

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

CSP 671/230-232/NCLT/MB/MAH/2017

CSP 672/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Fortune Integrated Assets Finance Limited  
.....Petitioner in CSP 671/2017  
(Demerged Company)

M/s. Wind Construction Private Limited  
.....Petitioner in CSP 672/2017  
(Resulting Company)

Order delivered on : 15.12.2017

**Coram :**

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Mr. Akshay Udeshi, Advocate i/b. Sanjay Udeshi & Co. – Advocates for the Petitioners.

**For the Regional Director:**

Mr. Ramesh Gholap, Deputy Registrar (WR).

*Per : Bhaskara Pantula Mohan, Member (J)*

**COMMON ORDER**

1. The sanction of the Tribunal is sought under sections 230 to 232 of the Companies Act, 2013 to a Scheme of Arrangement of M/s. Fortune Integrated Assets Finance Limited, (Demerged Company) with M/s. Wind Construction Private Limited, (Resulting Company) and their respective shareholders.
2. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Demerged Company is The Demerged Company is registered under Section 45-IA of the Reserve Bank of India Act, 1934 as a Non-Banking Finance Company and is classified as an Asset Finance Company. The company is engaged in providing finance,



granting loans and credit facilities against security of vehicles on short, medium and long-term basis.

4. The Resulting Company is engaged in the business of construction.
5. The demerger would enable greater/enhanced focus of management in these businesses thereby facilitating the management to efficiently exploit opportunities for each of these businesses. It is believed that the proposed segregation will create enhanced value for shareholders and allow a focus strategy in operations, which would be in the best interest of all the stakeholders and the persons connected. The demerger will also provide scope for independent collaboration and expansion with an intention to ensure better operational management and focus on accelerated growth of remaining undertakings. The Boards of Demerged Company as well as Resulting Company believes that this demerger will contribute to smooth integration of relevant undertakings of both the Companies and would benefit the shareholders, employees and other stakeholders of the Demerged Company and the Resulting Company.
6. The Authorized Share Capital of the Demerged Company is ₹ 20,00,00,000/- comprising of 2,00,00,000 Equity Shares of ₹ 10/- each. Whereas the Issued, Subscribed and Paid-up Share Capital of the Demerged Company is ₹ 19,31,81,210/- comprising of 1,93,18,181 Equity Shares of ₹ 10/- each.
7. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Resulting Company is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹ 10/- each
8. The averments made in the Petition and the submissions made by the Learned Counsel for the Petitioners are:
  - a) The Petitioner Companies have complied with all the requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable.
  - b) The Regional Director has filed his Report dated 20<sup>th</sup> November, 2017 stating therein, save and except as stated in paragraph IV(a) to (d), 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:-

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a. As per Definitions Clause - 3.3 of the Scheme "Appointed Date" shall mean 1<sup>st</sup> July, 2016 or such other date as may be fixed or approved by the High Court subject to acceptance of such other date by the Board of Directors of the Demerged Company and the Resulting Company.

In this regard, it is submitted that in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> July, 2016;

b. As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 15<sup>th</sup> May, 2017 has served a copy of company scheme application no. 453 & 454 of 2017 along with relevant orders etc. to IT Department. Further, this office has also issued remainder letter dated 20/094/2017 to the concerned Income Tax authorities;

c. 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 Tribunal may not deter the Income Tax Authority to scrutinize the tax return filled by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

d. Since the entire non-banking finance business of Transferor Company is being transferred to Resulting Company, the transferor company has to change the name and accordingly the resulting company also to change the name and to get registered with RBI.

c) Apropos the observation made in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Appointed Date for the said Scheme of Arrangement shall be 1<sup>st</sup> July, 2016 as mentioned in the Clause 3.3 of the Scheme of Arrangement and reiterated by the Regional Director in its Report.

d) Apropos the observations made in paragraph IV (b) and (c) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies



submits that the copy of the Scheme is already served upon the Income Tax Department and till date no response is received from the Income Tax Department. The Demerged Company and the Resulting Company also undertakes to comply with all applicable provisions of Income Tax Act and all the Tax issues arising out of the scheme and the same will be met in accordance with law.

- e) Apropos the observation made in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Petitioner Companies undertakes to comply with all applicable provisions of Reserve Bank of India with respect to change of name and registration with the Reserve Bank of India as directed by the Regional Director in its Report.
- f) It is further submitted that no objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Arrangement and Amalgamation.
9. From the material on record, the Scheme of Arrangement and Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Companies, **do Order that:**
- a) All the Demerged liabilities including taxes and charges, if any, and Demerged duties of the Demerged Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee/Resulting Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) Since the Resulting Company is wholly-owned subsidiary of the Demerged Company no shares shall be issued and allotted of the Resulting Company in lieu of the consideration of the Scheme.
- d) The Petitioner Companies to lodge a copy of this order and the Scheme of Arrangement and Amalgamation duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, of the 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) The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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 issuance of the order by the Registry, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- f) Each Petitioner Companies to pay costs of ₹ 25,000/- to the Regional Director, Western Region, Mumbai. The cost is to be paid within four weeks from the date of the receipt of Order.
- g) All concerned authorities to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- h) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- i) Any concerned authority is at liberty to approach this Bench to seek any clarification/direction hereinafter under this Scheme.
- j) The Scheme is sanctioned hereby on the above terms and directions. The appointed date of the Scheme is fixed as 1<sup>st</sup> July, 2016.

10. Ordered Accordingly. To be consigned to Records.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

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

**Dated : 15.12.2017**