

IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH
AT HYDERABAD

C.P.No.363/2016
[CP(TCAA)No.35/HDB/2017]

&

C.P.No.362/2016
[CP(TCAA)No.36/HDB/2017]

Under Section 391/394 of the Companies Act, 1956

In the matter of

SVKR Infra India Limited
6-3-347/9/N, N.V. Plaza, Dwarakapuri Colony,
Near Model House, Punjagutta,
Hyderabad – 500 082.
Telangana.

.... Petitioner/Demerged Company

VAGOR Constructions Private Limited
D.No.1-394-5, Bus Stand Road,
Yemmiganur, Kurnool,
Andhra Pradesh – 518360.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

.... Petitioner/Resulting Company

Vs.

The Regional Director (SER),
Ministry of Corporate Affairs,
Corporate Bhavan, 3rd Floor,
Bandlaguda, Nagalore,
Hyderabad.

... Respondent

Order delivered on: 19.09.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For Petitioners : Mr. V. Venkata Rami Reddy, Advocate

For Respondents : Mr. A. Appa Rao, Central Government Standing
Counsel for Regional Director.

Per: **Ravikumar Duraisamy, Member (Technical)**



ORDER

1. The Company Petition bearing CP.No.363/2016 [CP(TCAA)No.35/HDB/2017] and CP.No.362/2016 [CP(TCAA)No.36/HDB/2017] were filed by SVKR Infra India Limited (Petitioner/Demerged Company) and Vagor Constructions Private Limited (Petitioner/Resulting Company) respectively before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh under Sections 391 & 394 of the Companies Act 1956, by seeking the Hon'ble High Court to sanction Scheme of Arrangement in question (enclosed to the Company Petitions), so as to be binding on all the Shareholders, Creditors and employees of the Demerged Company and Resulting Company and all concerned.
2. As per the Gazette Notification GSR 1134(E) dated 14th December, 2016 issued by the Ministry of Corporate Affairs with effective date of 15th December, 2016 and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 & Rule 23A of NCLT Rules R/w Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016, jurisdiction is conferred on this Tribunal in respect of subject cases and thus pending cases also transferred from the Hon'ble High Court to the NCLT. Accordingly, the Hon'ble High Court transferred these cases to this Bench. On transfer, these cases were listed before this Bench on 01.02.2017, 21.02.2017, 10.03.2017, 17.03.2017, 04.04.017 and for clarifications with regard to properties mentioned in Schedule-1 of the Scheme of Arrangement the cases are posted finally on 19.09.2017.
3. Heard, Mr. V. Venkata Rami Reddy, Learned Counsel for the Demerged/Resulting Companies, Mr. B. Appa Rao, Central Government Standing Counsel for RD and have carefully perused all pleadings along with material papers filed in its support.
4. Brief facts of case which are relevant to the issue in question, are submitted as under:
 - a. Initially, the Petitioner/Demerged Company has filed Company Application No.1373 of 2016 before the Hon'ble High Court of Judicature at Hyderabad



for the State of Telangana and the State of Andhra Pradesh for dispensing with the convening of meeting of shareholders of the transferor Company for consideration of the proposed scheme of arrangement of Demerged Company with Resulting Company as detailed in the Scheme.

b. The said Company Application No.1373 of 2016 was disposed of by Hon'ble High Court vide its Order dated 30.09.2016 dispensing with the conducting of meeting of the shareholders of Petitioner/Demerged Company. It is also recorded in the Order that the shareholders of applicant company that there are six shareholders, who have given written consent by way of Affidavit. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

c. Similarly, the Petitioner/Resulting Company has filed Company Application No.1372 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for dispensing with the convening of meeting of shareholders of the transferee Company for consideration of the proposed scheme of arrangement of Petitioner/Resulting Company with Demerged Company as detailed in the Scheme.

d. The said Company Application No.1372 of 2016 was disposed of by Hon'ble High Court vide its Order dated 30.09.2016 dispensing with the conducting of meetings of the shareholders of Petitioner/Resulting Company. It is also recorded in the Order that there are two shareholders, who have given written consent by way of Affidavit. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

e. **Details of the Petitioner/Demerged Company**

The Petitioner/Demerged Company i.e. SVKR Infra India Limited is a Public Limited Company incorporated under the provisions of the Companies Act, 1956 on 09.01.2008 vide Corporate Identification No.U45209TG2008PLC057070. The Registered Office of the Company is



situated at 6-3-347/9/N, N.V. Plaza, Dwarakapuri colony, Near Model House, Punjagutta, Hyderabad, Telangana – 500082.

