

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CA/199/CAA/CB/2017
&
CA/200/CAA/CB/2017

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Arrangement (Demerger)
between

M/s. Marshall, Sons & Co. (India) Limited
(Demerged Company)

and

M/s. Auromaa Manufacturing Industries Limited
(Transferee/Resulting Company)

Order passed on 10th of November, 2017

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

For Applicant(s) : Mr. R. Venkatavaradan & Chandramouli Prabhakar

ORDER

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

1. Under consideration are two Applications Nos. CA/199/CAA/CB/2017 and CA/200/CAA/CB/2017 filed under Sections 230 to 232 of the Companies Act, 2013. Since both the Applications are with regard to

the single Scheme of Arrangement (Demerger), we take both the Applications together to pass a common order.

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2 The prayer made in the application of the Demerged Company Viz., M/s. Marshall, Sons & Co. is for direction to convene, hold and conduct the meeting of the equity shareholders for passing the resolution to approve the Scheme of Arrangement (Demerger). There are 1826 shareholders in the Demerged Company. We direct for convening, holding and conducting of the meeting of the equity shareholders. The meeting shall be held on 30.12.2017 at 10.00 a.m. at No.1, Perumal Coil Street, Puducherry, 605 001.

We appoint Mr. M. K. Bajoria, as the Chairman of the meeting. The quorum shall be 15 equity shareholders present in person. In case there is no quorum at the designated time of the meeting, 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 voting by the proxy shall be permitted provided a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the company at its registered office not later than 48 hours before the meeting. Notice for the meeting shall be sent by the Chairman of the meeting by registered post or speed post or courier or e-mail or hand delivery as per the last known addresses of the equity shareholders at least one month before the date fixed for the meeting. The person who receives the notice within one month from the date of receipt of notice can vote in the meeting either in person or through proxy or through postal ballot or through electronic means or the mode mentioned in the notice. In relation to the voting through electronic means, Rule 20 of the Companies (Management and Administrative) Rules, 2014 shall be followed to the adoption of the Scheme of Arrangement (Demerger).

The Chairman is directed to ensure the availability of all the necessary facilities for the purpose of voting in the meeting so that the proceedings of the meeting may take place in a just, free and fair manner and to the extent possible in conformity with the Secretarial standard on general meetings issued under Section 118 (10) of the Companies Act, 2013. The Chairman shall appoint one Scrutiniser for scrutiny of the votes cast by equity shareholders, who shall submit the report to the Chairman.

ii. In relation to the Demerged Company, it has been submitted that there is no secured creditor and the certificate issued by the independent Chartered Accountant to that effect is placed at page 98 of the typed set filed with the Application.

iii. The Demerged Company has 16 unsecured creditors. The certificate of the Chartered Accountant to the effect and the list of unsecured creditors are

placed at page 99 and 100 of the typed set filed with the Application.

We order for convening, holding and conducting of the meeting of unsecured creditors on 30.12.2017 at 11.30 a.m. in the premises at No.1, Perumal Coil Street, Puducherry, 605 001.

We appoint Mr. Saikat Basu as Chairman for the meeting of the unsecured creditors. We fix the quorum for meeting at 6 and constituting 25% or more 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 person 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 report 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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3. With regard to the Resulting Company viz. M/s. Auromaa Manufacturing Industries Limited, there are 20 equity shareholders. The list of the shareholders is

placed at page 66 of the typed set filed with the Application. The consent affidavits given by the equity shareholders are placed at pages 67 to 106 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.

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 Resulting Company.

ii) The Resulting Company has no secured creditors. The certificate of the Chartered Accountant confirming the same is placed at page 59 of the typed set filed with the Application.

iii) As far as the unsecured creditors are concerned, it is stated that the entire dues of the unsecured creditors (both the unsecured creditors from whom consent has been obtained as well as the other 3

unsecured creditors) as on 31.03.2017 has been subsequently paid during the course of the year 2017. A statement showing the details of payment has been enclosed with the synopsis, which is taken on record. Hence, the Resulting Company has no secured creditors.

4. After hearing the Counsel for the Applicants and perusal of records and also of the fact that the Applicant Companies are listed companies, we direct the Registry to issue notice to the Regional Director, Ministry of Corporate Affairs, ROC concerned, Income Tax Authority, SEBI and other stock exchanges where stock is listed, CCI or other sectoral regulators if required under relevant acts. In case any authority is desirous of making any objection/ representation, they may do so within the period of 30 days from the date of the receipt of the notice. In case no representation is received within the stipulated period of 30 days by this Bench, it shall be presumed that the authorities have no representation to make on the proposed Scheme of

Arrangement. The Applicant Companies are directed to issue private notice separately to the authorities/regulators by way of speed post/hand delivery. The proof of sending and effecting the service upon them with the newspaper publication be submitted along with an affidavit, at the time of filing Petition.

5. The Applicant Companies are directed to effect publication separately in the newspapers one in English “New Indian Express” (Pondicherry Edition) and another in vernacular language “Dinamalar” (Tamilnadu Edition) having wide circulation in the State of Tamilnadu, having 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 respective company. The Registry is also directed to display the notices on the notice board of this Bench.

6. 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 is submitted to this Bench.



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