

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

CSP NO.603 OF 2017

AND

CSP NO.602 OF 2017

In the matter of the Companies Act, 2013;

And

In the matter of Sections 230 to 232 of the
Companies Act, 2013;

And

In the matter of Scheme of Arrangement
between AV Processors Private Limited
("Demerged Company") and Hawco
Lubricants Private Limited ("Resulting
Company"); and their respective
shareholders

AV Processors Private Limited).. Petitioner Company No. 1
(Demerged Company)

And

Hawco Lubricants Private Limited).. Petitioner Company No. 2
(Resulting Company)

Date of Order: 20th December , 2017

Coram:

Hon'ble M. K. Shrawat , Member (J)

Hon'ble V. Nallasenapathy , Member (T)

For the Petitioner(s): Mr. Anirudh A. Hariani
i/b Sonal Doshi & Co. Advocate for the
Petitioner Companies

Representatives of Registrar of Companies, Mumbai

Per : V. Nallasenapathy ,Member (T)

ORDER

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme of Arrangement, nor has any person controverted any

averments made in the Petitions about the Scheme of Demerger between **AV Processors Private Limited**, the Demerged Company and **Hawco Lubricants Private Limited**, the Resulting Company.

2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Arrangement between **AV Processors Private Limited**, the Demerged Company and **Hawco Lubricants Private Limited**, the Resulting Company.
3. Learned Counsel for the Petitioner Companies states that AV Processors Private Limited, Petitioner Company No. 1 (Demerged Company) is primarily engaged in the business of Radiation Sterilization while Hawco Lubricants Private Limited, Petitioner Company No. 2 (Resulting Company) is engaged in the business of supply of goods and services.
4. The Boards of Directors of the Petitioner Companies have approved the said Scheme of Arrangement by passing Resolutions which are annexed to the respective Company Scheme Petition filed by the Petitioner Companies. The shareholders of both the Petitioner Companies have also approved the said Scheme of Arrangement, without modification, unanimously by passing of resolutions.
5. Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble National Company Law Tribunal, Mumbai Bench and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all requirements, if any, under applicable provisions of the Companies Act, 2013 and the Rules made thereunder. The said undertaking given by the Petitioner Companies is accepted.
6. The Regional Director, Western Region (RD) has filed a Report dated 14th November, 2017 stating therein, that the

Tribunal may take the report on record and pass such order or orders as deemed fit and proper in the facts and circumstances of the case post considering the observations made at Sr No. IV (a) to (d) mentioned in his report.

In paragraphs IV (a) to (d) of the said Report it is stated that:-

- “(a). The tax implication if any arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon’ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
- (b). As per existing practice, the Petitioner Companies are required to serve Notice for the Scheme to the Income Tax Department for their comments. It is observed that the companies vide letters dated 16.05.2017 have served copies of the company scheme applications No. 545 & 546 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 03.10.2017 to the IT Department.*
- (c). 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;*
- (d). ROC-Mumbai has observed in its letter no. ROC/STA(C)/u/s.230 (Amlga/191207/959 dated 13.10.2017 as under:*
- There is no object/rationale clause in the Scheme and accordingly the rationale of the Scheme is not known.*

- *Divisional Financials alongwith Notes and Financials as at appointed date 01/04/2017 (31/03/2017) were not furnished with Scheme papers/Scheme Application. Accordingly, this office may be permitted to submit further report upon receipt of such financials. This information is required in terms of Section 230(2)(a) of the Companies Act, 2013.*
- *There was no such separate segment reporting done in the last available financials of Demerged Company as at 31.03.2016, as referred to have separate "Investment Segment" vide para (B) of Preamble of the Scheme & vide para 1.5 of the Scheme.*
- *Para No. 1.6 - Effective Date of the Scheme is violative of Section 232(6) of the Scheme as it is made Subject to Clause 32(c), 32(b) of the Scheme.*
- *Para No. 1.8 - Record Date of the Scheme is to be taken with Appointed date only.*
- *Para No. 1(B), 31.1, 31.2 & 35 - auto modification of the Scheme violative of Section 231(1)(b) & 231(1)(a) of the Act & hence need deletion.*
- *Para No. 27.1 needs to be deleted as it provides for increase of Authorised Capital of Resulting Company from existing Rs 10 Lakhs to Rs 10.55 Crore without any further act, whereas it has to pay fee to the Government/ROC on such increase.*
- *With reference to Para No. 28.1.1 & 28.2.1 of the Scheme, it should be adjusted to Capital Reserve only instead of "Reserve"/"Goodwill".*
- *It is actually a case of Transfer / Sale of "Investment in shares of the Companies" & not demerger of any business undertaking as a going concern, since no*

liability are proposed to transfer & no such segment exists for transfer.

In this regard, the Deponent prays that the ROC may be permitted to argue the observations raised by him as stated vide point IV(d) above.

Save and except as stated in para IV (a) to (d) it appears that the Scheme is not prejudicial to the interest of shareholders and public.”

