

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/190 & 191/CAA/2017
CA/104 & 105/CAA/2017

**IN THE MATTER OF SECTIONS 230 TO 232 OF THE
COMPANIES ACT, 2013**

And

**IN THE MATTER OF COMPOSITE SCHEME OF
ARRANGEMENT (DE-MERGER)**

Between

**SICAL MULTIMODAL & RAIL TRANSPORT LIMITED
("DEMERGED COMPANY")**

And

**SICAL BANGALORE LOGISTICS PARK LIMITED
("RESULTING COMPANY")**

And

THEIR RESPECTIVE SHAREHOLDERS & CREDITORS

Order delivered on: 04.12.2017

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**K. ANANTHA PADMANABHA SWAMY, MEMBER (J)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Demerged and Resultant Companies: Mr.P.Sriram PCS

PER: K ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under consideration is a Company Petition No.190 & 191/CAA/2017 filed under Section 230 to 232 of the Companies Act, 2013, M/s.SICAL Multimodal & Rail Transport Limited (hereinafter referred to as '**Demerged Company**') and M/s.SICAL Bangalore Logistics Park Limited (hereinafter referred to as '**Resultant Company**') seeks the sanction to the

Scheme of Arrangement (in short, 'Scheme') by virtue of which the Bangalore ICD Undertaking of the Demerged Company would be demerged and transferred to Resultant Company as a going concern.

2. The Share Capital of the Companies as on 31st March, 2017 is as under:

Types of Share Capital	Value in Rupees
Demerged Company	
Authorized Capital	1400000000
Issued, Subscribed and Paid up share capital	726900000
Resultant Company	
Authorized Capital	100000
Issued, Subscribed and Paid up share capital	100000

3. At the outset, it is necessary to mention brief facts of the scheme which needs consideration. The Demerged Company is a Public Unlisted Company having its registered Office at South India House, No.73, Armenian Street, Chennai 600 001, within the jurisdiction of this NCLT Bench at Chennai and the Board of Directors vide its resolution dated 15th October 2016 and 2nd February 2017 approved the said scheme of arrangement. The Demerged Company is engaged in the

business of operating container rail terminals/ICD container freight station.

4. The total number of equity shareholders in the Demerged Company is 7, with 3 secured creditors and 196 Unsecured Creditors and the Demerged Company had furnished a certificate from Chartered Accountant Mr.P.Venkatramani F.C.A. certifying the list of Secured Creditors and from M/s.VKNH & Associates, Chartered Accountants with respect to Unsecured Creditors & list of shareholders individually. In relation to the Resultant Company, there are 7 Equity Shareholders and no Secured Creditors and Unsecured Creditors and the Resultant Company had furnished a certificate from M/s.VKNH & Associates, Chartered Accountants individually.

5. Considering the fact that the shareholders & creditors had given their consent by way of affidavit, the Tribunal vide its order dated August 2, 2017 in CA/104/CAA/2017 and CA/105/CAA/2017 dispensed with the convening and holding of the meeting of the equity shareholders, secured creditors and unsecured creditors of the Demerged Company and dispensed with the convening and holding of the meeting of the equity shareholders of resultant company respectively.

6. PCS submitted that the said demerger proposal shall be in the larger interest of all the shareholders, creditors and employees of the Demerged company and help to achieve effective growth of the Resultant Company and that there are no investigation proceedings pending against the petition companies under Sec.235 to 251 or any other provisions of the Companies Act, 2013 ("Act") and prayed to dispose of this petition as per the provisions of Section 230 to 232 of the Act and submitted that the notices were issued to the statutory authorities as per the law. No objections have been received from any of the stakeholders, or statutory authorities except for an observation made by the Regional Director.

7. The Regional Director, Southern Region (In Short, 'RD') in its Report Affidavit (for brevity, 'Report') dated 10.10.2017 has made observation vide para 8 in respect of Clause 15 of the Scheme and has stated that "As provided under Section 61(2) of the Companies Act 2013 if the Authorized Share Capital of the demerged company is cancelled for whatever reasons, that part of the Authorised Capital so cancelled will not be in existence and therefore the demerged company itself cannot avail any benefit out of the cancellation/reduction of the Authorised Capital. While that

being the legal position what the demerged company has lost by cancelling the authorized capital is no longer is available for transferring to other entity here the resulting company. Both the demerged company and the resulting company continue to be in existence and fee paid by one company towards the registration of Authorised Capital cannot be adjusted against the payment of fee by the other company.

8. The contention of the RD regarding Sec.61 of the Companies Act 2013 have been taken note of. However, in this connection the applicant company has stated that the provisions of Sec.61(2) will be applicable only in the case of issued and paid up capital. The cancellation or reduction of authorised capital in a scheme of amalgamation especially in the context Section 61 requires that on sanctioning of the scheme of arrangement the demerged company and the resulting company have to alter their Memorandum of Association and Articles of Association and submit the same to the Registrar of Companies in order to comply with the provisions of the Scheme of Arrangement as provided under the Companies Act and relevant rules in this regard. In this case, the authorised issued and the paid up capital are the same in the case of the resultant company. To accommodate the further issue of shares through

OCPS as mentioned in the Scheme of Arrangement and it will be necessary to amend the MOA and AOA. This will be necessary to give effect to the provisions clause 15 of the Scheme of Arrangement regarding Re-organization of Authorised Share Capital.

9. RD in its Report Affidavit (for brevity, '**Report**') dated 10.10.2017 submitted that as per records of ROC, Chennai, the demerged and the resulting companies' are regular in filing their statutory returns. No prosecution filed, no complaints pending and no inspection/investigation has been conducted in respect of the Demerged companies. The scheme of arrangement of demerger filed with the applications have been examined and it has been decided not to make any objection to the scheme except for the observation made in para (8).

10. In the RD report it has been submitted that clause 8 of the scheme of the Companies provides for the protection of the interest of the employees of the demerged undertaking.

11. 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 Scheme of Arrangement will not cost 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 date of the said Scheme is 1st June, 2016.

12. The said Scheme of Arrangement appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under section 391 of the Companies Act, 1956. Taking into consideration all the above, the Company Petition is allowed and the scheme of arrangement annexed with the petition is hereby sanctioned which shall be binding on all the members, creditors and shareholders.


13. The parties to the said Scheme or any other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme. The Demerged Company is directed to file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.


14. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the

Companies (Compromises, Arrangements and Amalgamations)

Rules, 2016 as has been notified on 14th December, 2016.

Accordingly, the **Company Petition No.190 & 191/CAA/2017** along with related CA/104 & 105/CAA/2017 stand disposed of.


(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)


(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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