

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH,
AT NEW DELHI**

Company Application No. CA (CAA)-112 (PB)/ 2018

Connected with CA (CAA) 631/230-232/NCLT/MB/MAH/2018

Under Sections 230-232 and other applicable provisions of the Companies Act,
2013 read with Companies (Compromises, Arrangements and Amalgamations)
Rules, 2016

In the matter of

Scheme of Arrangement

BETWEEN

SMC COMTRADE LIMITED

Demerged Company no. 1

AND

SMC INVESTMENTS AND ADVISORS LIMITED

Demerged Company no. 2

AND

SMC FINVEST LIMITED

Transferor Company no. 1

AND

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INDUNIA REALTECH LIMITED

Transferor Company no. 2

AND

SMC GLOBAL SECURITIES LIMITED

Resulting Company / Transferee Company

Judgment delivered on: 25.09.2018

CORAM:

CHIEF JUSTICE (Rtd.) M.M. KUMAR, Hon'ble President

S. K. MOHAPATRA, Hon'ble Member (T)

For the Applicants: Mr. Abhishek Nahta, Chartered Accountant

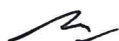


ORDER

S .K. Mohapatra, Member

1. These two applications have been filed by the Applicant Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by separate affidavits of the Applicant Companies, for seeking appropriate orders/directions for dispensing with/convening the respective meetings of shareholders, secured creditors and unsecured creditors of the applicant companies, in connection with the proposed Scheme of Arrangement contemplated between the applicant companies. The said Scheme of Arrangement (hereinafter referred to as the “Scheme”) has been placed on record along with the joint application.

2. It is represented that the registered offices of all the applicant companies except Transferor Company No. 1 are situated in New Delhi, well within the territorial jurisdiction of this Tribunal. It is also submitted that an application in relation to transferor company no. 1 being CA (CAA) 631/230-232/NCLT/MB/MAH/18 was initially filed before Mumbai Bench of NCLT, which subsequently got transferred from Mumbai Bench to this Bench vide order dated 19th July, 2018.



3. As there is a single Scheme involved in both the applications and the Scheme is in between all the applicant companies of both the applications; for the sake of convenience both the applications are taken together for disposal in the present order. It is pertinent to mention here that this is a composite scheme of arrangement by way of demerger of commodity broking, clearing services and proprietary trading business (arbitrage related to agri and non agri commodities) of demerged company no. 1 and demerger of wealth management, business including portfolio management services, distribution of mutual funds and third party investment products business of demerged company no. 2 into transferee company and amalgamation of transferor company no. 1 and transferor company no. 2 with transferee company.
4. M/s SMC Comtrade Limited (Demerged Company No.1) was incorporated on 21.03.1997 under the provisions of the Companies Act, 1956. The present Authorized Share Capital of the Demerged Company no.1 is Rs. 10,00,00,000/- divided into 1,00,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 10,00,00,000/- divided into 1,00,00,000 Equity Shares of Rs. 10/- each. The registered office of the Demerged Company no.1 is situated at 11/6B, Shanti Chamber Pusa Road, New Delhi 110005.



5. It is submitted that the Demerged Company no. 1 has 7 Equity Shareholders consisting of 1 beneficial shareholder and 6 nominee shareholders holding 1 share each. The sole beneficial shareholder holding 99.99 % of shareholding of the company has given its consent affidavit in favour of the Scheme. The consent affidavit of the sole beneficial equity shareholder has been placed on record. It is further represented that the Demerged company no. 1 has four secured creditors and 16,425 unsecured creditors. In relation to the shareholders, the demerged company no.1 seeks dispensation from convening and holding of their meeting on the ground that the beneficial shareholder holding 99.99 % of total shareholding of the Demerged company no. 1 has given its consent affidavit in favour of the Scheme. In relation to the secured creditors and unsecured creditors of the demerged company, prayers have been made for issuance of directions for convening and holding of their respective meetings in order to obtain their approval in favour of the Scheme.
6. M/s SMC Investments and Advisors Limited (Demerged Company no.2) was incorporated on 28.08.1997 under the provisions of the Companies Act, 1956. The registered office of the Company is situated at 11/5B, Pusa Road, New Delhi 110005. The Authorized Share Capital of the company is Rs. 27,00,00,000/- divided into 2,70,00,000 Equity Shares of



Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 25,00,00,000/- divided into 2,50,00,000/- Equity Shares of Rs. 10/- each.

