

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH**

Company Petition No.94/ALD/2017  
Company Application No.46/ALD/2017  
(Under Section 230/232 of Companies Act,2013)

**IN THE MATTER OF:**

**SYBLY INDUSTRIES LIMITED**

(A Company incorporated under the Companies Act, 1956 having its Registered Office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh-201206 (CIN: L17111UP1988PLC009594)

....Demerged Company/ Transferee Company (Applicant Company No.1)

**SPACE INCUBATRICES TECHNOLOGIES LIMITED**

(A Company incorporated under the Companies Act, 1956 having its Registered Office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh-201206 (CIN: U74999UP2016PLC084473)

.....Resulting Company/ Applicant Company-No.2

**AND**

**VARTEX FABRICS PRIVATE LIMITED**

(A Company incorporated under the Companies Act, 1956 having its Registered Office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh-201206 (CIN: U74899UP1995PTC077579)

..... Transferor Company /Applicant Company No.3

**DUX TEXTILES PRIVATE LIMITED**

(A Company incorporated under the Companies Act, 1956 having its Registered Office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh-201206 (CIN: U74899UP1995PTC077578)

.....Transferor Company /Applicant Company No.4

**JUDGMENT/ORDER DELIVERED ON 31.01.2018**

**CORAM : Sh. Harihar Prakash Chaturvedi, Member(Judicial)**

For the Petitioner : Sh. Shahid Kazmi, Adv.  
For the Central Govt. : Sh. Krishna Dev Vyas, C.G.S.C


**Order/Judgment**

1. The Petitioner Companies filed the Present Company Petition under Section 230/232 of Companies Act, 2013 praying for sanction of the Proposed Company Scheme of Amalgamation /Arrangement between *Vartex Fabrics Private Limited and Dux Textiles Private Limited* (hereinafter referred to as Transferor Company), with *Sybly Industries Limited (Demerged/ Transferee Company) and Space Incubatics Technologies Limited* (Resulting Company).
2. It is submitted that the Proposed Company Scheme of Amalgamation has earlier been approved by the Respective Board of Directors of the Petitioner Companies No. 1,3 and 4 in its meetings held on **20<sup>th</sup> June, 2016** and meetings of the Petitioner Company no.2 2 held on **4<sup>th</sup> July,2016**.
3. The *Appointed Date* as has been decided in respect of the Proposed Company Scheme of Amalgamation is **1<sup>st</sup> April, 2016**.
4. Some of the Important facts, which prompted to propose the present Composite Scheme and incorporated in the Present Company Petition may be reproduced hereunder: -
  - (i) *Demerged /Transferee Company (Sybly Industries Limited)* is engaged in the business of manufacturing of "Polyester Yarn". However, over period of time, the company has invested funds in the shares in its subsidiary and has provided loan to its subsidiary and other entities, which do not pertain to the core activities of the Demerged Company. Though, the

*invested funds in the subsidiary in form of its shares and the loans provided to the subsidiary entities and their connected liabilities and reserves thereof, are the non-core assets, for the Demerged Company, however, these assets can help the Resulting Company, to procure projects, win contracts/ tenders on the basis of strong financials.*

- (ii) *Secondly, Transferor Companies are promoted by the common promoters and the Amalgamation of the Transferor Companies with the Transferee Company, shall result in the consolidation of similar line of business and result in saving of administrative costs and various other overheads. The Amalgamation shall also improve the financial position of the Transferee Company as the cross holding of loans and advances shall be wiped off.*

5. In addition to above narrated facts of the case, the main object to and rationale of the Proposed Company Scheme have been described in the Present Company Petition read with previous company (First Stage Motion) Application e.g. CA. No- 46/ALD/2017 reproduced hereunder:

- (i) *Financial strength and flexibility for the Transferee Company, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity.*
- (ii) *Achieve greater efficiencies in operations with optimum utilization of resources, better administration and reduced cost.*
- (iii) *Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplifications of business process, productivity*
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*improvements, and the elimination of duplication, and optimum rationalization of administrative expenses and utilization of human resources.*

- (iv) *Improved organizational capability and leadership arising from pooling of financial, managerial and technical resources.*
- (v) *It is believed that the proposed segregation will enhance value for shareholders as there would be absolute clarity to the investors in the business profile of the Demerged Company and the Resulting Company.*
- (vi) *The Demerger/ Amalgamation shall also ensure, focused management on each set of business, thereby resulting in optimal utilization of the resources available and creation of better opportunities thereof.*


