

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

**CSP No. 604/230-232/NCLT/MB/MAH/2017**

**AND**

**CSP No. 634/230-232/NCLT/MB/MAH/2017**

**under Sections 230 to 232 of Companies Act, 2013**

In the matter of Scheme of Arrangement  
between BMS Industries Limited ('the Demerged Company') and  
Ashrit Holdings Limited ('the Resulting Company') and  
their respective Shareholders

**In the Matter of**

BMS Industries Limited,  
having its Registered Office At A-25,  
Technocraft House, MIDC,  
Marol Ind Area, Road No. 3,  
Opp ESIS Hospital,  
Andheri(E), Mumbai – 400093.

... Petitioner/Demerged Company

Ashrit Holdings Limited,  
having its Registered Office At A-25,  
Technocraft House, MIDC,  
Marol Ind Area, Road No. 3,  
Opp ESIS Hospital,  
Andheri(E), Mumbai – 400093.

... Petitioner/Resulting Company

**VERSUS**

Regional Director (Western Region)  
Ministry of Corporate Affairs,  
EVEREST, 5<sup>th</sup> Floor,  
100 Marine lines,  
Mumbai- 400002.

... Respondent

**Date of Order: 10.10.2017**

**CORAM:**

**Hon'ble Shri M.K. Shrawat, Member (Judicial)**  
**Hon'ble Shri Ravikumar Duraisamy, Member (Technical)**

**Parties Present**

Counsel for Petitioners : Shri Hemant Sethi, Advocate  
For Regional Director : Shri Ramesh Gholap, Assistant Director



**Per: Ravikumar Duraisamy, Member (Technical)**

**ORDER**

1. The Company Scheme Petition bearing CSP No. 604 of 2017 and Company Scheme Petition bearing CSP No. 634 of 2017 are filed by the Petitioners / Demerged Company and Resulting Company, under Sections 230 to 232 of the Companies Act 2013.

2. Brief facts leading to the filing of present case are as follows:

**A) In Respect of Demerged Company:**

a) The Demerged Company was originally incorporated under the Companies Act, 1956 as a Private Limited Company in the state of Maharashtra in the name of 'Brihan Maharashtra Steel Industries Private Limited' on 24<sup>th</sup> day of April, 1974. Then, the name of the Company was changed to 'Brihan Maharashtra Steel Industries Limited' on 13<sup>th</sup> date of December, 1994. Subsequently, the name was changed to its present name 'BMS Industries Limited' on 5<sup>th</sup> day of October, 2006 (hereinafter referred to as "BMS") The registered office is situated at A-25, Technocraft House, MIDC, Marol Ind Area, Road No. 3, Opp ESIS Hospital, Andheri(E), Mumbai - 400093.

b) The Authorised, issued, subscribed and paid-up share capital of the Demerged Company as on 31<sup>st</sup> March, 2016 was as under:

| <b>Particulars</b>                                  | <b>Rupees</b>     |
|---|-------------------|
| <b>Authorised Share Capital</b>                     |                   |
| 800,000 Equity Shares of Rs. 100/- each fully paid  | 80,000,000        |
| <b>Issued, Subscribed and Paid-up Share Capital</b> |                   |
| 592,875 Equity Shares of Rs. 100/- each fully paid  | 59,287,500        |
| <b>Total</b>  | <b>59,287,500</b> |

c) The main objects of Company as set out in its Memorandum of Association, in brief, are as follows:

To manufacture, produce, purchase, import, export, sell, fabricate and deal in the items of iron, steel, hardware, machinery and tools, sheets, wire and wire products of iron steel, ferrous and/or Non-ferrous and to



carry on the business of an investment Company of the moneys in the hands of Company or by conversion/swapping of the debts dues to the company by other companies, by investing in and acquire and hold and otherwise deal in shares, stocks, debenture, bonds, mutual funds otherwise movable or immovable properties.