7. It is submitted that Demerged Company No. 2 has 7 Equity Shareholders consisting of 1 beneficial shareholder and 6 nominee shareholders holding 1 share each. The sole beneficial shareholder holding 99.99 % of shareholding of the company has given its consent affidavit in favour of the Scheme. It is further represented that the demerged Company No. 2 has no secured creditor and 19 unsecured creditors. Out of 19 unsecured creditors 3 unsecured creditors constituting 97.48% in value have given their consent affidavits in favour of the Scheme. Certificates of chartered accountant in respect of status of creditors of the company have also been placed on record. Since the demerged company no.2 has no secured creditor, the requirement of convening meetings of Secured creditors of the company does not arise. In relation to the shareholders as well as the unsecured creditors, the demerged company no.2 seeks dispensation from convening and holding of their meeting, on the ground that the sole beneficiary shareholder holding 99.99 % shareholding and the unsecured creditors constituting 97.48% of the total value have given their consent affidavits in favour of the Scheme.




8. M/s SMC Finvest Limited (Transferor Company no.1) was incorporated in the State of Maharashtra on 6.11.2009 in the name of Sanlam Investment Management (India) Limited. The name of the company was changed to SMC Finvest Limited on 06.02.2012. The registered office of the Company is situated at A-401/402, Lotus Corporate Park, Jai Coach Junction, Off Western Express Highway, Goregaon (East), Mumbai-40063. The Authorized Share Capital of the company is Rs. 60,00,00,000/- divided into 6,00,00,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 41,00,00,000/- divided into 4,10,00,000/- Equity Shares of Rs. 10/- each.
9. It is submitted that Transferor Company No. 1 has 7 Equity Shareholders consisting of 1 beneficial shareholder and 6 nominee shareholders holding 1 share each. The sole beneficial shareholder holding 99.99 % of shareholding of the company has given its consent affidavit in favour of the Scheme. It is further represented that the transferor Company No. 1 has no secured creditor and one unsecured creditor. Certificates of chartered accountant in respect of status of creditors of the company have also been placed on record. Since the transferor company no.1 has no secured creditor the requirement of convening meeting of Secured creditors does not arise. In relation to the shareholders and unsecured creditors, the



transferor company no.1 seeks dispensation from convening and holding of their respective meetings, on the ground that the sole beneficial shareholder holding 99.99 % of shareholding of the company and the sole unsecured creditor of the company have given consent in favour of the Scheme.

10. M/s Indunia Realtech Limited (Transferor Company No. 2) was incorporated on 25.06.2009 under the provisions of the Companies Act, 1956. The registered office of the Company is situated at 11/6B, Shanti Chamber, Pusa Road, New Delhi. The Authorized Share Capital of the company is Rs. 2, 50, 00,000/- divided into 25,00,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 2,50,00,000/- divided into 25,00,000/- Equity Shares of Rs. 10/- each.

11. It is submitted that Transferor Company No. 2 has 7 Equity Shareholders consisting of 1 beneficial shareholder and 6 nominee shareholders holding 1 share each. The sole beneficial shareholder holding 99.99 % of shareholding of the company has given its consent affidavit in favour of the Scheme. It is further represented that the transferor Company No. 2 has no secured creditor and one unsecured creditor. Certificates of chartered accountant in respect of status of creditors of the company have also been placed on record. Since the transferor company no. 2 has no



secured creditors the requirement of convening meeting of Secured creditors does not arise. In relation to the shareholders and unsecured creditors, the transferor company no.2 seeks dispensation from convening and holding of their meeting, on the ground that the sole beneficial shareholder holding 99.99 % of shareholding of the company and the sole unsecured creditor have given consent in favour of the Scheme.

12. M/s SMC Global Securities Limited (Transferee Company) was incorporated on 19.12.1994 under the Companies Act, 1956. The registered office of the Company is situated at 11/6B, Shanti Chamber, Pusa Road, New Delhi 110005. The Authorized Share Capital of the company is Rs. 33,01,00,000/- divided into 16,50,50,000 Equity Shares of Rs. 2/- each. The Issued share Capital of the Company is Rs. 22,62,68,900/- divided into 11,31,34,450/- Equity Shares of Rs. 2/- each.

