

**In the National Company Law Tribunal
Division Bench, Chennai**

**CP/144-151/CAA/2017
[CA/78-85/CAA/2017]**

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Composite Scheme of Arrangement & Amalgamation

Between

M/s. Chik India Investments Private Limited
(Demerged/Transferor Company 1)

And

M/s. Chinni Investments Private Limited
(Demerged/Transferor Company 2)

And

M/s. Kranes India Investments Private Limited
(Demerged/Transferor Company 3)

And

M/s. Nyle India Investments Private Limited
(Demerged/Transferor Company 4)

And

M/s. CavinKare Private Limited
(Resulting Company 1)

And

M/s. Vale Foods Private Limited
(Demerged/Transferor Company 5)

And

M/s. Cavin Estates Private Limited
(Resulting Company 2)

And

M/s. Cavin Solai Private Limited
(Amalgamated Company)

Order delivered on: 25.10.2017

Coram:

Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioners: Shri Pawan Jhabakh, Advocate
Shri Harishankarmani, Advocate

ORDER

Per: Ch. Mohd Sharief Tariq, Member(J)

1. Under consideration are eight Company Petition Nos. CP/144&145&146&147&148&149&150&151/CAA/2017 filed by the above mentioned Petitioner Companies under section 230 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.
2. The proposed Composite Scheme of Arrangement & Amalgamation (in short, '**Scheme**') provide as under:
 - ./ The Demerger of *Trading Business* of 4 companies viz. Chik India Investments Private Limited (in short, '**Demerged Company 1**'), Chinni Investments Private Limited (in short, '**Demerged Company 2**'), Kranes India Investments Private Limited (in short, '**Demerged Company 3**') and Nyle India Investments Private Limited (in short, '**Demerged Company 4**') into Cavin Kare Private Limited (in short, '**Resulting Company 1**'); and
 - ./ Demerger of *Birds Business* of Vale Foods Private Limited (in short, '**Demerged Company 5**') into Cavin Estates Private Limited (in short, '**Resulting Company 2**'); and
 - ./ Amalgamation of the Amalgamating/Transferor Companies into Cavin Solai Private Limited (in short, '**Amalgamated Company**'); and
 - ./ Cancellation of existing equity shares held by the pre-amalgamation shareholders in the Amalgamated Company. ju


3. The details of Share Capitals, shareholders, Secured & Unsecured creditors of the Petitioner Companies are as under:

Particulars	Authorised Capital	Issued, S&P Capital	Share-holders	Secured Creditors	Unsecured Creditors
Demerged/ Transferor Company 1	Rs. 50,00,000	Rs. 41,05,000	2	Nil	1
Demerged/ Transferor Company 2	Rs. 50,00,000	Rs. 40,05,000	2	Nil	1
Demerged/ Transferor Company 3	Rs. 50,00,000	Rs. 42,05,000	2	Nil	1
Demerged/ Transferor Company 4	Rs. 50,00,000	Rs. 42,07,000	2	Nil	1
Resulting Company 1	Rs. 59,60,00,000	Rs. 26,29,50,670	7	6	1780
Demerged/ Transferor Company 5	Rs. 5,00,000	Rs. 1,00,000	5	Nil	3
Resulting Company 2	Rs. 30,01,00,000	Rs. 30,01,00,000	6	3	2
Amalgamated Company	Rs. 1,00,000	Rs. 1,00,000	2	Nil	1

4. All the eight Companies are Private Limited Companies and the Board of Directors of the Petitioner Companies vide their resolutions dated 14.02.2017 have approved the said Composite Scheme of Arrangement & Amalgamation. All the eight companies are having their registered office at No. 12, Cenotaph Road, Teynampet, Chennai- 600018.

5. This Bench vide its order dated 13.06.2017, in TCA/78-85/CAA/2017 dispensed with the convening & holding of the meeting of the equity

shareholders and unsecured creditors of all the eight petitioner companies under the provisions of section 230(9) of the Companies Act, 2013. In relation to secured creditors, except the Resulting Company 1 and the Resulting Company 2 having 6 and 3 secured creditors respectively, there are no secured creditors in other six companies and the Resulting Company 1 & 2 have filed the consent affidavits of the said secured creditors. The petitioner companies complied with all the orders passed by this Bench.

6. Shri Pawan Jhabakh, the learned counsel appearing for the Petitioner Companies submitted that the rationale and circumstances that have necessitated the proposed scheme are that the demerger/amalgamation will enable consolidation of the business of the eight entities into lesser entity which will facilitate in focused growth, operational efficiency, resulting in more productive utilization of resources and cost & operational efficiency which would be beneficial to all stakeholders. The learned counsel further submits that no investigation proceedings are pending against the Companies under the provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.
7. Learned counsel for the Petitioner Companies has further submitted that the equity shares of none of the Petitioner Companies is listed 


with any stock exchanges; thus the Petitioner Companies do not require any compliance of Listing Agreement or SEBI Rules/regulations.