7. As far as the observations made in paragraph IV (a), (b) and (c) of the RD Report are concerned, Petitioner Companies through their Counsel undertake to comply with all applicable provisions of the law including the Income Tax Act and all tax issues arising out of the Scheme will be met and dealt with in accordance with the law. The accounting entries which are required to be made to give effect to provisions of the Scheme shall be in compliance with applicable accounting standards including AS-14.
8. As far as observations made in paragraph IV (d) of the RD report are concerned, the Learned Counsel for the Petitioner Companies submitted as under: -
 - (i) The object/rationale behind the Scheme is as under:
 - In case of the Demerged Company, helping the Demerged Company focusing on its core business of Radiation Sterilization and thus create added value for its shareholders.
 - In case of the Resulting Company, availability of increased resources and assets which can be utilized to enhance and grow business of the Resulting Company.

- The proposed demerger is likely to enhance significantly the values and synergies for both the Demerged Company and Resulting Company.

The Objects of the Scheme are also elaborated in the Company Applications filed before this Hon'ble Tribunal on 21.04.2017. Further and in any case, the Notice dated 16.05.2017 calling for a meeting of the equity shareholders, contained an explanation as to the rationale of the Scheme.

- (ii) As the audited annual financial statements for the F.Y. 2016 - 2017 were likely to be available only in September 2017, the latest available Financials of the Petitioner Companies for the year ended 31.3.2016 were annexed to the Applications / Petitions. The audited financials for F.Y. 2016-2017 have since been furnished.
- (iii) Accounting Standard 17 (Segment Reporting) is not mandatory for small and medium sized companies. The Demerged Company being a small and medium sized company it is accordingly not required to report segment-wise figures in its financials. However, details of investments (Assets) appear under separate note nos.12 & 13 in the annual financial statements of the Demerged Company for 2015-16 and 2016-2017 respectively.
- (iv) Section 232(6) of the Act mandates that a scheme shall clearly indicate an Appointed Date from which it shall be effective. In the present Scheme, Part II of the Scheme deals with transfer of Investment Segment of the Demerged Company; paras 3.2, 3.3, 3.4 etc thereof clearly mention that the transfer of assets & liabilities to the Resulting Company will be effective from the Appointed Date (namely 1.4.2017) as defined in para 1.2 of the Scheme. Para 32 lays down the conditions

of the Scheme which are standard conditions and are embodied in all Schemes of Arrangement.

The Petitioner Companies undertake that the Scheme will be effective from the Appointed Date only.

- (v) The Petitioner Companies undertake that upon Sanction of the Scheme by this Hon'ble Tribunal, the Board of Directors of the Resulting Company will fix a date as the "Record Date" for determination of equity shareholders of the Demerged Company for issue by the Resulting Company of new equity shares pursuant to the Scheme.
- (vi) The provisions with respect to making minor modifications in the scheme are for the purpose of removing difficulties so that once the Scheme is sanctioned, then the Resulting Company need not obtain the sanction of the shareholders for each and every minor modification. However, the Petitioner Companies undertake that while implementing the Scheme if any modification in the Scheme is required to be made, it shall be subject to approval/sanction of this Hon'ble Tribunal.
- (vii) With respect to increase in Authorized Share Capital of the Resulting Company, i.e. Petitioner No. 2 undertakes that whatever fees are payable to the Government on the contemplated increase in its authorised capital would be duly paid.
- (viii) The provisions in Paras 28.1.1 & 28.2.1 of the Scheme are in line with Accounting Standard AS 14 (para17) which provides that if the result of the computation of consideration deducted from value of the net assets of the Transferor Company is negative, then the difference is to be debited to "Goodwill", and if it is positive, it is to be credited to "Capital Reserve". This is precisely what has been provided in Paras 28.1.1 and 28.1.2. The Petitioner Companies undertake that the

accounting entries which are required to be made to give effect to provisions of the Scheme will be in compliance with applicable accounting standards including AS - 14 as aforesaid.

- (ix) The Petitioner Companies assure and undertake that the Scheme is not merely a transfer or sale of the Investment Segment, as it involves sale of the undertaking as a going concern. At present, there are no liabilities in the Investment Segment. Nonetheless, the Scheme *inter alia* provides for transfer of all liabilities with respect to the Investment Segment of the Demerged Company to the Resulting Company (in Paras 3.4, 3.5 and 3.7). Therefore, the Scheme is for demerger of the Investment Segment as a going concern and not merely a sale or transfer thereof. In any case, the Petitioner Companies undertake that all liabilities of the Investment Segment of the Demerged Company, if any, as on date of the sanction of this Hon'ble Tribunal, shall also stand transferred to the Resulting Company.
9. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 7 and 8 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
10. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
11. Since all requisite statutory compliances including obtaining certificate from statutory auditors in terms of Section 133 of the Companies Act, 2013 have been fulfilled, the Company Scheme Petition No. 603 of 2017 filed by the Petitioner AV Processors Private Limited is made absolute in terms of prayer clauses (a) to (d) of the Petition. Similarly, the Company Scheme Petition No. 602 of 2017 filed by the Petitioner Hawco Lubricants Private Limited is made absolute in terms of prayer clauses (a) to (e) thereof.

12. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically in the prescribed Form, in addition to a physical copy within 30 days from the date of receipt of the order from the Registry.
13. The Petitioner companies to pay costs of the company Scheme Petition of INR Rs. 25,000/- to the Regional Director, Mumbai. Costs to be paid within four weeks from the date of the order.
14. The Resulting Company to pay prescribed stamp duty on the Order within 60 days from the date of receipt of certified copy of Order from the Registry.
15. All authorities concerned to act on a certified copy of this Order along with the Scheme.
16. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

M.K.Shrawat, Hon'ble Member(J)

Dated - 20-12-2017