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

**Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**CAA-62(PB) 2017**

**CONNECTED WITH**

**CA (CAA)-07 (PB)/ 2017**

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013**

**AND**

**IN THE MATTER OF SCHEME OF ARRANGEMENT**

**BETWEEN**

**KHYATI NILUM ASSOCIATES PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

Guru Kripa, D-60/1 East of Kailash New Delhi-110065

.....Applicant No.1/ Demerging/ Transferor Company

**AND**

**KHYATI GLOBAL PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

Guru Kripa, D-60/1 East of Kailash New Delhi-110065

.....Applicant No.2/ Resulting/ Transferee Company

**AND**

**Their respective Shareholders and Creditors**

**ADVOCATE FOR THE PETITIONERS: Mr. Arun Saxena, Advocate**

**FOR REGIONAL DIRECTOR, (NR), MCA: Mr. Manish Raj, Company Prosecutor**



## ORDER

Order Delivered on:

25.08.2017.

1. This petition filed by the companies above named is coming up finally before us on 10.08.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of Demerger of the Rail USFD Business/ Undertaking of the Transferor Company/ Demerged Company/ Applicant Company I with the Resulting Company/Transferee Company/ Applicant Company II. A perusal of the petition discloses that initially the application seeking the directions for convening the meeting of equity shareholders, secured creditors and unsecured creditors of the Demerged Company and in relation to the Resulting Company of that of the Equity Shareholders and for dispensation of secured creditors and unsecured creditors were filed before this Tribunal in CA (CAA)-07 (PB) 2017. The Tribunal vide its order dated 16.02.2017 directed the convening of the meetings of the Equity shareholders of the Petitioner Companies and secured and unsecured creditors of the Demerging Company and there being no secured and unsecured creditors in Resulting Company, therefore the necessity of convening any meeting did not arise . Subsequent to the directions given vide order dated 16.02.2017, the petitioners have convened the meetings in relation to which the chairperson of the meetings have filed their reports.
2. Under the circumstances, the petitioners have filed their petitions for sanction of the Scheme of Arrangement before the Tribunal.

3. In relation to the Petition, the Tribunal ordered Notice in the Second Motion petition in CAA -62 (PB)/ 2017 on 13.04.2017 to the Regional Director, Registrar of Companies and Income Tax Department. The Petitioners were also directed vide the said order to carry out publication in the newspapers 'Indian Express' in English and 'Jansatta' in Hindi in relation to the date of hearing fixed on 15.05.2017.
4. The petitioners have filed an affidavit of service dated 4<sup>th</sup> May, 2017 in relation to the compliance of the orders passed by the Tribunal dated 13.04.2017 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Tribunal in one issue of the 'Indian Express' in English Edition and 'Jansatta' in Hindi Edition on 21.04.2017. Further, the affidavit also discloses that notices have been issued to the Regional Director, Northern Region, Registrar of Companies, Delhi & Haryana and Income Tax Department on 15.04.2017 and by hand to the said authorities on 17.04.2017 in compliance with the order dated 13.04.2017 and proof of the same by way of acknowledgement made by the respective offices have also been enclosed.
5. We have heard the counsels for the petitioners and also considered the representations made by the Regional Director, Northern Region vide representation dated 22<sup>nd</sup> May, 2017.
6. A perusal of the representation of the Regional Director shows that the representations are not serious enough to warrant the consideration of this Tribunal as it seems to be pedantic and also in view of the fact that the report states that the



- petitioners have complied with its representation by submitting the valuation report.
7. However, in response to the observation in relation to the stamp duty, the Transferee/ Resulting Company has filed an affidavit dated 25<sup>th</sup> May, 2017 stating that they will do all the necessary compliances in relation to the stamp duty as may be applicable to them. The above undertaking is taken on record.
  8. The Petitioner Companies it is seen has complied with by furnishing the certificate from the Company's Auditor in relation to compliance with Accounting Standards as prescribed under section 230 (7) proviso and section 232 (3) proviso of Companies, Act, 2013.
  9. Subject to above undertaking given by the petitioners, the Scheme of Arrangement annexed as Annexure-P-3, to the Company Petition as well as the prayer made therein in are sanctioned.
  10. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court 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. . While approving the Scheme as above, we further clarify 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, and payment in accordance with law



or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

**THIS TRIBUNAL DO FURTHER ORDER**

- (1) That the whole of the Rail USFD Business/ Demerged Undertaking shall pursuant to Section 232 of the Companies Act, 2013 and without further act or deed, matter or thing be in the first place stand transferred to and vested in and/or deemed to be transferred to and vested in the Resulting Company so as to vest in the Resulting Company all the rights, titles and interests pertaining to the Rail USFD Business/ Demerged Undertaking concern to the Resulting Company.
- (2) That all the liabilities and duties of the Demerged Undertaking of the Demerged Company be transferred without further act or deed to the Resulting company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Resulting company.
- (3) That all proceedings now pending by or against the Demerged Company pertaining to the Demerged Undertaking be continued by or against the Resulting Company.
- (4) That the Transferee Company/ Resulting Company do without further application allot to such members of the Transferor Company, as is required by




clause 9 of the SCHEME OF ARRANGEMENT herein the shares to which they are entitled under the said SCHEME OF ARRANGEMENT; and

(5) That as per clause 7 of the scheme, all the employees of the Demerged Undertaking in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service.

(6) That Petitioner/Resulting company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration;

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

  
(R. VARADHARAJAN)  
MEMBER (JUDICIAL)

U.D Mehta

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