The main objects of the Demerged Company as per its Memorandum of Association, in brief are to conceive, plan, survey, design, study and evaluate all steps, process, techniques and methods for setting up of all types of infrastructures projects, Infrastructure solutions, facilities or works, and to finance, build, construct. Install, erect, undertake, lay down, commission, establish, own, operate manage, control, and administer, lease, transfer, all infrastructure projects, facilities or works including industrial/agriculture parks, gardens, roads, bridges, fly-over, highways, roadways, structures and facilities, rail-roads. Railways stations, platforms, Railways yards, rail tracks including gauge conversions thereof, etc.

The Authorized share capital of the Petitioner/Demerged Company as on 30.06.2016 is Rs.12,00,00,000/- divided into 1,20,00,000 equity shares of Rs.10/- each. Issued, Subscribed and Paid-up Share Capital is Rs.9,23,50,000/- divided into 92,35,000 Equity Shares of Rs.10/- each.

f. Details of the Petitioner/Resulting Company

The Resulting Company i.e. Vagor Constructions Private Limited, is a Private Limited Company incorporated under the provisions of the Companies Act, 2013 on 01.08.2016 vide Corporate Identification No.U45500AP2016PTC103773. The Registered Office of the Company is situated at D.No.01/394-5, Bus-Stand Road, Yemmiganur, Kurnool, Andhra Pradesh – 518 360.

The main objects of the Resulting Company as per its Memorandum of Association, in brief are to carry on all the business of builders, real estate-developers, contractors, sub-contractors, dealers and by advancing money to and enter into contracts and arrangements of all kinds with builders, tenants, occupiers and others, land development, service apartments, serviced plots, constructions of residential and commercial premises including business centres and offices, securing lands, private or Government for formation and



development of town ships, and to deal in and act as agents for lands, buildings, factories, houses, flats etc.

The present Authorized Share Capital of the Resulting Company is Rs.4,00,00,000/- divided into 40,00,000 Equity Shares of Rs.10/- each. The Issued, subscribed & Paid up capital of the company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each.

5. The object of Scheme of Arrangement is as follows:

- a) The Scheme of Arrangement provides for transfer of the Commercial Division (“Demerged undertaking”) of the Petitioner/Demerged Company, the assets aggregating to Rs.5,84,95,340/- vide various DTCP Layout Permissions as set out in Schedule-1 to the Scheme of Arrangement.
- b) The demerger of the Demerged undertaking would help the Petitioner/Demerged Company and Resulting Company to focus on the respective businesses more effectively which requires diversified strategies and planning. The Demerged undertaking has underwent substantial growth and would require specific attention, planning and administration. This would bring about focus to the business of both the Demerged and Resulting Companies.

The present Scheme of Arrangement would involve transfer on a going concern basis of the Demerged undertaking as defined hereinafter into the Resulting Company, focusing on the remaining business as defined later in this scheme and in consideration thereof, issue of Equity Shares by the Resulting Company to the Shareholders of the Demerged Company.

- d) The Demerger will also provide scope for independent collaboration and expansion without committing the existing organization in its entirety.
- e) With aforesaid objective, it is proposed for demerger of the Commercial Division in to Resulting Company.



f) The Board of Directors of the Demerged and Resulting Companies were of the opinion that the de-merger would benefit the shareholders, employees and other stakeholders of the both the Companies.

6. The following are brief terms of Scheme of Amalgamation:

- a) The Appointed Date for the purpose of this Scheme means 01.09.2016.
- b) Upon the Scheme becoming effective, the estate, assets, rights, claims, title, interest and authorities including accretions and appurtenances of the Demerged undertaking shall stand transferred to and vested in or deemed to have been transferred to or vested in, as going concern, into the Resulting Company.
- c) The Resulting company shall without any further act or deed and without any further payment, issue and allot to each member of the Demerged Company, whose name is recorded in the Register of members of the Demerged Company, equity shares of the Resulting company in the ratio of 10 equity shares in the Resulting Company of Rs.10/- credited as fully paid up for every 25 equity shares of Rs.10/- each.



