

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

Arguments heard on 09.03.2017

Orders passed on 09.03.2017

Under Sections 230 to 240 of the Companies Act, 2013

And

In the matter of Scheme of Arrangement

Amongst

M/s. TNQ Books & Journals Private Limited

(Demerged Company)

CA No.24 of 2017

And

M/s. TNQ Technologies Private Limited

(1st Resulting/Transferee Company)

CA No. 27/2017

And

M/s. Author Café Private Limited

(2nd Resulting/Transferee Company)

CA No. 28/2017

And

Their Respective Shareholders and creditors.

Representative : Counsel for the Applicant Shri T. Poornam

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ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ,
MEMBERS (JUDICIAL)

COMMON ORDER

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. Under consideration are three Applications, the first has been filed by M/s. TNQ Books & Journals Private Limited, the second by M/s. TNQ Technologies Private Limited and the third by M/s. Author Café Private Limited. which are numbered as CA No. 24/2017, CA No: 27/2017 and CA No: 28/2017 respectively.

2. The relief sought for by the 1st applicant company, viz., M/s. TNQ Books & Journals Private Limited, is to dispense with the convening, holding and conducting of meeting of equity shareholders of the applicant company and also that of the secured creditor(s) of the applicant company and grant leave to the applicant company to file a petition under Sections 230 to 240 of the Companies Act, 2013 within two weeks from the date of order passed by this Bench.

The second application is of M/s. TNQ Technologies Private Limited wherein it has been prayed to order to dispense with the convening, holding and conducting of meeting of the equity shareholders and that of the creditor(s) of the 1st resulting company and grant leave to the 1st resulting company to file a petition under Sections 230 to 240 of the Companies Act, 2013 within two weeks from the date of order passed by this Bench.

The third application is of M/s. Author Café Private Limited wherein, the relief is sought to order to dispense with the convening,

holding and conducting of meeting of the equity shareholders and that of the creditors of the 2nd resulting company and grant leave to the 2nd resulting company to file a petition under Sections 230 to 240 of the Companies Act, 2013 within two weeks from the date of order passed by this Bench.

3. It may briefly be stated that the proposed Scheme of Arrangement is for Demerger of M/s. TNQ Books and Journals Private Limited. The salient features of the Scheme of Arrangement as given at page 13 of the CA 24/2017 are as follows:-

“19.

19.1 “Appointed Date” means 01.04.2017 or such other date as may be approved by the Hon’ble National Company Law Tribunal, Chennai Bench.

19.2 “Effective Date” means the last of the dates on which the certified copies of the order(s) of the Hon’ble National Company Law Tribunal, Chennai Bench sanctioning the Demerger Scheme are filed with the Registrar of Companies, Chennai, Tamilnadu.

19.3 “Demerged Company” means TNQ Books & Journals Private limited, a private limited company incorporated under the Companies Act, 1956 having its Registered Office at Plot Nos: 4/600 & 4/197, Phase 2, Dr. Vikram Sarabhai Instronic Estate, Kottivakkam, Chennai – 600 041, Tamil Nadu.

19.4 “Demerged Undertakings” or “Transferred Undertakings” shall collectively mean the Author Services Division and the Publishing Services Division.

19.5 “Remaining Undertaking” means all the businesses and divisions of the Demerged Company including the Property Division other than the Publishing Services Division and Author Services Division. Remaining Business is morefully described in Schedule A of the Scheme.”

4. In the light of the Scheme of Arrangement of Demerger, the 1st company M/s. TNQ Books and Journals Private Limited is transferring its business to M/s. TNQ Technologies Private Limited and M/s. Author Café Private Limited. Therefore, the 1st company is the transferor company and the 2nd and 3rd companies are the transferee companies. All the three companies are falling within the jurisdiction of this Bench. Therefore, we take up all the three applications together for disposal by way of passing a common order.

