is for dispensing with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of both the Applicant Companies for approving the proposed Scheme, as well as for effecting any publication.

**18.** In view of the aforesaid facts, it directed:-

**A. In respect of the Transferor Company:-**

- As all the 13 shareholders have accorded their consent vide affidavits placed on record, the requirement for convening meetings of the equity shareholders of the Transferor Company is hereby dispensed with.
- There are no unsecured creditor of the Transferor Company. Therefore, the requirement of convening their meeting does not arise.
- There is only one secured creditor of the Transferor Company whose consent Affidavit is on record. Therefore the convening a meeting for the secured creditor is dispensed with.

**B. In respect to the Transferee Company:-**

- Consent of its 3 Shareholders is on record. Convening their meeting therefore is dispensed with.

- Further there are no secured creditor of the Transferee Company. Therefore, the requirement of holding the meeting does not arise.
- There are 2 Unsecured creditors of the Transferee Company whose consent Affidavits are on record. Accordingly the convening of the meeting of unsecured creditors is dispensed with.

In view of the above, the requirement for effecting publication is also dispensed with.

**19.** The companies shall individually send notices to the Central Government, through the Regional Director, the Income Tax Authorities and Registrar of Companies NCT Delhi & Haryana along with copy of the Scheme and other required documents and as disclosures required under the provisions of 'The Act', read with 'The Rules'.

**20.** The applicant company shall further furnish a copy of the Scheme, free of charge within one day of any requisition for The Scheme made by any creditor or member of all the companies.

**21.** The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice on all concerned.

**22.** All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats





contained in the 'The Rules' as well as the provisions of the 'The Act' by the Applicants.

The application stands allowed in the aforesaid terms.

-S-d-7

**(S.K Mohapatra)**  
**Member Technical**

-S-d-7

**(Ina Malhotra)**  
**Member Judicial**