On the scheme becoming operative, all permanent employees on the rolls of the Demerged Company pertaining to the Demerged undertaking, in service on the Effective Date shall be deemed to have become the employees of the Resulting Company without interruption or break in their service.

7. The Board of Directors of the Demerged Company and Resulting Company at their respective Board meetings held on 25.08.2016 approved the Scheme in question.

8. It is further stated that the Petitioner/Demerged Company has no secured Creditors. However, the Petitioner/Demerged Company has Current Liabilities

to the extent of Rs.17,84,66,464/- payable to various persons and they have given their consent letters for the scheme.

9. It is further stated that the Petitioner/Resulting Company has no Secured/Unsecured Creditors.

10. The Learned Counsel filed a Memo dated 29.12.2016 before the Hon'ble High Court stating that as per the directions of the Hon'ble High Court on 31.10.2016, the petitioner got published advertisement of the "Notice of Petition" in English Daily (Business Standard) and Telugu Daily (Andhra Bhoomi) on 25.11.2016 and filed a proof of the same before the Hon'ble High Court. The learned Counsel further submits that in pursuant to the Orders dated 31.10.2016 of the Hon'ble High Court, notices were also issued to the Registrar of Companies; Regional Director (SER) on 06.12. 2016 and filed proof of the same.

11. The Learned Counsel filed a Memo dated 03.04.2017 before this Bench and submitted that they have not received any complaints/objections against the proposed Scheme of Arrangement. It is further stated that a copy of the petition has been served on the Income Tax Department at Kurnool on 07.12.2016 and filed proof of the same.

The Regional Director (SER), Hyderabad has filed a common affidavit dated 10.03.2017 in C.P.Nos.362/2016 and 363/2016, by inter-alia stating that the Demerged/Resulting Companies are regular in filing statutory returns, and no complaints, no investigations and no inspections are pending against them.

He has further stated that in pursuant to the General Circular No.1/2014 dated 15.01.2014 issued by the Ministry of Corporate Affairs, New Delhi, wherein comments of Income Tax Department is required to be sought under Section 391 or 394 of the Companies Act, 1956, a letter dated 14.12.2016 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days and no comments were received from IT Department. However, the Principal Commissioner of Income Tax, Kurnool Range, Kurnool vide letter



dated 03.01.2017 has informed that there are no objections for the proposed Scheme.

13. We have carefully perused all the pleadings, Report of the Regional Director (SER), letter dated 03.01.2017 of the Principal Commissioner of Income Tax, Kurnool Range, Kurnool and also relevant provisions of Companies Act. We are convinced that the Demerged/Resulting Companies have complied with all statutory requirements as required under Section 391 & 394 and other relevant provisions of Companies Act, 1956 as detailed supra. The Board of Directors of the Petitioner Companies at its meeting held on 25.08.2016 have approved the Scheme of Arrangement. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Demerged/Resulting Companies are admittedly following all rules/regulations of Companies Act as stated by Regional Director. Hence, we are of considered view that the Company Petitions deserved to be allowed as prayed for.

14. In the result, the CP.No.363/2016 [CP(TCAA)No.35/HDB/2017] and CP.No.362/2016 [CP(TCAA)No.36/HDB/2017] are allowed with the following directions:-

- a) Sanctioned the Scheme of Arrangement as proposed (which is placed along with material papers enclosed with the Petitions) and fixed Appointed Date as 01.09.2016 and it is ordered that the same is binding on all the Equity Shareholders/Members, Creditors (Secured & Unsecured), Employees and all concerned of the Petitioner/Demerged Company and Petitioner/Resulting Company.
- b) The Petitioner Companies are directed to take appropriate steps to submit the said scheme to Registrar of Companies within 30 days from the date of receipt of Copy of this order.
- c) The Petitioner Companies are directed to issue newspaper publication with respect to approval of scheme of arrangement, in the same newspapers in which previous publications were issued in order to ensure



transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.

d) The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Arrangement under the Provisions of the Act.

e) Liberty is granted to any party/parties, who are aggrieved by this order, to seek any direction(s) by way of filing miscellaneous application in the present CPs.



The Petitioner Companies are directed to strictly adhere to the above directions and applicable provisions of Companies Act.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

RAJESWARA RAO VITTANALA
Member (Judicial)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

[Signature]
Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER: CP No. 363/2016 (CPLT) No. 35/H
निर्णय का तारीख 24/7
DATE OF JUDGEMENT: 19.9.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON: 26.9.2017