

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH AT MUMBAI
COMPANY SCHEME PETITION NO.338 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 152 OF 2017

Deccan Mechanical and Chemical Industries
Private Limited.the Petitioner/ Demerged Company.

AND
COMPANY SCHEME PETITION NO.337 OF 2017

CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 153 OF 2017

Demech Power & Engineering Services
Private Limited. the Petitioner/Resulting Company.

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 read with Section 52, 66
of the Companies Act,2013 and other relevant provisions of
the Companies Act,2013.

AND

In the matter of the Scheme of Arrangement between:
Deccan Mechanical and Chemical Industries Private
Limited.

AND

Demech Power & Engineering Services Private Limited.

AND

their respective Shareholders.

Called for Hearing

Mr. Nitin Gutka, Chartered Accountants for the Petitioner in both the Petition.

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

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

and V. Nallasenapathy Member (T)

Date : 6th July,2017

MINUTES OF ORDER

1. Heard learned counsel for parties. No objector has come before the Hon'ble Tribunal to oppose the Scheme of Arrangement nor has any party controverted any averments made in the Company Scheme Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Sections 230 to 232 read with Section 52, 66 of the Companies Act,2013 and other relevant provisions of the Companies Act, 2013 to a Scheme of Arrangement between Deccan Mechanical and Chemical Industries Private Limited, the Demerged Company

and Demech Power & Engineering Services Private Limited, the Resulting Company and their respective shareholders (both the Companies hereinafter referred to as “the Petitioner Companies”) for Demerger of Demerged Undertaking consisting of properties and investments of Deccan Mechanical and Chemical Industries Private Limited into Demech Power & Engineering Services Private Limited and cancellation of equity shares of Demech Power & Engineering Services Private Limited.

3. The Learned counsel for the Petitioner Companies states that the Demerged Company is presently engaged in business of Dealing & Manufacturing of all kinds of Engineering Equipment’s and Machinery and holds properties and investments and the Resulting Company is presently not carrying on any business activities.
4. The Learned counsel for the Petitioner Companies states that the circumstances that have necessitated or benefits of Scheme of Arrangement are as follows:-
 - a) Deccan Mechanical and Chemical Industries Private Limited was incorporated to take over business of Partnership firm M/s. Akediji Industries. Deccan Mechanical and Chemical Industries Private Limited is engaged into the Business of Dealing & Manufacturing of all kinds of Engineering Equipment’s and Machinery.
 - b) The Resulting Company will take over the Demerged Undertaking on going concern basis from the Demerged Company.
 - c) Demerger of the Demerged Undertaking would help the company to segregate its assets namely the assets specifically acquired and used (directly or indirectly) in the process of manufacturing and dealing the engineering equipment and machineries and the assets which are generating “other income”, (secondary source of income) to the company.
 - d) Focused management attention to the respective business.
 - e) Efficient management control and system.
 - f) Enhance values of all stake holders in the long run.

5. The Learned counsel for the Petitioner Companies states that the Board of Director of the Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the respective Company Scheme Application and that the respective Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Scheme Application.
7. The Learned counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and rules made there under whichever are applicable. The said undertakings given by the Petitioner Companies are accepted.
8. The Regional Director has filed his Report dated 12th June,2017 stating therein that save and except the observations stated in para IV (1) to (8) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. The Tribunal may take this report on record and consider the observation made in para IV (1) to (8) and pass such other order or orders as deem fit in the facts and circumstances of the case. In paragraphs IV of the said Report, the Regional Director, has observed 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 not submitted the proof of serving notice, upon. the Income Tax Authorities for comments.*

In this regards, Petitioner Companies have to undertake to serve notice to the I.T Authorities and produce acknowledgement copy of service notice before Regional Director and Hon 'ble NCLT.

3. *Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

In this regard it is requested that Petitioner may be asked to submit the certificate.

4. *Applicant Company not submitted Minutes of order of the Hon 'ble NCLT.*

In this regards petitioner to undertake to submit minutes of order for the record of Regional Director.

5. *Applicant in the explanation has mentioned that any question that may arise pertaining to demerged undertaking as to particular asset or liability whether pertain to will be mutually decided by the Board of the petitioner companies.*

In this regard petitioner has to undertake to produce the details of the assets and liabilities before the Hon'ble Tribunal.

In this regard the petitioner has to undertake to adopt accounting standard instead of two options.

6. *Applicant company in clause 10 has inter alia mentioned that the Board of the companies in consultation with the respective auditors is authorised to account any of these balances or items in any manner whatsoever, as may be deemed fit or to make such*

adjustments as may be necessitated including reclassification of assets.