- d) The Petitioner Company is predominantly dealing in the business of manufacturing of drum closures and clamps on job work basis and also holds various current and non-current investments in the form of fixed maturity plans, blue chip funds, etc.
- e) Demerged Undertaking will have the meaning as defined in the definition in Part A of the scheme which interalia includes business division, non-current and current investment, other assets, liabilities etc.

**B) In Respect of Resulting Company:**

- a) Ashrit Holdings Limited, the Resulting Company herein, was incorporated under the Companies Act, 1956, in the State of Maharashtra on 12<sup>th</sup> day of May, 1992 (hereinafter referred to as "ASHRIT"). The Registered Office is situated at A-25, Technocraft House, MIDC, Marol Ind Area, Road No. 3, Opp. ESIS Hospital, Andheri(E), Mumbai – 400093. Ashrit is a Registered Non-Banking Finance Company (NBFC) with Reserve Bank of India (RBI) under section 45-1A of the RBI Act 1934.
- b) The Authorised, issued, subscribed and paid-up share capital of the Resulting Company as on 31<sup>st</sup> March, 2016 is as under:

| Particulars   | Rupees           |
|---|------------------|
| <b>Authorised Share Capital</b>   |                  |
| 2,800,000 Equity shares of Rs. 10/- each fully paid                                   | 28,000,000       |
| 5,950,000-10% Redeemable Non-Cumulative Preference shares of Rs. 10/- each fully paid | 59,500,000       |
|   | 87,500,000       |
| <b>Issued, Subscribed and Paid-up capital</b>   |                  |
| 292,800 Equity Shares of Rs.10/- each   | 2,928,000        |
| <b>Total</b>  | <b>2,928,000</b> |



- c) The main objects of the Company, as set out in its Memorandum of Association, in brief, are as follows:-

To carry on the business as an investment Company by investing the capital and other monies of the Company in the purchase or upon the security of shares, stock, debentures, bonds, mortgages obligations and securities of any kind, dealing in India or elsewhere.

- d) The company is predominantly dealing in business of financial activities such as Investment in financial instruments such as fixed maturity plans, monthly income plan, equity shares, debentures, etc., trading of stocks, financing etc.

**3. The object of proposed Scheme of Arrangement i.e Demerger would have the following benefits:**


- a) Integration of Operations;
- b) Greater financial strength and flexibility for the merged entity;
- c) Wider range of applications and scope for growth;
- d) Stability and enhancement in earnings and cash flow;
- e) Long term value unlocking of businesses;
- f) Enhanced value to the shareholders;
- g) Operational effectiveness and cost optimization; and
- h) Stronger balance sheet resulting in improved allocation of capital and broader access to capital markets.

4. It is further stated that the Board of Directors of both the Petitioners Companies vide its resolution dated 27<sup>th</sup> day of March, 2017 approved the Scheme of Arrangement between BMS Industries limited and Ashrit Holdings Limited and their respective Shareholders.

**5. The material provisions of the proposed Scheme are as under:**

- (i) Upon the coming into effect of this Scheme and with effect from the Appointed Date i.e. 31<sup>st</sup> March, 2017, the Whole of the Demerged Undertaking of the Demerged Company shall stand transferred to and vested in and/or be deemed to be transferred to and vested in the Resulting Company as a going concern.



