

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CA/189/CAA/CB/2017
CA/190/CAA/CB/2017
CA/191/CAA/CB/2017
CA/192/CAA/CB/2017
CA/193/CAA/CB/2017
&
CA/194/CAA/CB/2017

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation and Arrangement
(Demerger)

between

M/s. Ambattur Clothing Pvt. Ltd.

(Demerged Company)

M/s. Ambattur Constructions Pvt. Ltd.

(1st Transferor Company)

M/s. Ambattur Developers Pvt. Ltd.

(2nd Transferor company)

M/s. Ambattur Infra India Pvt. Ltd.

(1st Resulting company/ 1st Transferee company)

M/s. Ambattur Fashion India Pvt. Ltd.

(2nd Resulting company)

AND

M/s. Ambattur Hotels Pvt. Ltd.

(3rd Resulting company / 2nd Transferee company)

Order delivered on 2nd of November, 2017

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CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For Applicant(s) : Mr. Pawan Jhabakh and Mr. Abishek Ramesh, Counsels

ORDER

Per : CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under consideration are six Applications Nos. CA/189/CAA/CB/2017, CA/190/CAA/CB/2017, CA/191/CAA/CB/2017, CA/192/CAA/CB/2017, CA/193/CAA/CB/2017 and CA/194/CAA/CB/2017 filed under Sections 230 to 232 of the Companies Act, 2013. Since all the six Applications are with regard to the single Scheme of Amalgamation and Arrangement (Demerger), we take them together to pass a common order.

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2. In relation to the Demerged company viz., M/s. Ambattur Clothing Private Limited, there are three equity shareholders. The list of shareholders is placed at page 222 of the typed set filed with the Application. The consent affidavits given by the above three shareholders are placed at pages 223 to 228 of the typed set filed with the Application, wherein it has been

deposed that they did support the Scheme and consent to dispense with convening, holding and conducting the meeting of equity shareholders.

In the light of the affidavits placed on record, the requirement under law has been fulfilled. Therefore, we order to dispense with the meeting of the equity shareholders of the Demerged company.

ii. The Demerged company has one secured creditor. The certificate of the Chartered Accountant to the effect is placed at page 202 of the typed set of Application. The Counsel for the Applicant submitted that he would file the consent affidavit of the sole secured creditor at the time of filing of the Petition. We dispense with the meeting of the secured creditor subject to condition that the Applicant would file the consent affidavit of the secured creditor at the time of filing of the Petition.

iii. As far the unsecured creditors are concerned, Demerged company has 338 unsecured creditor. The certificate of the Chartered Account confirming the

number of unsecured creditors is placed at page 203 of the typed set filed with the Application.

We order for convening, holding and conducting of the meeting of unsecured creditors on 20.12.2017 at 11.00 a.m. in the premises at Ambattur Industrial Estate Manufacturer's Association, SIDCO AIEMA Tower, ATC Road, Ambattur Industrial Estate, Chennai – 600 058.

We appoint Mr. Solaiselvan, (Chief Financial Officer for the Group) as Chairman for the meeting of the unsecured creditors. We fix the quorum for meeting at 50 and constituting 25% or more in value of the total unsecured credit. In case the quorum is not there at the designated time, when the meeting is called, then, the meeting shall be adjourned by half an hour, and thereafter, the persons present for voting shall be deemed to constitute the quorum.

The notice of the meeting of unsecured creditors shall be issued at least not less than 30 days prior to the date fixed for meeting. The service of notice shall

be effected by speed post/through electronic means, provided the e-mail address of the unsecured creditors available with the Demerged company.

The Demerged company is also directed to make available the facility for voting by making appropriate arrangements. The information about such arrangements shall be given to unsecured creditors well before the date fixed for the meeting. Those who received the notices may vote in the meeting either in person or through proxy for the adoption of the Scheme. The Chairman shall ensure that the proceedings of the meeting may take place in a just, free and fair manner, and within one week of the meeting, the Chairman shall file the reports of the meeting of unsecured creditors before this Bench. The Chairman of the meeting is at liberty to fix his remuneration as per the practice in vogue and the company shall pay the same to him.