In this regard Applicant to undertake to comply with the orders of the Hon 'ble NCLT.

7. *Applicant in clause 2.8 of the scheme has inter alia mentioned that Demerged undertaking shall means and include business other than engineering business of DMACIPL including investments in the Resulting Company and in clause 2.3 of the scheme has inter alia mentioned remaining business means manufacturing and dealing of engineering equipment and machinery business and all business and assets of other than Demerged undertaking.*

In this regard Applicant Company to undertake to company clarify the difference between the engineering business and dealing of engineering equipment.

8. *Petitioner in clause 2.6 inter alia has mentioned that the Appointment Date is 1.4.2017 whereas Balance Sheets has been submitted upto 30.09.2016.*

In this regards Petitioner Companies undertake to file audited Balance sheets for the period from 1-10-2016 to 31-03-2017.

9. The Learned counsel for the Petitioner Companies states that the Petitioner Companies has filed their affidavit dated 23rd June,2017 in reply to the report of the Regional Director with this Registry and also with the Regional Director.
10. As far as the observations made in paragraph IV(1) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel undertakes to comply with all applicable provisions of the Income Tax Act,1961 and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.
11. As far as the observations made in paragraph IV (2) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel submits

that Petitioner Companies has submitted the notice to concerned income tax authorities on 28th February,2017 and proof of service was submitted to NCLT, Mumbai Bench vide affidavit dated 20th March,2017 .The copy of same was also submitted to the office of Regional Director alongwith all other documents vide authorized representative letter dated 21st March,2017.

12. As far as the observations made in paragraph IV (3) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel submits Certificate in accordance with section 133 of the Companies Act, 2013 by the Company's Auditor was submitted Regional Director, Ministry of Corporate affairs vide its authorised representative letter dated 27th June, 2017. The same has been filed with NCLT,Mumbai Bench in respective Company Scheme Petitions as **Annexure "G"**.
13. As far as the observations made in paragraph IV (4) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel submits that the Minutes of Orders dated 22nd February,2017 of NCLT, Mumbai Bench are submitted vide authorized representative letter dated 27th June,2017.
14. As far as the observations made in paragraph IV(5) of Regional Director Report is concerned, the Petitioner Companies through its learned counsel states that the Petitioner Companies has filed the details of assets/liabilities with Regional Director, Ministry of Corporate affairs vide its authorised representative letter dated 21st March,2017.The details of list of assets to be transferred to the Resulting Company is annexed as **Schedule I** to the Scheme of Arrangement in the respective Company Scheme Petition and the Petitioner Companies through its Learned Counsel undertakes to comply with applicable accounting standards in view of the Certificate from Company Auditors being obtained regarding conformity of accounting treatment with the accounting standards.
15. As far as the observations made in paragraph IV (6) of Regional Director Report is concerned, the Petitioner Companies through its learned counsel states that in view of the Certificate of the Company Auditor being obtained as regards

conformity of accounting treatment with the accounting standards clause 10.8 has become redundant and will not be implemented.

16. As far as the observations made in paragraph IV (7) of Regional Director Report is concerned, the Petitioner Companies through its learned counsel states that there is no difference between the terms engineering business and dealing of engineering equipment. Clause 2.3 of the scheme explains remaining business which is of manufacturing and dealing of engineering equipment and machinery whereas Clause 2.8 defined Demerged undertaking to mean the properties and investments undertaking as defined in Schedule I of the Scheme. In any event the engineering business is being retained in the Demerged Company.
17. As far as the observations made in paragraph IV (8) of Regional Director Report is concerned, the Petitioner Companies through its learned counsel states that financial year of the Petitioner Companies are 1st April,2016 to 31st March,2017. The Petitioner Companies undertakes to file audited Financial statements for F.Y 16-17 with respective Registrar of Companies. In any event the details assets liabilities to be transferred are already annexed as **Schedule I** to the Scheme of Arrangement in the respective Company Scheme Petition.
18. The observations made by the Regional Director have been explained by Petitioner Companies in paragraphs 10 to 17 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
19. 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. None of the parties concerned have come forward to oppose the Scheme of Arrangement.
20. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.338 of 2017 filed by the Demerged Company are made absolute in terms of prayer clause (a) to (d) and Company Scheme Petition No.337 of 2017 filed by the Resulting Company are made absolute in terms of prayer clause (a) to (d).

21. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai 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 receipt of this order.
22. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme of Arrangement 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
23. The Petitioner Companies to pay costs of Rs 25,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition No.338 & 337 of 2017. Costs to be paid within four weeks from the date of the Order.
24. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
25. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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