- (ii) Upon the scheme becoming effective, the following assets, liabilities, obligations, rights, title and interest of the Demerged Company on the appointed date will be vested with Resulting Company:-
- a) In respect of all movable and immovable assets of the demerged undertaking, shall without any further act or deed, be vested in and/or deemed to be vested in the Resulting Company so as to vest in the Resulting Company all the Rights, title and interest of the Demerged Company therein and shall be appropriately mutated, registered or recorded by the statutory authorities concerned therewith in favour of the Resulting Company,
  - b) In respect of all the movable assets of the Demerged Undertaking, capable of passing by manual delivery or by endorsement and delivery to the Resulting Company to the end and intent that the property therein passes to the Resulting Company.
  - c) All debts, liabilities, duties and obligations of every kind, nature and description whether provided for or not in the books of accounts pertaining to Demerged Undertaking of the Demerged Company shall also, without any further act, instrument or deed be transferred to and vested in and assumed by and/or deemed to be transferred to and vested in and assumed by the Resulting Company.
  - d) All statutory licenses, permissions, approvals, consents, powers, lease, tenancy rights, letter of intents, incentives if any and all other rights, title, interest, contracts including leasing agreements, etc., held by the Demerged Company which are required to carry on the activities or operations of the demerged undertaking shall, stand vested in and transferred to the Resulting Company without any further act or deed.
  - e) The transfer and vesting of Demerged Undertaking as aforesaid shall be subject to the existing securities, charges, mortgages and other encumbrances if any, subsisting over in respect of the property and assets or any part thereof relating to Demerged Undertaking to the extent such securities, charges, mortgages, encumbrances are created to secure the liabilities forming part of the Demerged Undertaking.
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- (iii) All cheques and other negotiable instruments, payment orders received and presented for encashment which are in the name of BMS and pertaining to the Demerged Undertaking after the Effective Date, shall be accepted by the bankers of Ashrit and Credit to the account of Ashrit.
  - (iv) This Scheme has been drawn up to comply with conditions relating to "Demerger" as specified under section 2(19AA) of the Income-tax Act, 1961. If any terms or provisions of the scheme is/are inconsistent with the provisions of said section, the scheme shall stand modified to the extent necessary to comply with the said section 2(19AA) of the Income-tax Act, 1961.
6. On the Scheme becoming operative, all employees in relation to Demerged Undertaking of the Demerged Company in service of the Effective date shall be deemed to have become employees of the Resulting Company without any break in their service and on the basis of continuity of service and the terms and conditions of their employment with Resulting Company.

**7. Consideration of the proposed Scheme is as under:**

Upon the coming into effect of this Scheme, and upon vesting of Demerged Undertaking of the Demerged Company into Resulting Company, the Resulting Company shall, without any further application or deed, issue and allot to the Equity Shareholders of the Demerged Company, as Consideration for Demerger of Demerged Undertaking of the Demerged Company into the Resulting Company in terms of this Scheme, in the following Ratio:

"5(five) fully paid-up Equity Shares of face value of Rs. 10/-(Rupees Ten only) each of the Resulting Company to the Equity Shareholders of the Demerged Company for every 21(Twenty One) fully paid-up Equity Shares of Rs.100/-(Rupees One Hundred Only) each of the Demerged Company held by such Equity Shareholders of the Demerged Company."

8. Petitioner Companies have served a notice along with a copy of the statement and copy of the scheme upon all its Secured and Unsecured Creditors as on 20<sup>th</sup> March, 2017.
9. The Learned Counsel for the Petitioner/Demerged Company states that in pursuance of the directions contained in Order dated 13<sup>th</sup> April, 2017 passed



by this Tribunal in the Company Scheme Application No. 410 of 2017, the meeting of Equity Shareholders of the Petitioner Company was convened and held at A-25, Technocraft House, MIDC, Marol Ind Area Road No. 3, Opp. ESIS Hospital, Andheri(E), Mumbai – 400093 on Monday, 5<sup>th</sup> June, 2017 at 12:30 pm and the requisite quorum was present and the Scheme was approved with the requisite majority by the Equity Shareholders without modifications. The Chairman appointed for the meeting has filed his affidavit verifying his report dated 05<sup>th</sup> June, 2017.

