

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPANY SCHEME PETITION NO. 355 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 179 OF 2017.

NIRLEP APPLIANCES PRIVATE LIMITED

...Petitioner/Demerged Company
AND

COMPANY SCHEME PETITION NO. 356 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 180 OF 2017.

BHOGALE AUTOMOTIVE PRIVATE LIMITED

...Petitioner/Resulting Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the
Companies Act, 2013 read with Sections 52, 55 and
66 and other applicable provisions of the
Companies Act, 2013 and rules made thereunder;

AND

In the matter of Scheme of Arrangement and
Reconstruction between Nirlep Appliances Private
Limited, the Demerged Company, and Bhogale
Automotive Private Limited, the Resulting Company.

CALLED FOR HEARING

Ms. Sunila Chavan, on behalf of Mr. Chandrakant Mhadeshwar,
Advocates for the Petitioner Company.

Mr. Ramesh Gholap, Assistant Director for Regional Director.

Coram: SH. B.S.V. Prakash Kumar Member (J)

Date: 18th May, 2017

MINUTES OF ORDER

1. Heard learned Counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions.

2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement and Reconstruction between Nirlep Appliances Private Limited, the Demerged Company and Bhogale Automotive Private Limited, the Resulting Company ('the Scheme')
3. The Petitioner Companies have approved the said Scheme of Arrangement and Reconstruction by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The learned Advocate for the Petitioner Companies states that the Scheme of Demerger will have benefit as under:
 - a. The Demerged Company is undertaking two different businesses, both of which require specialized skill and resources viz. production of Non Stick cookware (Consumer Appliances Undertaking) and coating of components used in Automobile Industry (Auto Undertaking). The Resulting Company is engaged in the related business activities, similar to Auto Undertaking and it would, therefore, be advantageous to combine the activities and operations of Auto Undertaking of Demerged Company into a Resulting Company for synergistic linkages and the benefit of financial and other resources for each Undertaking.
5. The Learned Advocate appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013

and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

6. The Regional Director has filed his Report on 27th April 2017, inter alia, stating therein that save and except as stated in paragraphs IV (1) to (6) of the said Report, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

1. *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 filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*

2. *The Petitioner Companies have submitted the proof of serving notice, upon the Income Tax Authorities as on 01.03.2017 and 03.03.2017 respectively. This Directorate has also issued a reminder letter to the Income Tax Department dated 26.04.2017.*

3. *The Petitioner has submitted certificate dated 28.01.2017 from S. V. Gogate & Co., Chartered Accountants, mentioning that accounting treatment proposed is in conformity with the generally accepted principles and standards issued. Whereas the Auditor has not mentioned whether the accounting treatment proposed is in accordance with provisions of Section 133 of the Companies Act, 2013.*

4. *Petitioner in clause 14 & 15 of the Scheme has inter alia mentioned that the deficit arising shall be adjusted first from the Capital Redemption Reserve Account and balance remaining shall be adjusted from Securities Premium Account in the books of Demerged Company and also mentioned that the difference arising on account of recording of assets and liabilities less the face value of shares issued by the Resulting Company shall be transferred to General Reserve Account or Goodwill Account, as the case may be in the books of resulting company.*

In this regard it is submitted that the Petitioner has to undertake to state that this treatment is in accordance with the accounting standards mentioned in the certificate.

5. *Petitioner in the reply dated nil received on 08.03.2017 inter alia mentioned at point 23 that the resulting company holds 20066 (5.44%) equity shares of Rs. 100/- each in the demerged company in respect of which no shares will be allotted on demerger whereas the same is not provided for in the Scheme.*

In this regard it is submitted that Petitioner Company has to undertake to insert a sub clause in the accounting treatment clause.

6. *Petitioner in clause 16 of the Scheme has inter alia mentioned that Clause V (a) of the Memorandum of Association of the Resulting Company shall, without any further act, instrument or deed, be and stand altered, modified and amended pursuant to Sections 16, 31, 94, 394 of the Companies Act, 1956 and or Sections 13, 14, 61, 232 and other applicable provisions of the Companies Act, 2013.*

In this regard Petitioner Company has to undertake file prescribed forms with the Registrar of Companies.

7. As far as the observation of the Regional Director stated in paragraph IV (1) and (2) of his report is concerned, the Petitioners undertake to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
8. As far as the observation of the Regional Director stated in paragraph IV (3) and (4) of his report is concerned, it is submitted that the Auditor of Petitioner Companies has certified that the accounting treatment in the books of the Demerged Company and the Resulting Company as proposed in the Scheme is in accordance with generally accepted accounting principles and Standards. The Petitioner Company states that the accounting treatment so mentioned under clause 14 and 15 of the Scheme is in accordance with the generally accepted accounting principles and standards as stated in the certificate.

9. As far as the observation of the Regional Director stated in paragraph IV (5) of his report is concerned, the Petitioner Companies hereby states that the Petitioner Company has already stated in para 13.1 of the Scheme that no shares would be issued to the Resulting Company in the Demerged Company pursuant to the Scheme and hence no modification is needed in the Scheme.

The para is reproduced hereunder for reference:

“13.1 Upon coming into effect of the Scheme, and in consideration for the transfer of and vesting of the assets and liabilities of Demerged Undertaking of the Demerged Company in the Resulting Company, the equity shareholders of the Demerged Company whose names appear in the Register of Members of the Demerged Company on the Effective Date (***other than to the extent of the shares of the Demerged Company being held by the Resulting Company***), shall, without any further act, deed or thing be allotted and issued Equity Shares of the Resulting Company in the following proportion viz.....”

10. As far as the observation of the Regional Director stated in paragraph IV (6) of his report is concerned, the Resulting Company undertakes to file the prescribed forms under Companies Act, 2013 in respect of alteration in the Memorandum of Association of the Resulting Company pursuant to the Scheme.
11. 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.
12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 355 of 2017 to 356 of 2017 are

made absolute in terms of prayer clauses (a) and (b) of the respective Petitions.

13. Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme of Arrangement and Reconstruction with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry.
14. The Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated 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.
15. The Petitioners in all the Company Scheme Petitions to pay costs of INR 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.
16. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

B.S.V. Prakash Kumar Member (J)