6. By such Proposed Composite Scheme of Arrangement/ Amalgamation Petitioners Companies have been agreed and required to give effect to following terms: -

- (i) Initially, the proposed Demerger of all the investments to be done in the subsidiary and the loans as were provided to the subsidiary and other entities and connected liabilities or reserves thereof (Demerged Undertaking) e.g. ***Sybly Industries Limited*** (*Demerged Company/ Transferee Company*) shall be hived off from it as being (*Demerged Company/ Transferee Company*) and would be transferred to and vested in ***Space Incubatics Technologies Limited*** (*being Transferee/ Resulting Company*).
- (ii) Secondly, as per the composite scheme, the whole business and undertaking of ***Vartex Fabrics Private Limited*** (*Transferor Company-1*) and ***Dux Textiles Private Limited*** (*Transferor*

*Company-2*) have been proposed to be merged with the **Syibly Industries Limited** (*Demerged/Transferee Company*).

7. The applicant Companies have submitted that the Proposed Company Scheme (of Arrangement/Amalgamation) is neither intended to in any manner nor having any beneficial effect on the managerial interest, of the Directors of the Petitioner Company, except to extent of their shareholdings. That, apart the Proposed Company Scheme does not adversely affect either to rights, or interest of any creditors and debenture holders or to its respective shareholders of the applicant's companies in any manner whatsoever.
8. It is further submitted that the Proposed Company Scheme of Arrangement/Amalgamation does not make any compromise with the Interest of its creditors and debenture holders of the Petitioner Companies because due provisions are made in the Proposed Company Scheme to make payment of all its liabilities as and when arises and falls due in its usual course.
9. It has been reported in the petition that the Auditors of the M/s Syibly Industries Limited have not spoken about any miss-management in the affairs of the Transferor and Transferee Company in their respective Audits Reports.

It is further reported that the Transferee Company has duly complied with all the accounting standards applicable there to. In support of this, the Petitioner Companies have dully obtained necessary certificate from the auditor of the Transferee Company. Who have certified that the



accounting treatment under the Proposed Company Scheme are found to be in order and inconformity with the Accounting Standards. Such kind of certificate has been filed in and annexed with the pervious Company **Application No. 46/ALD/2017**, which is now clubbed together with the Present Petition.

10. By perusal of the averments of the Present Company Petition, this may be seen that the Petitioner Companies initially filed a company application as First Stage Motion Petition in this Bench of the NCLT, the same was allowed in terms of its prayer clause and accordingly stands disposed of vide its order dated **23.05.2017**. Subsequent thereto, the applicants filed the Present Company Petition as Second Stage Motion Petition under provision of section 230/232 of Companies, Act, 2013 by seeking for sanction of the Proposed Scheme of Arrangement.

The Petitioner Companies, in its Company Application (**CA No.46/ALD/2017**) had prayed from this court for issue of some directions, which were allowed vide its order dated **23.05.2017**, in follow up thereof a meeting of an equity shareholders of **Sybly Industries Limited** (*Demerged/Transferee Company*) was called for through postal ballot/ e-voting. While meetings with regards to **Space Incubatrics Technologies Limited** (*Resulting Company*) and **Vartex Fabrics Private Limited** (*Transferor Co.No.1*) and **Dux Textiles Private Limited** (*Transferor Co.No.2*) were dispensed with.

11. In addition to the above stated direction given by this Bench (of NCLT), directed the Applicant Company to issue a formal notice to the Central



Government through the office of Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Kanpur, The Official Liquidator, Allahabad and further to effect necessary paper publication in English and Hindi newspapers vide its order dated **11.08.2017** by fixing date of hearing of the company petition on **22<sup>nd</sup> September, 2017**.

In compliance of above stated directions of this court, **the scrutinizer Shri R.S. Bhatia dully filed his report confirming about the resolution passed for approval of Composite Scheme of Arrangement among Sybly Industries Limited and Space Incubatrics Technologies Limited, Vartex Fabrics Pvt.Ltd and Dux Textiles Pvt.Ltd by reporting 90% votes are casted in favour of scheme.** Further, the authorised representative of the applicant companies have filed an affidavit of service, confirming this that notices of Present Company Petition are duly published in the "**Business Standard**" **Hindi and English New Delhi Edition.** The Petitioner Companies further served a notice in respect of Present Company Petition to the Central Government through the office of Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi as well as to the Registrar of Companies, Kanpur.

