

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO 96 OF 2017

International Cargo Terminals And Infrastructure Private Limited

.....Petitioner/Resulting Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO 95 OF 2017

International Cargo Terminals And Rail Infrastructure Private Limited

.....Petitioner/Demerged Company

In the matter of Companies Act, 2013

AND

In the matter of Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 and the Companies Act, 2013 (corresponding section 230 to 232 of the Companies Act, 2013)

AND

In the matter of Scheme of Arrangement between International Cargo Terminals And Rail Infrastructure Private Limited ("ICTRPL") and International Cargo Terminals And Infrastructure Private Limited ("ICTIPL") and their Respective Shareholders

**Called for Hearing**

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Companies

Mr Ramakantha Joint Director in the office of Regional Director

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

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

**Date: 29th March 2017**

**MINUTES OF ORDER**

- 1 Heard the learned counsel for the Petitioner Companies. One of the unsecured creditors of the demerged company had raised an objection against the proposed scheme of arrangement for non-payment of his outstanding dues. However, the learned counsel submits that the demerged company has paid the outstanding dues of the said creditor and who has withdrawn his objection to the proposed scheme of arrangement by issuing a No Objection letter and same has been taken on record.
- 2 The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between International Cargo Terminals And Rail Infrastructure Private Limited ("ICTRPL" or "Demerged Company") and

International Cargo Terminals And Infrastructure Private Limited (“ICTIPL” or “Resulting Company”) and their Respective Shareholders

- 3 The Counsel for the Petitioner Companies submit that ICTRIPL is engaged in the business of containerized rail freight services under a Category 3 railway license, related logistic services and also engaged in operation and maintenance of Inland Container Depots and ICTIPL is engaged in the business of providing container freight station operations, handling of containerized cargo, shipping agency services to its principals and other ancillary services.
- 4 The respective Boards of Directors are of the view that the proposed Scheme of Arrangement is beneficial to the respective shareholders, employees and all stakeholders of the Petitioner Companies. The proposed Scheme of Arrangement is aimed at achieving the following business and commercial objectives:
  - i) *The Resulting Company (“ICTIPL”) is engaged in distinct line of business activities of providing container freight station operations, handling of containerized cargo and other ancillary services. The Resulting Company also through its various subsidiaries is engaged in CFS Businesses, Container Terminal Management Projects, Inland Container Depots, Large Sized Port Development and Port Terminal Projects including multipurpose berthing at Ports, Infrastructure Projects, Transportation - containerized road / rail freight services and Multi Modal Logistics (“CFS , Port Development , Infrastructure and Logistics Business“)* .
  - ii) *The Demerged Company (ICTRIPL) is engaged in 2 (two) distinct lines of business namely:*
    - a) *Providing containerized rail freight services under Category 3 railway license and related logistic services (“Rail Undertaking”);*
    - b) *Operation and maintenance of Inland Container Depots (“ICD Business”) in the hinterland*
  - iii) *The nature of risk and competition involved in CFS as well as the Rail Business is distinct from that of ICD Business i.e.,*
    - a) *The CFS and Rail Business operate inter alia in the business to business (“B2B”) realm; and*
    - b) *The ICD Business on the other hand, operates in the hinterland and caters to end consumers(“B2C”) realm*
  - iv) *Further, the competitive dynamics of these businesses are also different, with B2B servicing a global product portfolio with B2C being a largely domestic business*

