

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, CHENNAI.**

**Arguments heard on 08.03.2017**

**Orders passed on 22.03.2017**

**C.P.No.17 of 2017**

**(Under Sections 230 to 240 of Companies Act, 2013)**

**In the matter of Scheme of Arrangement of Demerger**

**between**

**M/s L&T Shipbuilding Ltd.**

**and**

**M/s. Marine Infrastructure Developer Pvt. Ltd. and its  
respective shareholders**

**Petitioner represented by: Advocates Shri PL.Narayanan, P.T.Rakesh,  
K.Anandhasayanan & R.Vigneshkumar**

**CORUM**

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

**O R D E R**

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

1. Under consideration is the C.P. No.17 of 2017 which has been filed by the Petitioner Company under Sections 230 to 240 of the Companies Act, 2013 for seeking relief to sanction the Scheme of Arrangement of the Petitioner Company/Demerged Company, for demerger of Demerged Undertaking of Petitioner Company to “Marine Infrastructure Developer Private Ltd.”, the resulting company, so as to be binding on all the equity shareholders and

creditors of the Petitioner Company w.e.f the 'Appointed Date' and thus render justice. The grounds, which have been made for seeking sanction of the Scheme of Arrangement of Demerger (hereinafter referred to as "Scheme") are given in the Petition as follows :-

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- (a) *The management of the Demerged Company and the Resulting Company has evaluated the plan and strategy for both the Companies and demerging the Ports Business of the Demerged Company will bring about synergies of operation and increase in operational efficiency.*
- (b) *The demerger would effect internal economies of scale, organisational efficiencies, reduction in overheads, and other expenses, optimum utilisation of resources, development of business and maximization of profitability.*
- (c) *Demerging the business of the Companies will lead to greater and optimal utilisation of available recourse.*
- (d) *Demerger is in the interest of public including the interest of stakeholders. The financial strength will also enable it to exert leverage and raise resources at very competitive rates, thereby contributing to better profits.*
- (e) *Demerger of the Ports Business of the demerged Company in to the Resulting Company would ensure that*

*the businesses of the Demerged Company is streamlined and demarcated under different entities, have separate Boards to address their strategies thus, providing a significant opportunity to introduce new investors and raise funds, considering the financial performance and funding requirements of the respective businesses.*

*(f) Demerger has been devised primarily with a view to maximize overall shareholders value and it is not prejudicial to the interest of creditors, secured or unsecured and other stakeholders.*

*(g) Aggregate assets of the Demerged Company and the Resulting Company are more than sufficient to meet all their liabilities and the scheme of arrangement will not adversely affect the rights and interest of any of the creditors of the Demerged Company or the Resulting Company in any manner whatsoever.”*

2. It may be recalled that the Company Application No: 10/2017 was presented before this Bench and vide Order dated 01.02.2017, we dispensed with calling of a meeting of creditors, both secured and unsecured, under sub-section 9 of Section 230 of the Companies Act, 2013. The Application revealed that there is a scheme for Arrangement of Demerger of the transferor company which has decided to demerge the ports business, thereby transferring and vesting the operation relating to the ports business of the transferor

company into a separate company, i.e. M/s. Marine Infrastructure Developer Pvt. Ltd., the transferee company.

3. In this connection, the Board of Directors of the transferor company and the transferee company have held their respective meetings by resolution dated 22.07.2016 and approved the said Scheme. The transferor company, *inter alia*, filed the auditor's certificate dated 30.09.2016 which provides the list and the respective outstanding value of secured creditors and unsecured creditors. In short, the transferor company and the transferee company are stated to have aggregate assets which are more than sufficient to meet all their liabilities, and the proposed Scheme will not adversely affect the rights and interests of any of the creditors of the transferor company or the transferee company in any manner whatsoever. The transferor company has only two secured creditors i.e. IDBI Trusteeship Service Ltd and State Bank of India to whom the company owes Rs.1641,37,01,472/- as on 30.09.2016 and the amount due to unsecured creditors as on 30.09.2016 is Rs.2247,51,22,503/-. The IDBI Trusteeship Service Ltd and the State Bank of India's credit that have been given, if shown in percentage, amounts to 81.09% and 18.91% respectively. The secured creditors have approved the Scheme by duly swearing in consent affidavits. It is also pertinent to mention herein that the unsecured creditors holding around 96.4% of the total value of the equity of M/s. L&T Shipbuilding Ltd. and M/s. Larson & Toubro Ltd., have also accorded their approval by duly swearing in consent affidavits dated 28.12.2016 to this effect. It is also placed on record that the transferor company's shareholders [M/s. Larson & Toubro

Ltd.] are holding 81,86,79,994 equity shares of Rs.10/- each, along with TN Industrial Development Corporation Ltd., holding 253,20,000 equity shares of Rs.10/- each, being the transferor herein, and six nominees shareholders holding one equity share of Rs.10/- each jointly with M/s. Larson & Toubro Ltd., have accorded their unconditional consent and approval to the Scheme. The secured creditors and the unsecured creditors as well, who are having more than 90% value, did agree and confirm by way of Affidavits, the said Scheme.