10. The Learned Counsel for the Petitioner/Resulting Company states that in pursuance of the directions contained in Order dated 13<sup>th</sup> April, 2017 passed by this Tribunal in the Company Scheme Application No. 384 of 2017 in Company Scheme Petition No.634 of 2017, the meeting of Equity Shareholders of the Petitioner Company was convened and held at A-25, Technocraft House, MIDC, Marol Ind Area Road No. 3, Opp ESIS Hospital, Andheri(E), Mumbai – 400093 on Monday, 5<sup>th</sup> June, 2017 and the requisite quorum was present and the Scheme was approved with the requisite majority by the Equity Shareholders without modifications. The Chairman appointed for the meeting has filed his affidavit verifying his report dated 05<sup>th</sup> June, 2017.
11. The Learned Counsel for the Petitioners further submits that as directed by this Tribunal, notices have been served upon all the Regulatory Authorities namely, Central Government through Regional Director, Registrar of Companies, Mumbai and Income Tax Authority. The requisite information called for by the office of Regional Director has already been submitted by the Petitioner Companies and no further information has been sought for. The Regional Director has filed his report on 25-07-2017.
12. From the records it is noted that the Petitioner Companies have submitted the proof of service of notice on Income Tax Department dated 28.04.2017 for comments and office of Regional Director (Western Region) has also issued a reminder dated 18.07.2017, but the Comments of Income Tax Department has not been received so far.
13. Petitioner Companies were directed to publish the notice of hearing of petition in two local newspapers, both having wide circulation in Mumbai,



and the same was compiled and the notice of hearing of petition was published in two local newspapers viz. "Free Press Journal", in English Language and translation thereof in "Navshakti", in Marathi language and affidavit of service regarding the directions given by the Hon'ble Tribunal has been duly complied with, before three clear days of the date fixed for hearing.

14. The learned Counsel for the Petitioners submits that the Company scheme petitions have been filed in consonance with the order passed in Company Scheme Application No.410 and 384 of 2017 and further submitted that no objector has come before this Tribunal to oppose the scheme nor has any party controverted any averments made in the Petitions.
15. We have carefully perused all the pleadings, and also relevant provisions of the Companies Act. We are convinced that the Demerged/Resulting Companies have complied with all statutory requirements as required under section 230 to 232 and other provisions of Companies Act, 2013 as detailed supra. The Board of Directors of the Petitioner Companies at its meeting held on 05<sup>th</sup> June, 2017 at 12:30 pm have approved the Scheme of Arrangement. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Demerged/Resulting Companies are admittedly following all rules/regulations of Companies Act. Hence, we are of the considered view that the Company Petitions deserved to be allowed as prayed for.
16. In the result, the Company Scheme Petition bearing CSP No. 604 of 2017 and Company Scheme Petition bearing CSP No. 634 of 2017 are allowed with the following directions:-
  - a) Sanctioned the Scheme of Arrangement as proposed (which is placed along with material papers enclosed with the Petition) and fixed Appointed Date as 1<sup>st</sup> April, 2017 and it is ordered that the same is binding on all the Equity Shareholders/Members, Employees and all concerned of the Demerged Company and Resulting Company.
  - b) The Petitioner Companies are directed to take appropriate steps to submit the said scheme to Registrar of Companies within 30 days from the date of receipt of Copy of this order.



- c) Since the Resulting Company is a Registered NBFC with RBI, the Resulting Company is directed to ensure necessary compliance with applicable rules, regulations, directions, circulars etc of RBI including approval required if any.
- d) Petitioners to lodge certified copy of this order and the scheme duly certified by the Deputy Director, 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.
- e) Both the Petitioner Companies are directed to provide broad description of Assets being transferred from Demerged Company to Resulting Company such as Land & Building, Factory Premises, Furniture & Fixtures, Name of Plant and Machinery, Make, Quantity, Approx. value of the same and similar details regarding movable Assets to be provided in the Scheme of Arrangement.
- f) Both the Petitioner Companies are directed to provide details regarding Number of employees transferred from Demerged Company to Resulting Company.
- g) The Petitioner Companies are directed to issue newspaper publication with respect to approval of scheme of arrangement, in the same newspapers in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as Proposed.
- h) The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved scheme of Arrangement under the provisions of the Act.
- i) Liberty is granted to party/parties, who are aggrieved by this order, to seek any direction(s) by way of filing miscellaneous application in the present CSP.
- j) The Petitioner Companies are directed to strictly adhere to the above directions and applicable provisions of Companies Act.

Sd/-

**RAVIKUMAR DURAISAMY**  
**MEMBER (TECHNICAL)**

Sd/-

**M.K. SHRAWAT**  
**MEMBER (JUDICIAL)**