12. In response to the above notices issued, the Regional Director has filed its Representation Affidavit along with the report of the ROC Kanpur, Further the Official Liquidator also filed his report, before this Tribunal. While making perusal of the representation affidavit dated **27.10.2017** of the R.D(N. R). this fact came to our notice that there are some factual



mistakes erupted in the Representation Affidavit of the Regional Director, requiring appropriate rectification by filing amended Affidavit. Hence, this Bench vide its **interim order dated 29.12.2017** duly pointed out such defect in detail to the Central Government/ RD (N.R). In compliance thereof of the R.D(N.R.) further filed its another Affidavit dated **22th January, 2018** by replacing the earlier one and rectifying the defects pointed out.

- 13.** In addition to the above, The ROC, Kanpur which is falling within the jurisdiction of this Bench has submitted its report that there is no prosecution, filed against Transferor and Transferee Company nor any proceedings against alleged violation of section 235 to 251 of the Companies Act, 1956 are pending nor any violation under section 383A/215 of the Companies Act, 1956 is reported against the Transferor and Transferee Company.
- 14.** The Registrar of Companies in para 9 of its report has informed about the share Exchange ratio of the petitioner company, which may be described as under:-

**(i) Demerger of M/s Sybly Industries Limited with M/s Space Incubatics Technologies Limited.**

*“The resulting company shall, without any further act or deed and without any further payment, issue and allot equity shares in the ratio of 85 Equity Shares of Rs.10/- each at par in **Space Incubatics Technologies Limited** for every 100(Hundred) Equity Shares of Rs.10/- each held by them in **Sybly Industries Limited**”.*

**(ii) Merger of M/s Vartex Fabrics Private Limited (Transferor Co.No.1) and M/s Dux Textiles Private Limited (Transferor Co.No.2) with M/s Sybly Industries Limited.**



“Transferee Company shall issue and allot to each of the shareholders of Transferor Company No.1 shares in proportion of 501 equity shares of face value of Rs.10/- each in Transferee Company for every 100 equity shares of Rs.10/- each held by them in Transferor Co.No.1 pursuant to scheme of Amalgamation.

“Transferee Company shall issue and a lot to each of the shareholders of Transferor Company No.2 shares in proportion of 262 equity shares of face value of Rs 10/- each in Transferee Company for every 100 equity shares of Rs.10/- each held by them in Transferor Co.No.2 pursuant to Scheme of Amalgamation.

15. That apart the ROC in para 22 of his report has pointed out certain special feature those are having some bearing on the Application, which are stated as under: -

**Listing of Equity Shares of Resulting Company since The Demerged Company is a listed Company.**

“It is mentioned in the Part-E, point no.3 of the Scheme that the Resulting Company SITL shall within 30 days from the date of receipt of certified copy of order of Hon’ble Court sanctioning the scheme, take necessary steps for listing of shares allotted, simultaneously on all the Stock Exchanges where the Equity shares of Demerged Company I.e. M/s Sybly Industries Limited are listed. Resulting Company shall make application to SEBI in terms of Rule 19(7) of Securities Contract (Regulation) Rules, 1957 for listing of equity shares at all stock exchange where the equity shares of Demerged Company are listed on the Appointed date without complying with the requirements of Rule 19(2)(b) of Securities Contract (Registration) Rules,1957.”

ROC further in Para 30 made some observation which is as follows:

- (1) **The Demerged Company M/s. Sybly Industries Limited is a listed Company.**
- (2) **The Company M/s. Vartex Fabrics Private Limited has taken a corporate guarantee in favour of M/s Sybly Industries Limited, a holding co. of M/s. Vartex Fabrics Private Limited to Bank of Baroda to secure credit facility of Rs.950 Lacs to M/s. Sybly Industries Limited.**

16. By considering the above, the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, through its Representation Affidavit have stated that his office is having no objection to Sanction of the Proposed

Company scheme, because, as there is no prosecution/ pending proceedings are reported against the Transferor and the Transferee Company or against its Directors for alleged breach of any provision of the Companies Act or other statutory provisions of FEMA, IPC, SEBI Act, RBI Act in any Court of law.

