

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, CHENNAI

Arguments heard on 10.03.2017  
Orders passed on 10.03.2017

**Original Application No: 1 (CAA)/2017**

Under Sections 230 to 232 and other applicable provisions of the  
Companies Act, 2013

And

In the matter of Scheme of Arrangement (Demerger)

Between

M/s. Tube Investments of India Limited

And

M/s. TI Financial Holdings Limited and their shareholders.

Representatives: Mr. P. H. Arvinth Pandian for Harishankar Mani  
and Pawan Jhabakh, Counsel for transferor and  
transferee companies.

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

**ORDER**

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

1. The original application No. 1(CCA)/2017 has been filed  
under Sections 230 to 232 and other applicable provisions of the  
Companies Act, 2013. This application has been filed by M/s. Tube

Investments of India Limited, a company incorporated under Indian Companies Act 1913 with CIN : L35921TN1949PLC002905, having its registered office at 'Dare House', No. 234, NSC Bose Road, Chennai-600001, Tamilnadu.

2. In this application, the reliefs sought by the applicant company are listed under para (iv) of the application, which are as under:-

(A) For necessary directions for convening, holding and conducting of a meeting of equity shareholders of the applicant company and to fix a date for presentation of the company petition,

(B) For issuance of necessary directions for dispensing with the convening, holding and conducting of a meeting of the secured creditors of the applicant company,

(C) For issuance necessary directions for dispensing with the convening, holding and conducting of a meeting of the unsecured creditors of the applicant company and

[D] For issuance of notices to the statutory authorities as per the provisions of Section 230 (5) of the Companies Act 2013 and Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

We have heard the counsel representing the applicant company in detail and have perused the record placed on file.

3. The gist of the Arrangement of Scheme of Demerger is given at page 1 (G) of the application, which is summarised as under:-

*“(a) That the Manufacturing Business Undertaking (“Demerged Undertaking”) of the Applicant Company, as specified in Clause 1.9 of the Scheme of Arrangement, shall be demerged, transferred and vested with the Resulting Company, which is a wholly owned subsidiary of the Applicant Company, as a going concern; and*

*(b) That the paid up equity share capital of 11,00,000 (Eleven Lakhs) equity shares of Re.1 each of the Resulting Company held by the Applicant Company be reduced and cancelled as provided for and detailed under Part III of the Scheme; and*

*(c) That upon the sanction of the Scheme, the name of the Resulting Company shall automatically stand changed without any further act, instrument or deed to “Tube Investments of India Limited” and that the name of the Demerged Company shall automatically stand changed without any further act, instrument or deed to “TI Financial Holdings Limited” as detailed under Clause 17 of the Scheme; and*

*(d) That the main objects of the Applicant Company be amended without any further act or deed in accordance with Clause -19 of the Scheme; and*

*(e) That the face value of the equity share of the Applicant Company be reduced from Rs.2 to Re.1 as*

*specified and detailed under Clause 20 of the Scheme of Arrangement.*

*The Scheme of Arrangement will take effect from the Appointed Date (i.e.) 1<sup>st</sup> April, 2016.”*

4. The applicant is a listed company. During the course of hearing, the counsel for applicant has drawn our attention towards communications placed at pages 49, 50 and 51 of the application, wherein BSE, SEBI and NSE have, in principle, agreed with the proposed Scheme, but with some observations which the applicant company is directed to follow. There are about 21,000 equity share holders. The company is having an authorised share capital of Rs.43 Crores and issued, subscribed and paid up share capital of Rs.37,46,93,074/-.

5. The proposed Scheme provides that, the demerger company is transferring the manufacturing business to the resulting company which will retain the name of the demerging company and the demerged company will get a new name 'M/s. T.I. Financial Holdings Limited', and as a consequence, there is a proposal for reduction of share capital of the transferee company. We feel that the proposed Scheme is in the interests of the shareholders and the creditors. The total number of secured creditors is 39. There are unsecured creditors as well. The detail pertaining to the secured and unsecured creditors is placed at page 396 of the application in tabular form which indicates that the secured creditors' outstanding amount is Rs.678 crores and unsecured creditors' outstanding amount is Rs.538 Crores. As per the consent of the secured creditors/unsecured creditors is concerned, it is said to have

been obtained by the applicant company on the letter heads of the creditors. However, there is requirement of the affidavits of consent of the creditors for the purpose of dispensing with meeting of the creditors as is provided under clause 9 of Section 230 of the Companies Act, 2013. A list of secured creditors and unsecured creditors is placed in annexure I. The said list is also said to have been made available at the registered office of the company for the purpose of inspection. There are two certificates of the Chartered Accountants pertaining to the list of secured creditors and unsecured creditors, available at pages 393 and 429, respectively. The certificates are said to have been given by the independent Chartered Accountants.

