

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO 334 OF 2017  
IN  
COMPANY SCHEME APPLICATION NO 178 OF 2017

V. M. Salgaocar and Brother Private Limited ... Petitioner or Demerged Company

COMPANY SCHEME PETITION NO 333 OF 2017  
IN  
COMPANY SCHEME APPLICATION NO 164 OF 2017

VMSalgaocar Corporation Private Limited ..... Petitioner or Resulting Company

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 V.M. Salgaocar and Brother Private Limited having CIN U35111GA1965PTC000048 ("The Petitioner" or "The Demerged Company") and VMSalgaocar Corporation Private Limited having CIN U26921GA1991PTC001168 ("The Petitioner" or "The Resulting Company") and their respective Shareholders and Creditors

**Called for hearing**

Mr. Hemant Sethi i/b M/s Hemant Sethi & Co., Advocate for the Petitioners in all the Petitions

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director

**CORAM: B.S.V. Prakash Kumar, Member (Judicial)**

**V. Nallasenapathy, Member (Technical)**

**DATE: 21<sup>st</sup> June, 2017**

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal to oppose the Scheme.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between V.M. Salgaocar and Brother Private Limited ("Demerged Company") and VMSalgaocar Corporation Private Limited ("Resulting Company") and their respective Shareholders and Creditors (hereinafter referred to as 'the Scheme').

3. The learned Counsel for the Petitioner Companies submits that the Demerged Company is *inter-alia* engaged in the business of iron-ore mining and hotels and hospitality whereas the Resulting Company is engaged in the hotels and hospitality business.
4. The learned Counsel for the Petitioner Companies further submits that the Scheme has been drawn up to give effect to and implement the Family Settlement and Arrangement entered into between members of Shivanand V. Salgaocar and family and Dattaraj V. Salgaocar and family as recorded in the Consent Terms filed with the Hon'ble Bombay High Court in Suit No. 719 of 2013 (Order dated 06.12.2016). Accordingly, the Board of Directors of the Demerged Company and the Resulting Company have approved the re-organization and segregation of the businesses of the Demerged Company by way of demerger of the Hotels and Hospitality Business undertaking (as defined in the Scheme) of the Demerged Company into the Resulting Company.
5. The Board of Directors of the Petitioner Companies have approved the said Scheme by passing necessary Board Resolutions which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
6. The learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed by the Tribunal in the Company Scheme Applications and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Scheme Applications.
7. The learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under. The said undertaking given by the Petitioner Companies is accepted.
8. The Regional Director has filed his Report dated 15<sup>th</sup> June, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

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- a) *regarding **Clause 6.3 of the Scheme** it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account of the Transferee Company;*
- 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 6<sup>th</sup> March 2017 has served a copy Company Scheme Application No. 164 & 178 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder on 5<sup>th</sup> June 2017;*
- c) *The tax implications 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.*

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- 9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Counsel for the Resulting Company submits that the surplus if any arising as per Clause 6.3 of the Scheme shall be credited to Capital Reserve Account and deficit if any arising out of the same shall be debited to Goodwill Account. The accounting shall however be subject to compliance with applicable Accounting Standards i.e. IND AS-103.
- 10. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies submit that vide letter dated 06<sup>th</sup> March 2017 they have served a copy of Company Scheme Application No. 164 and 178 of 2017 along with relevant orders etc. with the Income Tax Department. However, no response has been received from the Income Tax Department so far.
- 11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, it is submitted that the Petitioner Companies are bound 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.

12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and submission made by the Petitioner Companies are hereby accepted.
13. Further, the Counsel for the Resulting Company submits that the Report of Regional Director has inadvertently cited incorrect address of the registered office of the Resulting Company in paragraph III (3) and (11) of the report. The Counsel for the Resulting Company submits that the registered office address of the Resulting Company is Salgaocar House, Luis Gomes Road, Vasco Da Gama, Goa- 403802, India. Hence, the registered office of the Resulting Company is situated in the State of Goa. Leave to amend the incorrect address of the registered office of the Resulting Company in paragraph III (3) and (11) of the Report of Regional Director is granted.
14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 334 of 2017 filed by the Demerged Company is made absolute in terms of prayer clause (a) to (g) of the Petition and Company Scheme Petition No. 333 of 2017 filed by the Resulting Company is made absolute in terms of prayer clause (a) to (g) of the Petition.
16. The Petitioner Companies 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.
17. 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 the physical copy, within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of receipt of Order.
19. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

20. It is directed that the Scheme shall take effect from the date of filing of a signed copy of this order with the Registrar of Companies. The Petitioner Companies undertake to file a certified copy of the Scheme along with this order with the Registrar of Companies within a period of thirty days from the date of receipt of order. 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 (Technical)**

Sd/-

**B.S.V. Prakash Kumar Member (Judicial)**