3. The 1st Transferor Company viz., M/s. Ambattur Constructions Private Limited has two equity shareholders. The list of shareholders is placed at page 193 of the typed set filed with the Application. The consent affidavits given by the two shareholders are placed at pages 194 to 198, wherein it has been deposed that they do support the Scheme and consent to dispense with convening, holding and conducting the meeting of equity shareholders. Therefore, we order to dispense with the meeting of the equity shareholders of the 1st Transferor company.

ii. There is no secured creditor in the 1st Transferor Company. The certificate issued by the Chartered Accountant in this regard is placed at page 189 of the typed set filed with the Application. However, there is one unsecured creditor whose consent affidavit is placed at pages 191 and 192 of the typed set filed with the Application.

iii. In the light of the Affidavit filed in respect of the unsecured creditor, the requirement under law has been fulfilled. Therefore, under clause (9) of the Section 230 of the Companies Act 2013, we order to dispense with the meeting of the unsecured creditor of the 1st Transferor company.

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4. In relation to the 2nd Transferor company viz., M/s. Ambattur Developers Private Limited, there are seven equity shareholders. The list of shareholders is placed at page 187 of the typed set filed with the Application. The consent affidavits given by the above seven shareholders are placed at pages 188 to 201 of the typed set of Application, wherein it has been deposed that they did support the Scheme and consent to dispense with convening, holding and conducting the meeting of equity shareholders.

In the light of the affidavits placed on record, the requirement under law has been fulfilled. Therefore,

we order to dispense with the meeting of the equity shareholders of the 2nd Transferor company.

ii. The 2nd Transferor company has no secured creditor. The certificate of the Chartered Accountant to the effect is placed at page 168 of the typed set filed with Application.

iii. As far the unsecured creditors are concerned, 2nd Transferor company has 368 unsecured creditor. The certificate of the Chartered Account confirming the same is placed at page 169 of the typed set filed with the Application.

We order for convening, holding and conducting of the meeting of unsecured creditors on 20.12.2017 at 2.00 p.m. in the premises at Ambattur Industrial Estate Manufacturer's Association, SIDCO AIEMA Tower, ATC Road, Ambattur Industrial Estate, Chennai – 600 058.

We appoint Mr. Solaiselvan, (Chief Financial Officer for the Group) as Chairman for the meeting of

the unsecured creditors. We fix the quorum for meeting at 50 and constituting 25% or more in value of the total unsecured credit. In case the quorum is not there at the designated time, when the meeting is called, then, the meeting shall be adjourned by half an hour, and thereafter, the persons present for voting shall be deemed to constitute the quorum.

The notice of the meeting of unsecured creditors shall be issued at least not less than 30 days prior to the date fixed for meeting. The service of notice shall be effected by speed post/through electronic means, provided the e-mail address of the unsecured creditors available with the 2nd Transferor company.

The 2nd Transferor company is also directed to make available the facility for voting by making appropriate arrangements. The information about such arrangements shall be given to unsecured creditors well before the date fixed for the meeting. Those who received the notices may vote in the meeting either in person or through proxy for the adoption of the scheme. The Chairman shall ensure that the

proceedings of the meeting may take place in a just, free and fair manner, and within one week of the meeting, the Chairman shall file the reports of the meeting of unsecured creditors before this Bench. The Chairman of the meeting is at liberty to fix his remuneration as per the practice in vogue and the company shall pay the same to him.

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5. The 1st Resulting/1st Transferee Company viz., M/s. Ambattur Infra India Private Limited has two equity shareholders. The list of shareholders is placed at page 167 of the typed set filed with the Application. The consent affidavits given by the two shareholders are placed at pages 168 to 171, wherein it has been deposed that they do support the Scheme and consent to dispense with convening, holding and conducting the meeting of equity shareholders. Therefore, we order to dispense with the meeting of the equity shareholders of the 1st Resulting/1st Transferee company.

ii. There is no secured creditor in the 1st Resulting/1st Transferee Company. The certificate issued by the Chartered Accountant in this regard is placed at page 157 of the typed set filed with the Application. However, there is one unsecured creditor whose consent affidavit is placed at pages 159 and 160 of the typed set filed with the Application.

iii. In the light of the Affidavit filed in respect of the unsecured creditor, the requirement under law has been fulfilled. Therefore, under clause (9) of the Section 230 of the Companies Act 2013, we order to dispense with the meeting of the unsecured creditor of the 1st Resulting/1st Transferee company.