6. Looking to the Scheme of Arrangement of Demerger and the record placed on file, we are persuaded to allow the application of the company and direct that convening, holding and conducting the meeting of the equity shareholders be taken up on 24.04.2017 at 10.15 A.M at the venue being TTK Auditorium, Music Academy, No.168 (old No.360), TTK Road, Chennai-600 014. The meeting shall be chaired by Mr. MM.Murugappan (Chairman) failing him, Mr. L. Ramkumar (Managing Director), failing him Mr. N. Srinivasan (Director). We fix quorum for the meeting of the equity shareholders to 100. In case the quorum, as mentioned with respect to the equity shareholders <sup>of</sup> applicant company 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.

7. The Chairman holding the meeting shall appoint one scrutiner for scrutinising the votes. The notices to the equity shareholders shall be issued in 21 clear days prior to the date fixed for the meeting plus two days margin. Notices could be sent by the applicant company via e-mail address of the equity shareholders available with the transferor company and the others notices will be sent physically by registered post. The applicant company is also directed to publish notices in leading newspapers one in English “Business Standard” (All India edition) and another in vernacular language “Dinamani”, (Tamilnadu edition) having wider circulation, in the state of Tamilnadu.

8. The applicant company is also directed to make available the facility of electronic voting for which appropriate arrangements may be made with all facilities. The information about such arrangements shall be given to the equity shareholders well before the date is fixed for the meeting.

9. The Chairman shall ensure that the proceedings of the meeting may take place in a just, free and fair manner, and after two weeks of the meeting, the Chairman shall file a report before this Bench.

10. In relation to the voting through electronic means, Rule 20 of the Companies (Management and Administrative) Rules, 2014 shall be followed. We are also inclined to direct the Registry to issue notice to the Regional Director, Ministry of Corporate Affairs, ROC, Income Tax Authorities, Reserve Bank of India, SEBI, BSE and NSE. The Scheme of Demerger does not involve the subject matter being administered by the Competition Commission of India.

Therefore, there appears no need to issue notice to the Competition Commission of India.

11. The authorities concerned, within 30 days from the date of receipt of the notice, may make representation and in case within the said period no representation is received, it shall be presumed that they have no representations to make.

12. In addition to the above, the applicant company is also directed to issue private notices to the above mentioned stake holders as per the procedures prescribed, and file proof of sending and effecting notices thereon, along with copy of advertisement with an affidavit.

13. Since the secured creditors and unsecured creditors have given their consent on letter heads, the prayer with reference to the dispensing with the meeting is declined for the reasons that clause (9) of Section 230 of the Companies Act, 2013, requires the consent and confirmation to the Scheme of Arrangement of Demerger only by way of affidavits.

14. The applicant has submitted that during the time of meeting which is ordered to be conducted, the applicant company could be in a position to get the affidavits of the secured and unsecured creditors to the extent of 90% of the value.

15. We direct the applicant company to obtain the required consent and confirmation of the secured and unsecured creditors to the Scheme by way of affidavits and file the same before this Bench for appropriate orders. As a matter of practice, at the time of presentation of the application, the affidavits ought to have been

produced for dispensing with the meeting of the creditors but for the reasons that the Scheme of Arrangement of Demerger has been formulated in the month of November-2016, and the consent of the secured and unsecured creditors have been taken on letter heads. The relevant provisions of the Companies Act, 2013 have been notified on 15.12.2016. In view of this, time is given to the applicant company for obtaining the consent and confirmation of the secured and unsecured creditors to the proposed Scheme by way of affidavits. However, this shall not be treated as a precedent for other matters as this direction is given under the special circumstances of the case.

16 The applicant company is directed to file the petition for approval/sanction of the Scheme of Arrangement of Demerger after one week from the date, the report of the chairman is submitted to this Bench.

  
ANANTHA PADMANABHA SWAMY  
MEMBER (JUDICIAL)

  
CH. MOHD SHARIEF TARIQ  
MEMBER (JUDICIAL)