8. The notices were issued to the statutory authorities viz. Official Liquidator, Regional Director, RoC & Income Tax Authority as per the procedure prescribed. However, there has been no objection to the proposed scheme under reference.
9. The Regional Director, Southern Region (In short, '**RD**') in the Report Affidavit (for brevity, '**Report**') dated 21.09.2017 submitted that as per records of ROC, Chennai, all the eight petitioner companies are regular in filing their statutory returns and no investigation is pending against the companies. It is further submitted that Clauses 3.6 & 5.5 of the Scheme provide for the protection of the interest of the employees of the demerged undertaking and the transferor companies. However, in Para 9 of the Report, it has been submitted that clauses 5.7.1 & 5.7.2 of the scheme provide for the consolidation of the authorized capital of the amalgamating/transferor companies 1 to 5 with the amalgamated company, therefore the amalgamated company may be directed to file the amended MoA with RoC, Chennai for records. Thus, the RD did not object to the scheme.
10. With regard to above observation made by the RD, the amalgamated company has filed an affidavit signed by Shri MD Sudharsan wherein

it has been stated that the amalgamated company undertakes to make necessary compliances.

11. The Official Liquidator (In short, 'OL') in its report dated 12th September, 2017 submitted that M/s. Sankar Prasad & Co., Chartered Accountants (**Auditor**) has scrutinized the books and accounts of all the five Transferor Companies. The said Auditor has broadly reviewed and observed that the Transferor Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principles and fulfilled the requirements of the Companies Act, 2013 and also the affairs of the Transferor companies have not been conducted in a manner prejudicial to the interest of its members, creditors or the public.

12. The OL further submitted that as per clause 6.1 to 6.6 of Part- 6 of the said scheme, upon the scheme becoming effective, the amalgamated company shall without any further act or deed, issue and allot equity shares of the face value of Rs. 10/- each in the amalgamated company, credited as fully paid up, to the members of each of the amalgamating companies as on Record Date, in the following manner:-

“4,26,627 equity shares of Rs. 10/- each credited as fully paid-up of the Amalgamated Company to all the eligible equity shareholders of Amalgamating Company no. 1” 


“4,02,695 equity shares of Rs. 10/- each credited as fully paid-up of the Amalgamated Company to all the eligible equity shareholders of Amalgamating Company no. 2”

“4,23,301 equity shares of Rs. 10/- each credited as fully paid-up of the Amalgamated Company to all the eligible equity shareholders of Amalgamating Company no. 3”

“3,99,577 equity shares of Rs. 10/- each credited as fully paid-up of the Amalgamated Company to all the eligible equity shareholders of Amalgamating Company no. 4”

“the equity shares of the Amalgamating Company 5 held by the Amalgamating Company 1 to 4 and the Amalgamated Company shall be deemed to be cancelled without any further act or deed, and no shares of the Amalgamated Company are required to be issued in lieu thereof”

13. The Competition Commission of India (in short, ‘CCI’) vide its letter dated 22.05.2017 submitted that before passing an appropriate order, the NCLT may seek an undertaking from the companies involved in the merger/amalgamation that CCI approval is not required for the said scheme.

14. With regard to the observation made by the CCI, the amalgamated company has furnished an affidavit signed by Shri MD Sudharsan wherein it has been stated that the proposed composite scheme does 

not exceed the threshold limits specified under section 5 of the Competition Act, 2002 and does require the CCI approval under the provisions of the Competition Act, 2002.

15. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Composite Scheme of Arrangement & Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed ^{for} date of the said Scheme is 1st April, 2016.

16. There is no additional requirement for any modification and the said Composite Scheme of Arrangement & Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under section 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petitions are allowed and the Composite Scheme of Arrangement & Amalgamation ^{is} annexed with the petition ^{is} hereby sanctioned which shall be binding on the members, creditors and shareholders.

17. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from ^{the}

payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

18. The Amalgamated Company is directed to file the amended MoA & AoA with RoC, Chennai for records.

19. The Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the implementation of the said Scheme.

20. The Petitioner Companies shall file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of order.

21. All the five Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies, Chennai.

22. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all documents relating to all the five Transferor Companies with that of the Amalgamated Company and the files relating to all the five Transferor Companies shall be consolidated with the files and records of the Transferee Companies.

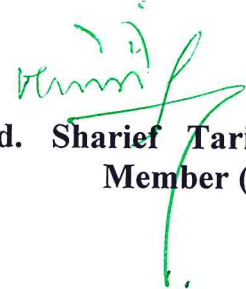
23. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies *Act*

(Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

24. Accordingly, the Scheme stands sanctioned and CP/144&145&146&147&148&149&150&151/CAA/2017 stands disposed of.

S. Vijayaraghavan.

(S. Vijayaraghavan)
Member (T)



(Ch. Mohd. Sharief Tariq)
Member (J)

RLS