

C.P. (CAA)/2711/MB/2018

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

C.P/(CAA)/2711/MB/2018

In

CSA No. 221 of 2018

In the matter of Companies Act,
2013

AND

Under Section 230-232 read with
section 66 of the Companies Act,
2013 and other applicable provisions
of the Companies Act, 2013

AND

In the matter of Scheme of
Arrangement amongst Vulcan
Express Private Limited (**'Demerged
Company'**) and Future Supply Chain
Solutions Limited (**'Resulting
Company'**) and their respective
shareholders

M/s. Future Supply Chain Solutions Limited

....Petitioner/Resulting Company

Order delivered on: 30th day of August, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b. Hemant Sethi & Co.

For Regional Director: Mr. S. Ramakantha, Joint Director representing
the office of the Regional Director.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard learned counsel for the party. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 read with section 66 of the Companies Act, 2013, to a Scheme of Arrangement amongst Vulcan Express Private Limited ('**Demerged Company**' or '**VEPL**') and Future Supply Chain Solutions Limited ('**Resulting Company**' or '**FSC**') and their respective shareholders.
3. Learned Counsel for the Petitioner states that the Demerged Company engaged in the business of providing warehousing and logistics services and is also involved in designing and deploying logistic management system and other activities of similar nature. Learned Counsel for the Petitioner further states that the Resulting Company, one of the India's largest organized third party logistics service operator, offering automated and IT enabled warehousing, distribution and other logistics solutions to a wide range of customers.
4. The Petitioner Company has approved the said Scheme of Arrangement by passing a Board Resolution and thereafter approached the Tribunal for sanction of the Scheme.
5. The Learned Counsel appearing on behalf of the Petitioner Company states that the Petition has been filed in consonance with the order passed in Company Scheme Application No. 221 of 2018 of the Hon'ble Tribunal
6. The Learned Counsel appearing on behalf of the Petitioner states that the Petitioner Company has complied with all requirements as per directions of the Hon'ble Tribunal and has filed necessary Affidavit of compliance with Hon'ble Tribunal. Moreover, Petitioner Company undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

7. The Regional Director has filed his Report on 29th August, 2018 *inter alia* stating therein that save and except the observations as stated in paragraph IV of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-
- a) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
 - b) *In addition to compliance of AS 14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
 - c) *The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
 - d) *It is submitted that Vulcan Express Private Limited (CIN: U63090DL2013PTC261203) is a private company limited by shares, incorporated on 28th November, 2013 under the provisions of the Companies Act, 1956, having its registered office at 61/1, Block III, Kirti Nagar, WHS New Delhi, New Delhi - 110015 ("VEPL" or the "Demerged Company"). In this regard, The Registered Office of the demerged Company is situated in the State of New Delhi, i.e. outside of the jurisdiction of NCLT of this Tribunal and falls within the jurisdiction of NCLT of Delhi Bench. Accordingly, similar approval be obtained by the Demerged Company from Hon'ble NCLT at Delhi respectively.*
 - e) *As per Part 1 of the scheme, "Appointed Date" means 1st October, 2016 or such other date as the National Company Law Tribunal may decide/ approve being the date with effect from which the Demerged Undertaking of Demerged Company shall stand transferred/ deemed to have been transferred, to the Resulting Company in terms of the Scheme; and according to Registrar of Companies, Mumbai report dated 13.08.2018 inter alia mentioned that Resulting Company has filed form MGT 7 upto 14.09.2016 & AOC 4 upto 31.03.2017. In this regards, Resulting Company has to file Form MGT-7 upto 31.03.2017 with Registrar of Companies, Mumbai, before the sanction of the scheme.*
 - f) *As per Part 1 of the scheme, it is submitted that Section 232(6) of the Companies Act, 2013 states that the schemes shall be deemed to be effective from such date and not at a date subsequent to the*

appointed date. However this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

8. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Petitioner Company submit that the notices have been served upon the concerned authorities ie. (i) concerned Income Tax Authority with in whose jurisdiction the Petitioner Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Maharashtra at Mumbai (iv) BSE Limited, (v) National Stock Exchange of India Limited, and (vi) Securities and Exchange Board of India on 18th June, 2018 and filed the acknowledgments with this Tribunal vide its Affidavit of Service. Further, the Petitioner Company through their Counsel undertakes to comply with and abide by all provisions of the applicable laws after giving effect to the Scheme.
9. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned, the Petitioner Company undertakes to comply with the applicable Indian Accounting Standards (including IND AS 103 and IND AS 8) and pass such accounting entries which are necessary in connection with the Scheme.
10. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned, the Petitioner Company through their Counsel clarified that the Scheme enclosed to the Company Scheme Application and the Scheme enclosed to the Company Petition are one & the same and there is no discrepancy or deviation
11. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, the Petitioner Company submits that the approval of NCLT, New Delhi for the Scheme of Arrangement shall be obtained by the Demerged Company.
12. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report is concerned, the Petitioner Company through their Counsel clarifies that form MGT-7 upto 31-03-

2017 has already been filed vide SRN G55127369 dated October 6, 2017 with the Registrar of Companies, Mumbai.

13. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his report is concerned, the Petitioner Company clarifies that the Appointed date shall be 1st October, 2016 as mentioned in the Scheme.
14. The observations made by the Regional Director have been explained by the Petitioner Company in Para 8 to 13 above. The clarifications and undertakings given by the Petitioner Company are accepted.
15. From the material on record, the Scheme appears to be fair, reasonable and is not in violation of any provisions of law nor is contrary to public interest.
16. Since all the requisite statutory compliances have been fulfilled, the above _____ Company _____ Petition is made absolute in terms of prayer as provided therein.
17. The Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the order from the Registry duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
18. The Petitioner Company to lodge a copy of this order and the Scheme duly Certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.
19. The Petitioner Company to pay costs of Rs. 25,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the duly Certified Copy of this Order.

20. All authorities concerned, to act on a copy of this Order along with Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

SD/-

V. Nallasenapathy
Member (T)

SD/-

Bhaskara Pantula Mohan
Member (J)