

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 804 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between Nilkanth Tech Park Private Limited ('the Demerged Company' or 'Applicant Company') and Seamless Capsules Private Limited ('the Resulting Company') and their respective Shareholders.

Nilkanth Tech Park Private Limited, a Company	}
incorporated under the provisions of Companies Act, 2013	}
having its registered office at Times Square, Andheri Kurla	}
Road, Near Sakinaka Junction, Opp Mittal Industrial Estate,	}
Andheri (West), Mumbai- 400059	}
CIN: U45200MH2004PTC149113	}
	...Applicant Company
	(Demerged Company)

Order delivered on 10<sup>th</sup> August, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co. Advocates for Applicants  
Per: **V. Nallasenapathy, Member (T)**

### ORDER

1. The Counsel for the Applicant Company submits that the present Scheme is a Scheme of Arrangement between Nilkanth Tech Park Private Limited ('the Demerged Company' or 'Applicant Company') and Seamless Capsules Private Limited ('the Resulting Company') and their respective Shareholders. The Scheme inter-alia provides for demerger of business undertaking of the Demerged Company to the Resulting Company and the consequent discharge of consideration by the Resulting



Company to the shareholders of the Demerged Company, pursuant to the relevant provisions of the Companies Act, 2013 ("Act").

2. The Counsel for the Applicants further submit that the Demerged Company is primarily engaged in the business of real estate development. The Resulting Company intends to engage in the business of real estate development.
3. The Counsel for the Applicants further submit that the rationale for the Scheme is that it would lead to: (i) focused and concentrated approach by the management (ii) Maximize value creation for the stakeholders; and (iii) Efficient management control and system, and therefore the management of the Demerged Company has decided to demerge the business undertaking of the Demerged Company into the Resulting Company. Accordingly, with a view to effect such plan, the Board of Directors of the Demerged Company and the Resulting Company proposes that the business undertaking of the Demerged Company be transferred to and be vested in the Resulting Company on a going concern basis.
4. The meeting of the Equity Shareholders of the Applicant Company be convened and held at Times Square, Andheri Kurla Road, Near Sakinaka Junction, Opp Mittal Industrial Estate, Andheri (West), Mumbai- 400059 on Monday, the 18<sup>th</sup> September, 2017, at 11.am for the purpose of considering and, if thought fit, approving with or without modification(s), the Scheme of Arrangement between Nilkanth Tech Park Private Limited and Seamless Capsules Private Limited and their respective Shareholders.
5. That at least one (1) month before the said Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post



/ Hand Delivery or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

6. That at least one (1) month before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602, A Wing, Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
7. That the Notice of the Meeting shall be advertised in two local newspapers viz. 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated in Mumbai, not less than one month before the date fixed for the meeting.
8. That Mr. Bandish Ajmera or failing him, Mr. Harsh L Mehta, Director of the Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders to be held at Times Square, Andheri Kurla Road, Near Sakinaka Junction, Opp Mittal Industrial Estate, Andheri (West), Mumbai- 400059 on Monday, the 18<sup>th</sup> September, 2017, at 11.am or any adjournment or adjournments thereof.
9. That the Chairman appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an



amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

10. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorisation duly signed by the person entitled to attend and vote at the meetings, are filed with the Applicant Company or the Second Applicant Company (as the case may be) at its registered office at Times Square, Andheri Kurla Road, Near Sakinaka Junction, Opp Mittal Industrial Estate, Andheri (West), Mumbai- 400059 not later than 48 hours before the aforesaid meeting.
12. That the value and number of shares of each Equity Shareholder shall be in accordance with the books/ register of the Applicant Company and where the entries in the books / register are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
13. That Harish Sanghvi, Chartered Accountants, is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Company to be held at Times Square, Andheri Kurla Road, Near Sakinaka Junction, Opp Mittal Industrial Estate, Andheri (West), Mumbai- 400059 on Monday, the 18<sup>th</sup> September, 2017, at 11.am or any adjournment or adjournments thereof and his remuneration is fixed as Rs. 5000/.
14. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the directions regarding the issue of notices and the advertisement have been duly complied with.
15. That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the meeting.



16. That the Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) the concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) the Registrar of Companies and (iv) the Maharashtra Real Estate Regulatory Authority, as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with the direction that they may submit their representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. That Counsel for the Applicant Company submits that since the Scheme is an Arrangement between Nilkanth Tech Park Private Limited and Seamless Capsules Private Limited and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the Applicant Company to issue notice to all its Secured Creditors as on 31<sup>st</sup> July, 2017, as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
18. That Counsel for the Applicant Company submits that since the Scheme is an Arrangement between Nilkanth Tech Park Private Limited and Seamless Capsules Private Limited and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the Applicant Company to issue notice to all its Unsecured Creditors as on 31<sup>st</sup> July, 2017 as required under Section 230(3) of the Companies Act, 2013 with a direction that they

may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

19. The Applicant Company to file affidavit of service of the notices issued to the Equity Shareholders, Secured Creditors and Unsecured Creditors, publication of notices in newspapers and to the regulatory authorities as stated in Clause 16 above not less than seven days before the date fixed for the holding of the meeting and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

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

Sd/-

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