5. It is worthwhile to mention that in the demerged company, the 1st Resulting company and the 2nd Resulting company, the equity shareholders are one and the same, who are three in number. All the three members have given separate affidavits. In relation to the transferor company, Mrs. Mariam Ram w/o Mr. N. Ram, aged 63 years, residing at No.43B, Kasthuri Ranga Road, Chennai-600 018, affirmed that she is holding 899 ~~fully paid up~~ ^{su} equity shares constituting 89.9% of the applicant fully paid up share capital, understood the scheme of arrangement of demerger and expressed that she has no objection to the scheme of arrangement of demerger.

Similarly, the other 2 equity shareholders N.Ram s/o late G.Narasimhan, aged 71 years having the same address, holding one share, has also given an affidavit of consent affirming that he understood the scheme of arrangement of demerger. The third equity shareholder is Mr. Yakov Chandy s/o K.J.Chandy, aged 43 years, residing at the same address who is holding 10% of the fully paid up equity share capital of the applicant company and has given his consent to the scheme of arrangement of demerger. All the three applications are pertaining to the Demerged company, 1st Resulting and 2nd Resulting company and all the equity shareholders are one and the same. So, they have submitted similar affidavits in relation to the 1st and 2nd transferee companies also.

6. Therefore, we dispense with the meeting of the equity shareholders for all the three companies, as prayed in the applications. In relation to secured creditors/unsecured creditors, the demerging company is having single secured creditor, namely, City Bank (Business Banking), Anna Salai, Chennai which has also given consent to the scheme of arrangement of demerger but on the letter head. Therefore, we order conducting of the meeting of the secured creditor, who may pass a resolution approving the scheme of arrangement of demerger and submit the same, along with an affidavit, to this Bench within four weeks' time from the date of order of this Tribunal is received. We are not inclined to appoint Chairman for conducting the meeting of the secured creditor because the bank is an institution which has its own management for conducting meetings as per its own procedure and to give the required consent /approval to the proposed scheme of arrangement of ^{de}merger.

7. The 1st Resulting company and 2nd Resulting company do not have secured/unsecured creditors. Therefore, there is no requirement for any order for dispensing with the meeting of creditors in relation to Resulting companies.

8. In relation to the demerged company M/s. TNQ Books and Journals Private Limited, an affidavit has been given by Mr. P.Babu, Chartered Accountant of M/s. Brahmayya & Co., certifying that there is only secured creditor namely, City Bank and the applicant company has no other secured or unsecured creditor and the balance outstanding as on date against Working Capital of the Applicant company as 'Nil'. In relation to the 1st Resulting Company, viz., M/s. TNQ Technologies Pvt Ltd., an affidavit has been filed by Mr.R.C.Krishnen, Chartered Accountant of M/s.R.C.Krishnen, certifying that the 1st Resulting company has no bank account and neither has secured nor unsecured creditors. Similarly, in relation to 2nd Resulting company, viz., M/s.Author Cafe Pvt Ltd, an affidavit has been filed by Mr.R.C.Krishnen, Chartered Accountant of M/s.R.C.Krishnen, confirming that the applicant company is having bank account with ICICI Bank Ltd., which is carrying on business at No.208, Anna Salai, Chennai- 600 006 and have no secured or unsecured creditors.

9. We admit all the three applications and inclined to issue notice to all the concerned. Therefore, the Registry is directed to issue notice to Regional Director, Ministry of Corporate Affairs, ROC concerned, Income Tax Authorities, RBI, SEBI, Competition Commission of India. The applicant companies are also directed to

issue private notice to the above mentioned authorities as prescribed. The concerned authorities within thirty days of the receipt of the notice may make representation, the copy of which shall simultaneously be sent to the concerned companies and in case no representation is received, it shall be presumed that the authorities have no representation to make to the proposed Scheme of Arrangement of Demerger.

10. The applicant companies are directed to publish notices in the newspaper one in English and the other in vernacular having wider circulation in the state of Tamilnadu. The notices are also to be uploaded in the website of the companies, if available. The companies shall file the affidavit of service, stating that the directions for issue of notice and advertisement have been duly complied with.

11. After two weeks of the expiry of the period of notice and the submission of report of the secured creditor (only 1st company), the companies may present the petitions for approval/sanction of the Scheme of Arrangement of Demerger provided the provisions of the Companies Act, 2013 and the Rules made thereunder are complied with including the established accounting standards.


ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)


CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)