17.The OL, Allahabad while furnishing his report in respect of the present company petition has provided us detail/particulars of Authorized, Issued, Subscribed and Paid up Capital of the Transferor and Transferee Company as on 31/03/2016 which are stated as under:-

The details/particulars of Authorized, issued, Subscribed and paid up share Capital in respect of the **Petitioner/Transferor Company No.1 i.e Vartex Fabrics Private Limited as on 31.03.2016** are stated as under:

Share Capital	Amount (In Rupee)
<b>Authorized Capital</b> 4,60,000 Equity Shares of Rs.10/- each.	46,00,000/-
<b>Issued Capital</b> 4,55,690 Equity Shares of Rs.10/- each, fully paid up	45,56,900/-
<b>Subscribed and Paid Up share Capital</b> 4,55,690 Equity Shares of Rs.10/- each, fully paid up	45,56,900/-

The detail/particulars of Authorized, issued, Subscribed and paid up share capital in respect of **Petitioner/Transferor**

Company No.2 i.e Dux Textiles Private Limited as on 31.03.2016 is as under:

Share Capital	Amount (In Rupees)
Authorized Capital 3,00,000 Equity shares of Rs.10/- each.	30,00,000/-
Issued Capital 2,92,270 Equity shares of Rs.10/- each fully paid up.	29,22,700/-
Subscribed and paid up share Capital 2,92,270 Equity Shares of Rs.10/- each fully paid up.	29,22,700/-

The detail/particulars of Authorized, issued, Subscribed and paid up share capital in respect **Demerged /Transferee Company i.e Sybly Industries Limited** as on 31.03.2016 is as under:

Share Capital	Amount ( in Rupees)
Authorized Capital 7,00,00,000 Equity Shares of Rs.10/- each	70,00,00,000
Issued Capital	40,72,91,000/-

4,07,29,100 Equity shares of Rs.10/- each.	
<b>Subscribed and Paid Up Shares Capital</b>	40,71,61,000/-
4,07,16,100 Equity Shares of Rs.10/- each.	65,000/-
13,000 Forfeited Equity Shares of Rs.10/- each.	

The detail/particulars of Authorized, issued, Subscribed and paid up share capital in respect of **Resulting Company i.e Space Incubatries Technologies Pvt.Ltd. as on 31.03.2016 is as under:**

Share Capital	Amount ( in Rupees)
<b>Authorized Capital</b>	70/-
7 Equity Shares of Rs.10/- each	
<b>Issued Capital</b>	70/-
7 Equity Shares of Rs.10/- each fully paid up	

<b>Subscribed and Paid Up Shares</b>  <b>Capital</b>  7 Equity Shares of Rs.10/- each  fully paid up.	70/-
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The OL Allahabad, through his report further informed that Shri Amit Gupta alongwith Shri Shahid Kazmi, Adv. being Authorized representative of Transferor and Transferee Company have produced necessary accounts and statutory records of companies, before him for his perusal, and having made the scrutiny thereof, he submitted the present reports and as per opinion of his office *the affairs of the Transferor Company are not found to have been conducted in any manner prejudicial to the interest of its members or to the public at large. In para 21 of its report he further informed such that his office is having no objection for dissolution of the Transferor Company without being wound up pursuant to provisions of Section 230/232 of the Companies Act, 2013 and rules made there under.*

We duly considered the above stated facts and report submitted before us, in respect of the present company petition and the Proposed Company Scheme. Further, we have gone through the contents of the present petition and documents annexed therewith. We also perused the Representation Affidavit of the RD (NR), along with report of the ROC Kanpur and OL, Allahabad filed in the present case to sanction or



otherwise of the Proposed Company Scheme of Arrangement/Amalgamation.

15. This Court, in its previous decision in the matter of *Auxin Engineering Limited with Oasis Grassland Private Limited (59/ALD/2017)*, came to an occasion to examine the criteria for sanction of a company scheme, and got support from a decision of the Hon'ble Gujrat High Court *In Re: (Kril Standard Products ... vs Unknown) dated 24 August, 1973 Reported in: (1976 46 CompCas 203 Guj, (1974) 0 GLR 810)* wherein Hon'ble Justice D.A. Desai (as then his Lordship was) made certain observation, for deciding the issue in hand, for sanction of Company Scheme .which are equally relevant for disposal of the present company petition. Hence, the same (as made in para no.36 to 37 of the above reference judgement,) for the sake of convenience are being reproduced here in below: -