13. It is submitted that Transferee Company has 1437 Equity Shareholders, twelve secured creditors and 94,508 unsecured creditors. Certificates of chartered accountant in respect of status of the creditors of the company has been placed on record. In relation to the shareholders, secured and unsecured creditors of the transferee company, prayers have been made for issuance of directions for convening and holding of their



respective meetings in order to obtain their approval in favour of the Scheme.

14. We have perused both the applications and the connected documents / papers filed by the applicant companies including the Scheme of Arrangement as contemplated between the Applicant companies.
15. It is seen that the Board of Directors of the Demerged Company no. 1, Demerged Company no. 2, Transferor Company no. 1, Transferor Company no. 2 vide respective meetings held on 16.05.2018 have unanimously passed resolutions and approved the proposed Scheme of Arrangement as contemplated above and copies of the resolutions have also been placed on record by the respective Companies.
16. Further the Board of Directors of the Resulting Company/Transferee Company vide meeting held on 14.05.2018 has unanimously passed resolution and approved the proposed Scheme of Arrangement as contemplated above. Copy of the resolution passed thereat has also been placed on record.
17. All the applicants have filed their respective Memorandum and Articles of Associations. The applicants have also filed their latest audited financial statements for the year ending 31.03.2018.



18. It is submitted that the proposed arrangement is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the same if sanctioned by this Tribunal the appointed date as provided in the Scheme shall be April 1st, 2018.
19. All the companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 is pending against the applicant companies.
20. It is also submitted in the applications that the Scheme does not contemplate any corporate debt restructuring exercise and creditor's responsibility statement and other requirements under Section 230(2) (c) are not applicable to the present case.
21. It is pertinent to state here that certificate of statutory auditor of all the companies confirming that the accounting treatment in the Scheme is in conformity with Section 133 of the Companies Act, 2013 has been placed on record.
22. Further, it has been stated in the application that the Scheme will be beneficial to all the applicant companies and their respective shareholders, employees, creditors and other stake holders.



23. Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued: -

A. In relation to the Demerged Company 1:

i. The holding of meeting of the shareholders is dispensed with as consent affidavit of the sole beneficiary shareholder holding 99.99 % of shareholding of the company has been placed on record.

ii. The meeting of Secured Creditors of Demerged Company no. 1 is directed to be held at Jawahar Lal Nehru National Youth Centre, Narayan Dutt Tiwari Bhawan, 219 Deen Dayal Upadhyay Marg, New Delhi – 110002 on 3rd November, 2018 at 10:30 A.M. subject issuance of notice as per law. The quorum of the meeting of the Secured Creditors of Demerged Company no 1 shall be 2 in number or 75% in value.

iii. The meeting of Unsecured Creditors of Demerged Company no. 1 is directed to be held at Jawahar Lal Nehru National Youth Centre, Narayan Dutt Tiwari Bhawan, 219 Deen Dayal Upadhyay Marg, New Delhi – 110002 on 3rd November, 2018 at 11:30 A.M. subject issuance of notice as



per law. The quorum of the meeting of the Unsecured Creditors of Demerged Company no. 1 shall be 500 in number or 75% in value.

B. In relation to the Demerged Company 2:

- i. The holding of meeting of Equity Shareholders is dispensed with as consent affidavit of the sole beneficiary shareholder holding 99.99 % of shareholding of the company has been placed on record.*
- ii. The meeting of Secured creditors and Unsecured Creditors are also dispensed with as because there are no Secured Creditors and nineteen Unsecured Creditors out of which three Unsecured Creditors (97.48% in value) have given consent on affidavits in favour of the Scheme.*

C. In relation to the Transferor Company 1:

- i. The holding of meeting of Equity Shareholders is dispensed with as consent affidavit of the sole beneficiary shareholder holding 99.99 % of shareholding of the company has been placed on record.*
- ii. The meeting of Secured creditors and Unsecured Creditors is also dispensed with because there are no*



Secured Creditors and One Unsecured Creditor in the company and consent affidavit of the sole unsecured creditor has been obtained in favour of the Scheme.