4. Now, the Company Petition No.17 of 2017, filed in connection with C.A.No.10 of 2017 that provides the salient features of the Scheme, indicates that the reduction in the share capital of the resulting company shall be effected as an integral part of the Scheme in accordance with the provisions of Section 66 of the Companies Act, 2013. The said reduction will not involve even a diminution of liability in respect of the unpaid share capital or payment of paid up share capital. The Petitioner also assured that in case this Bench is pleased to sanction this Scheme, then, it shall deem to be an Order passed by this Tribunal under Section 66 of the Companies Act, 2013. The staff, workmen and the employees of demerged undertaking on and from the effective date but with effect from the appointed date of the identified persons shall become the staff, workmen and employees of the resulting company. The Petition indicates that there is no likelihood that any of the creditors of the demerged company or resulting company would lose or be prejudiced as a result of the proposed Scheme being passed. The Petition provides that the arrangements are, in no way, going to cause any additional burden on the shareholders of any of these Companies

nor it will prejudicially affect the interest of any of the classes of the creditors. There is no investigation proceedings pending either against the Petitioner Company or against the Resulting Company. In short, the Petition indicates that the said Scheme is not prejudicial to the interests of the creditors both secured and unsecured and other stakeholders.

5. In response to the notices issued in this Company Application, we have received the objection of the Regional Director, Ministry of Corporate Affairs. The Regional Director, Ministry of Corporate Affairs, Chennai, has raised objection with regard to dispensing with the meeting of the shareholders stating that the members and the creditors stand on different footing so far as the protection of their interests are concerned. A meeting of the members is considered to be essential to ensure corporate democracy and principle of participation in important decision making process. Therefore, as a matter of policy, the Government never agreed for dispensing with the meeting of members. In this connection, we may make a reference to the decision given by the Hon'ble High Court of Delhi in **Mazda Theatres Pvt. Ltd. and Anr. Vs. New Bank of India Ltd. and Ors.**, reported in (1975) ILR 1 Delhi 1. For the sake of convenience, we would like to give summary of the observations made by their Lordships which are as follows:-

*It has been observed, the meeting contemplated in Section 391 is analogous to an extraordinary general meeting of the members of the company, inasmuch as a three-fourth majority is required to pass the required resolution. The normal rule is that the consent of the shareholders, whether it is unanimous or by a three-fourth majority, must be obtained in a meeting summoned on the orders of the Court*

*under Section 391. This is in accordance with the general principle that members must act in a general meeting. Inroads have, however, been made on this formal doctrine. Firstly, the consent of all or virtually all the shareholders given even outside a meeting is sufficient to comply with the requirement of a meeting. Secondly, written resolutions instead of those passed in meetings are not capable of being registered, e.g., Section 192 of the Company Act. Thirdly, the doctrine of lifting the veil of incorporation and looking at the reality of the action of the members enables the Court to hold that the consent of the overwhelming majority of the shareholders outside a meeting is sufficient to show that the resolution was supported by virtually all the members of the company. In these three ways substantial compliance rather than a formal compliance meets the requirements of the statute. Lastly, the failure of all the members of the company to object the absence of a meeting constitutes acquiescence from which also their consent can be inferred even though no meeting has been called.*

In the light of the ratio laid down in the above noted case, we are satisfied that the requirement of the law seems to have been fulfilled when all the equity shareholders of the transferor company have accorded their unconditional consent and approval to the Scheme under reference. Therefore, in the given facts and circumstances, the Order passed in the Company Application to dispense with the meeting of the shareholders is legally sound.

The second communication that has been received from the Deputy Commissioner of Income Tax, Corporate Circle-4(1), Chennai, provides that they have no any objection to the processing of the Company Petition and passing of the suitable orders. Besides this, we have not received any objections from other stake holders.

Therefore, we presume that they have no interest in making any representation.

6. We have heard the Counsel for the Petitioner and have perused the Scheme along with records placed on the file. The salient features of the Scheme are as follows:-

*“Part-I deals with the preamble, facts, rationale and benefits of the Scheme including introduction with regard to the Scheme and companies involved in the same.*

*Part-II deals with the definitions and share capital of the Demerged Company and the Resulting Company.*

*Part-III deals with the mechanics of the transfer of the demerger of the operations relating to Ports Business on a going concern basis for consideration being discharged by way of issue of shares of the Resulting Company to the shareholders of the Demerged Company and also to receive lump sum cash payment towards consideration in addition to the allotment of the said shares, re-organisation of the share capital of the Resulting Company, accounting treatment, conduct of business from the Appointed Date inclusive of the Effective Date and also deals with vesting of the Demerged Undertaking along with its employees, continuation of legal proceedings and sets out the general terms and conditions of the process of demerger.*



*Part-IV deals with the re-organisation of the issued, subscribed and paid up equity share capital of the Demerged Company.*

*Finally Part-V deals with the process of demerger, applying to the Hon'ble Tribunal with liberty to modify and amend the Scheme, conditions to which the Scheme is subjected to and all expenditure connected with the Scheme.”*