36. "Last question is whether this court should accord sanction to the scheme of amalgamation. The matter is within the discretion of the court. In exercising this discretion, the court will examine the scheme as a man of business would reasonably evaluate it. I have been often told that the court should not try to substitute its judgment for the commercial judgment of those interested in the company as expressed in various meetings. That apart, the court still has discretion in the matter and the court is not a mere rubber stamp because the scheme has been approved by a statutory majority in various meetings". The zeal with which attempt is made to acquire controlling block of shares in companies, it is not difficult for the industrialists to push through the scheme with the majority at their back and call, but the court cannot abrogate the discretion in favour of such a majority. Therefore, the court must and should examine the scheme on its own merits. I would, however, not dilate upon this, for this reason that by the scheme of amalgamation, a wholly-owned subsidiary company merges into the holding company. The factual merger is now being converted into a legal and total merger. Further, both the companies are private limited companies, meaning thereby that they are something like a



*family concern. In this background, I need not examine the scheme in all its details.*

37. *Having given my anxious thought to the scheme, I would accord sanction to the scheme of arrangement for amalgamation of the transferor-company with the transferee-company, with this condition that the scheme shall not take effect and be operative until and unless it is sanctioned in an appropriate proceeding to be taken by the transferee-company in the High Court having jurisdiction to be invoked by the transferee-company. Subject however to this specific reservation, the consequential orders, as are required to be made under section 394 prayed for in prayers (i) to (iv) of paragraph 12 of the petition, including the one that on scheme of amalgamation becoming effective, the transferor-company should be deemed to have been dissolved without winding up, are hereby made.*

16. Thus, by following the above stated judicial precedent and by considering the factual aspects of the applicant companies and merits of the Proposed Company Scheme, it seems that all the statutory compliance either to have been complied with or are undertaken for making necessary compliance by Petitioner Companies in terms of its affidavits of undertaking. Therefore, the Proposed Company Scheme, seems to be reasonable and fair scheme, inconformity with statutory provisions. Thus, it deserves for approval.

17. Therefore, in view of the aforesaid reason, the present company petition is allowed in terms of its Prayer Clause. Accordingly, the company Scheme of Arrangement/Amalgamation as annexed with the present Company Petition is hereby sanctioned, for to be acted upon in terms and condition contained therein by the applicant's companies.

18. Consequent upon approval and sanction of the Present Company Scheme, all the property, rights and powers of the **Transferor Company** i.e. (M/s **Vartex Fabrics Private Limited and Dux Textiles Private Limited**) be transferred without further act or deed to the **Transferee Company/**

**Demerged Company i.e. (M/s Sybly Industries Limited)** and accordingly the same shall pursuant to Section 232 of Act, be transferred to and vested in the Transferee / Demerged Company for all intents and interest of the Transferor Company therein. Further Demerged undertaking of Demerged Company/ Transferee Company i.e. of **(M/s Sybly Industries Limited)** be transferred to **Resulting/Transferee Company i.e (Space Incubatrics Technologies Limited).**

19. All the liabilities of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company.
20. Notwithstanding the above, while sanctioning the Present Company Scheme, we make it clear that this order should not be inferred to as an order for grant of any exemption from payment of stamp duty, taxes. statutory charges which are required to be paid in accordance with law or relation to any relaxation, compliance with any other requirement which may be specifically required under the law.
21. That, the petitioner companies shall within thirty days of receipt of an authentic copy of the present order deliver it to the Registrar of Companies for registration. Further, the Transferor Company No 1 and 2, upon delivery of such certified copy to the ROC, Kanpur shall deem to be dissolved.



The Registrar of Companies shall place all documents relating to the Transferor Company and Transferee Company. Further all files relating to the petitioner companies to be consolidated accordingly.

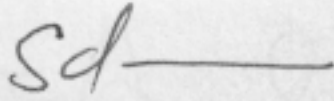
22. In addition to the above, a cost of Rs. 10,000/- (Rupee Ten Thousand only) with each company is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), towards Legal Expenses incurred which is payable by the Petitioner companies within four weeks from the receipt of an authentic copy of this order.
23. The Petitioner counsel is instructed to furnish a copy of the draft order of sanction of the Present Scheme in prescribed format under **Companies (Compromises, Arrangements and Amalgamations) Rules, 2016** read with other rules for the purpose of scrutiny and authentication by the Registry.
24. The Authentic copy of this order annexed with the Present Company Scheme to be acted upon by the Regulatory Authority and all concern.

Accordingly, the Company Petition is disposed of.

**Dated- 31/01/2018**

Typed by:

*Aman Kumar Dwivedi*  
(Law Research Associate)

  
**H.P. Chaturvedi**  
**Member (Judicial)**