D. In relation to the Transferor Company 2:

- i. The holding of meeting of Equity Shareholders is dispensed with as consent affidavit of the sole beneficiary shareholder holding 99.99 % of shareholding of the company has been placed on record.*
- ii. The meeting of Secured creditors and Unsecured Creditors is also dispensed with because there are no Secured Creditors and One Unsecured Creditor in the company and consent affidavit of the sole unsecured creditor has been obtained in favour of the Scheme.*

E. In relation to the Resulting Company/ Transferee Company:

- i. The meeting of Equity Shareholders of Resulting Company is directed to be held at Jawahar Lal Nehru National Youth Centre, Narayan Dutt Tiwari Bhawan, 219 Deen Dayal Upadhyay Marg, New Delhi – 110002 on 3rd November, 2018 at 1:00 P.M. subject to issuance of the notice as per law. The quorum of the meeting of the shareholders of*



Resulting Company/ Transferee Company shall be 500 in number or 75% in value.

ii. *The meeting of Secured Creditors of Resulting Company is directed to be held at Jawahar Lal Nehru National Youth Centre, Narayan Dutt Tiwari Bhawan, 219 Deen Dayal Upadhyay Marg, New Delhi – 110002 on 3rd November, 2018 at 02:30 P.M. subject to issuance of the notice as per law. The quorum of the meeting of the Secured Creditors of Resulting Company/ Transferee Company shall be 7 in number or 75% in value.*

iii. *The meeting of Unsecured Creditors of Resulting Company is directed to be held at Jawahar Lal Nehru National Youth Centre, Narayan Dutt Tiwari Bhawan, 219 Deen Dayal Upadhyay Marg, New Delhi – 110002 on 3rd November, 2018 at 4:00 P.M. subject to issuance of the notice as per law. The quorum of the meeting of the Unsecured Creditors of Resulting Company/ Transferee Company shall be 1000 in number or 75% in value.*

F. Mr. Inderjeet Singh (Mobile No. 9818285641) is appointed as the Chairperson and Ms. Shivani Gupta,



Advocate (Mobile No. 8840769824) is appointed as the Alternate Chairperson and Mr. Anand Rao Korada, Company Secretary (Mobile No.9874264647) is appointed as Scrutinizer for the said meetings.

G. In case the quorum as noted above for the aforesaid meetings are not present at the meetings, then the meeting shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the transferee company at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

H. The fee of the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/- , the fee of the Alternate Chairperson shall be Rs. 1,00,000/- and the fee of the Scrutinizer shall be Rs. 1,00,000/- in addition to meeting their incidental expenses.



The Chairperson will file its reports within a week from the date of holding of the above meetings.

- I. That the Applicant companies shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Delhi editions of 'Business Standard' English edition and "Business Standard" Hindi edition stating that the copies of Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Transferee Company.
- J. It is also directed that the individual notices shall only be send to the unsecured creditors of demerged company no. 1 and resulting company having value in excess of Rs. 5,00,000/-. The public notice published in the newspaper shall be deemed to be sufficient service of notice to the remaining unsecured creditors.
- K. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through



electronic means as may be applicable for the aforesaid respective meetings in terms of the provisions of the Companies Act, 2013 and Rules framed there under.

- L. The companies shall individually send notice to Central Government through Regional Director (Northern Region as well as Western Region), Ministry of Corporate Affairs, the Income Tax Authorities, Registrar of Companies National Capital Territory of Delhi and Haryana as well as Registrar of Companies, Maharashtra, Official Liquidator (Delhi and Mumbai), Securities and Exchange Board of India (SEBI), Calcutta Stock Exchange and along with copy of relevant documents and disclosures as required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.
- M. The applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every members and creditors entitled to attend the meetings as mentioned above.
- N. The authorized representative of the applicant companies shall furnish an affidavit of service of notice of meetings and




publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

N. All the aforesaid directions are to be complied with by the Applicants strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as in terms of the provisions of the Companies Act, 2013.

Both the applications stand allowed in the aforesaid terms.

Let the copy of the order be served to the parties.


(M.M. KUMAR) 25.09.

PRESIDENT


(S. K. MOHAPATRA)

MEMBER (T)