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6. The 2nd Resulting Company viz., M/s. Ambattur Fashion India Private Limited has two equity shareholders. The list of shareholders is placed at page 167 of the typed set filed with the Application. The

consent affidavits given by the two shareholders are placed at pages 168 to 171, wherein it has been deposed that they do support the Scheme and consent to dispense with convening, holding and conducting the meeting of equity shareholders. Therefore, we order to dispense with the meeting of the equity shareholders of the 2nd Resulting company.

ii. There is no secured creditor in the 2nd Resulting Company. The certificate issued by the Chartered Accountant in this regard is placed at page 159 of the typed set filed with the Application. However, there is one unsecured creditor whose consent affidavit is placed at pages 161 and 162 of the typed set filed with the Application.

iii. In the light of the Affidavit filed in respect of the unsecured creditor, the requirement under law has been fulfilled. Therefore, under clause (9) of the Section 230 of the Companies Act 2013, we order to dispense with the meeting of the unsecured creditor of the 2nd Resulting company.

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7. The 2nd Transferee /3rd Resulting Company viz., M/s. Ambattur Hotels Private Limited has two equity shareholders. The list of shareholders is placed at page 170 of the typed set filed with the Application. The consent affidavits given by the two shareholders are placed at pages 171 to 174 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent to dispense with convening, holding and conducting the meeting of equity shareholders. Therefore, we order to dispense with the meeting of the equity shareholders of the 2nd Transferee/3rd Resulting company.

ii. There is no secured creditor in the 2nd Transferee/3rd Resulting Company. The certificate issued by the Chartered Accountant in this regard is placed at page 160 of the typed set filed with the Application. However, there is one unsecured creditor

whose consent affidavit is placed at pages 162 and 163 of the typed set filed with the Application.

iii. In the light of the Affidavit filed in respect of the unsecured creditor, the requirement under law has been fulfilled. Therefore, under clause (9) of the Section 230 of the Companies Act 2013, we order to dispense with the meeting of the unsecured creditor of the 2nd Transferee/3rd Resulting company.

8. After hearing the Counsel for the Applicants and perusal of records, we are inclined to direct the Registry to issue notice to the Regional Director, Ministry of Corporate Affairs, ROC concerned and Income Tax Authority. Since the Applicants are private limited companies, there is no requirement to issue notices to the SEBI and other stock exchanges. The Counsel for the Applicants submitted that there is no requirement to issue notice to CCI or other sectoral regulators and will file a memo to that effect. In case any authority is desirous of making any objection/

representation, they may do so within 30 days from the date of receipt of the notice. In case no objection/representation is made, it shall be presumed that they/any of them have/has no objection/representation to make.

9. The Applicant Companies are directed to effect publication separately in the newspapers one in English "The Business Standard" (All India Edition) and another in vernacular language "Malai Chudar" (Chennai Edition) having wide circulation in the State of Tamilnadu, not less than 30 days before filing the Company Petition. The Applicant Companies are directed to upload the notices on their websites and display the notices on the notice boards at the Registered Office of the Companies. The Registry is also directed to display the notices on the notice boards of this Bench. The Applicant Companies are directed to issue private notice separately to the authorities/regulators by way of speed post/hand delivery. The proofs of sending and effecting the

service upon them along with the newspaper publications be submitted along with an affidavits.

10. We also direct the Registry to issue notice to the Official Liquidator in respect of 1st Transferor company and the 2nd Transferor company. The Official Liquidator shall appoint Chartered Accountant on his own for the purpose of preparation of the report which shall be submitted to this Bench within four weeks from the date the copy of this order is received.

11. Accordingly, the Applications are allowed. We direct the Applicant Companies to present Petition(s) within one week from the date the report of the Chairman of the Demerged and 2nd Transferor companies are submitted to this Bench.


(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)
PAM


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)