7. The key rationale of this Scheme is to achieve better management and to have clear focus on business operations, therefore, the management of demerged company has decided to demerge its ports business, thereby transferring and vesting the operations relating to its ports business into a separate company i.e. M/s. Marine Infrastructure Pvt. Ltd., the resulting company. It has further been averred that the demerger of the ports business of M/s. L&T Shipbuilding Limited, the Demerged Company into the Resulting Company would ensure that the business of the demerged company are streamlined and demarcated under different entities, have separate boards to address their own strategies, thus, providing a significant opportunity to introduce new investors and raise funds, considering financial performance and funding requirements of the respective businesses, and to facilitate the reorganisation of the business and to enable the vesting of the demerged undertaking in the resulting company, the ports business, would be transferred on a going concern basis from the appointed date for a consideration as provided in paragraph 10 of the petition and in a manner to be discharged as provided therein. It is worthwhile to mention that Schedule 'B' of the Scheme provides that all the rights, titles and

interests or obligations of the demerged undertakings shall be transferred to and vested in, in the resulting company subject to the exceptions set forth therein. In the definition part, 'appointed date' means the close of business hours of 31<sup>st</sup> of March, 2016.

8. The Demerged Company is entitled to various benefits under incentive schemes and policies in relation to the Demerged Undertaking. The benefits under all of such Schemes and policies shall be transferred to and vest in the Resulting Company and all benefits, entitlements and incentives of any nature whatsoever, including sales tax and income tax concessions/exemptions and incentives, shall be claimed and/or to be claimed by the Resulting Company and these shall relate back to the Appointed Date as if the Resulting Company was originally entitled to all the benefits under such incentive scheme and/or policies, subject to continued compliance by the Resulting Company of all the terms and conditions subject to which the benefits under such incentive schemes were made available to the Demerged Company.

9. It is worthwhile to mention that under para 12 of the Scheme, a detail is provided about the accounting treatment that states as follows:-

*“1) Treatment in the books of Demerged Company*

*(i) On and from the Effective date, the Demerged Company shall record the deletion of the assets and liabilities of the Demerged Undertaking transferred to and vested in the Resulting Company pursuant to the Scheme at their respective book values as appearing in*

*its books as on the Appointed Date and such deletion of assets and liabilities shall take effect from the Appointed Date.*

*(ii) The difference between the net asset value of the Ports Business as transferred and vested in the Resulting Company and the consideration received by the Demerged Company, whether excess or deficit shall be adjusted to the profit and loss account of the Demerged Company.*

2) *Treatment in the books of Resulting Company*

*(i) The Resulting Company shall on and from the Effective Date, record the assets and liabilities of the Demerged Undertaking of the Demerged Company transferred to and vested in it pursuant to the Scheme at their respective fair values as on the Appointed Date and such recording of assets and liabilities shall take effect from the Appointed Date.*

*(ii) Surplus arising out of the excess of net assets value of the Ports Business assigned from the Demerged Company and recorded by the Resulting Company over the amount credited as share capital and other consideration paid or payable by the Resulting Company shall be credited to the reserve account, or deficit, if any, shall be debited to goodwill account of the Resulting Company.*

*(iii) Any deposit (whether in the nature of a security deposit or otherwise) received by the Demerged Company at any time after the Appointed Date but before the Effective Date in connection with the proposed induction of M/s. Adani Ports and Special Economic Zone Ltd. (or its subsidiary) as strategic partner into the Resulting Company will be recorded by the Resulting Company and shall be paid over to Larsen & Toubro Ltd. towards discharge of the liability specified in paragraph 10 (a) (i) above. On any such discharge, the directions contained in paragraph 10 (a) (i) shall be deemed to refer to such deposit as well as the balance liability owed to Larsen & Toubro Ltd.”*

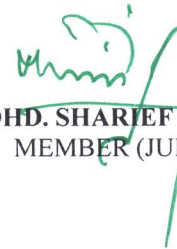
10. The accounting treatment seems to be in conformity with the established accounting standards. In short, there is no apprehension that any creditors of the demerged company or resulting company would lose or be prejudiced as a result of the proposed Scheme being sanctioned. The arrangement of demerger will, in no way, cost any additional burden on the shareholders of any of the companies involved in the Scheme and also it will not prejudicially affect the interest of any classes of the creditors. We do not feel that there is any requirement of any modification in the Scheme. Hence, the Company Petition is allowed and the said Scheme under reference is hereby sanctioned.

11. This Scheme shall be binding on the Transferor Company, Transferee Company and secured & unsecured creditors both. The

Petitioner Companies to the Scheme or other persons interested, shall be at liberty to apply to this Bench for any direction that may be necessary in regard to the working of the said Scheme. Accordingly, the Order of sanction of this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Petitioner Companies shall file with the Registrar of Companies a certified copy of this Order within 30 days from the date of receipt of copy of the order.



(ANANTHA PADMANABHA SWAMY)  
MEMBER (JUDICIAL)



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