- v) *Thus separation of the Rail Business, including its business, undertaking and investments by way of demerger from the Demerged Company to the Resulting Company through a Scheme of Arrangement would lead to significant benefits for both businesses including;*
- a) *Enhanced strategic flexibility to build a vibrant, robust and dynamic infrastructure platform;*
  - b) *Enable a dedicated management focus and to accelerate growth of the CFS, Port and Container Terminal Development and other Infrastructure Business of the Resulting Company and the ICD Business separately;*
  - c) *The vesting of the assets of the Rail Business in the Resulting Company coupled with the existing CFS Business along with the Port connectivity would augment and significantly strengthen the various businesses of the Resulting Company and would unlock significant business potential:*
  - d) *Would allow the business verticals increased flexibility, optimum allocation of assets across various facilities, significantly reduce avoidable costs which otherwise have to be separately incurred by the Rail Business and provide huge growth opportunities considering the vast market potential.*
  - e) *The proposed demerger would result in improving service, faster delivery of goods and lower transactional costs. This will enable shipping lines to offer competitive rates. Cost to the port users will be reduced paving the way for attracting traffic and reaching optimum profitability.*
  - f) *The proposed demerger provides scope for independent collaboration and expansion of each individual undertaking /business without committing the existing organization in its entirety.*
  - g) *The proposed demerger would help in creating an amenable structure for fund raising in future to fuel the rapid growth of both the "CFS, Port Development, Infrastructure and Logistics Business" and "ICD Business".*
  - h) *The Scheme of Arrangement would be in the best interests of the shareholders, creditors, employees and other stakeholders of the Companies, as it would result in enhancement of shareholder value, operational efficiencies and greater focus and would enable the management of each of the aforesaid companies to vigorously pursue revenue growth and expansion opportunities through organic and inorganic growth.*
- 5 The Board of Directors of the Demerged Company and the Resulting Company have approved the said Scheme of Arrangement 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 requirements as per directions of the Court / Tribunal and the necessary affidavits of compliance has been filed in the Court / Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
- 7 The Regional Director has filed his report dated 17<sup>th</sup> March 2017 stating therein that, save and except as stated below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, it is stated that:
  - (a) *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 companies has served a copy of company petition No. 95 and 96 of 2017 along with relevant orders, etc to respective IT Department. However, as on date there is no response from Income Tax Department.*
  - (b) *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 Resulting Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
  - (c) *Petitioner in the Clause No 7.6 inter alia has mentioned that prior to the scheme becoming operative and prior to the allotment of the shares in terms of clause 7.1 of the scheme, Resulting Company shall increase or alter its authorized capital as may be required. Therefore, Deponent prays that the Hon'ble NCLT may pass orders to comply with Section 61, r/w section 13, section 64 and other applicable sections of the Companies Act, 2013*
  - (d) *In addition to compliance of AS-14 corresponding (IND AS-103) the Resulting Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (Ind AS-8) etc.*
  - (e) *Petitioner in the Clause No 13.2.4 inter alia has mentioned that upon coming into effect of this Scheme, the difference being the deficit or surplus between the net assets of the Demerged Undertaking transferred to the Resulting Company over the value of shares allotted by the Resulting Company to the shareholders of the Demerged Company and/or after making adjustments for Clause 13.2.3 above*

*shall be adjusted against the General Reserve of the Resulting Company. In view of this, General Reserve be read as "Capital Reserve"*

- 8 In so far as observations made in paragraph IV (a) and (b) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Companies 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.
- 9 In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, it is submitted that the Resulting Company in order to increase or alter its authorized capital as may be required, shall comply with the section 61, r/w section 13, section 64 and other applicable sections of the Companies Act, 2013 to the extent applicable.
- 10 In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Resulting Company through its Counsel undertakes that it shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.
- 11 In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, it is submitted that upon coming into effect of this Scheme, the difference being the deficit or surplus between the net assets of the Demerged Undertaking transferred to the Resulting Company over the value of shares allotted by the Resulting Company to the shareholders of the Demerged Company and/or after making adjustments for Clause 13.2.3 of the scheme shall be adjusted against the "Capital Reserve" of the Resulting Company.
- 12 The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
- 13 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.
- 14 Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 95 and 96 of 2017 filed by the respective Petitioner Companies is made absolute in terms of prayer clause (a) of TCSP No 95 OF 2017 and clause (a) of TCSP 96 OF 2017 of the respective Petition.

- 15 Petitioner Companies are 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 the physical copy within 30 days from the date of issuance of the order by the Registry.
- 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 The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai .
- 18 Costs to be paid within four weeks from today.
- 19 All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
- 20 Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

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

Sd/-

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