

IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH
AT HYDERABAD

C.P.No.394/2016
[CP(TCAA)No.55/HDB/2017]
&
C.P.No.395/2016
[CP(TCAA)No.56/HDB/2017]

U/s 391/394 of the Companies Act, 1956

In the matter of

Genome Valley Tech Parks & Incubators Private Limited,
Building 450, Genome Valley,
Turkapally (V), Shamirpet Mandal,
R.R District, Hyderabad – 500078

... Petitioner/Demerged Company

MN Takshila Industries Private Limited,
15-31-LHC-1B-1800, Lodha Bellezza,
KPHB-IV, Kukatpally,
Hyderabad – 500 07.

... Petitioner/Resulting Company

Vs.

1. The Official Liquidator,
Corporate Bhawan, 1stFloor,
Bandlaguda, Nagole,
Hyderabad.

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OF THE ORIGINAL

2. The Regional Director (SER),
Ministry of Corporate Affairs,
Corporate Bhawan, 3rd Floor,
Bandlaguda, Nagole,
Hyderabad.

... Respondents

Order delivered on: 18.10.2017

CORAM:

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

For Petitioner : Mr. V.B. Raju, Advocate

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

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



ORDER

1. The Company Petition bearing CP.No.394/2016 [CP(TCAA)No.55/HDB/2017] and CP.No.395/2016 [CP(TCAA)No.56/HDB/2017] were filed by Genome Valley Tech Parks& Incubators Private Limited (Petitioner/Demerged Company) and MN Takshila Industries Private Limited (Petitioner/Resulting Company) respectively was filed by 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 High Court to sanction scheme of Arrangement in question (enclosed to the Company Petition), so as to be binding on all the members and employees of the Petitioner Companies 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, the above cases were listed before this Bench on 02.02.2017, 23.02.2017, 14.03.2017, 15.03.2017, 05.06.2017, 08.09.2017 and finally posted on 12.09.2017 for clarifications on (a) shareholding pattern of the pre and post scheme of arrangement and (b) whether the petitioner companies have complied with the rules relating to collection of deposits.
3. Heard, Mr. V.B. Raju, Learned Counsel for the Petitioner Companies, Mr. B. Appa Rao, Central Government Standing Counsel 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.1569 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 Petitioner/Demerged Company for consideration of the proposed scheme of arrangement of Petitioner/Demerged Company with MN Takshila Industries Private Limited (Resulting Company) as detailed in the Scheme.
- b. The said Company Application No.1569 of 2016 was disposed of by Hon'ble High Court vide its Order dated 14.11.2016 dispensing with the conducting of meetings of the shareholders of Petitioner/Demerged Company as all the shareholders had given their no objection by mean of affidavits. 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.1570 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 Petitioner/Demerged Company for consideration of the proposed scheme of arrangement of Petitioner/Resulting Company with Genome Valley Tech Parks& Incubators Private Limited (Demerged Company) as detailed in the Scheme.
- d. The said Company Application No.1570 of 2016 was disposed of by Hon'ble High Court vide its Order dated 14.11.2016 dispensing with the conducting of meetings of the equity shareholders and unsecured creditors of Petitioner/Resulting Company as all the shareholders and Unsecured Creditor had given their consent letters to the proposed Scheme of Arrangement. 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. Genome Valley Tech Parks & Incubators Private Limited is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 21.03.2009 vide Corporate Identification No.U74900AP2009PTC063133. The Registered Office of the Company is situated at Building 450, Genome Valley, Turkapally (Village), Shamirpet Mandal, R.R. District, Hyderabad – 500 078.

The main objects of the Petitioner/Demerged Company as per its Memorandum of Association are to carry on business as developers, builders, masonry, managers, operators, hirers and general construction contractors of all kinds of immovable properties, including but not limited to that of specialised life science parks, bio technology parks, laboratories, incubation centers, centers for bio information, human genetics and related research, nutraceutical research, fermentation, microbiology, downstream processing, molecular biology, plant tissue culture, animal tissue culture and analysis, agricultural biotechnology, customized cold storages etc., and among other things to constitute, execute, carry out, equip, improve work and advertise research and development centers, industrial parks, technology parks, sheds, laboratories, commercial complexes and various kinds of buildings., etc.

The Authorized Share Capital of the Petitioner/Demerged Company as on 31.03.2016, is Rs.3,00,00,000/- divided into 30,00,000 Equity Shares of Rs.10/- each. The Issued, subscribed & Paid up capital of the company is Rs.1,63,57,460/- divided into 16,35,746 equity shares of Rs.10/- each.

f. Details of the Resulting Company

The Resulting Company i.e. MN Takshila Industries Private Limited, is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 09.07.2016 vide Corporate Identification No.U74999AP2016PTC110778. The Registered Office of the Company is



situated at 15-31-LHC-1B-1800, Lodha Bellezza, KPHB-IV, Kukatpally, Hyderabad, Telangana– 500072.

The main objects of the Resulting Company as per its Memorandum of Association are to carry on business as developers, builders, masonry, managers, operators, hirers and general construction contractors of all kinds of immovable properties, including but not limited to that of specialised life science parks, bio technology parks, laboratories, incubation centers, centers for bio information, human genetics and related research, nutraceutical research, fermentation, microbiology, downstream processing, molecular biology, plant tissue culture, animal tissue culture and analysis, agricultural biotechnology, customized cold storages etc., and among other things to constitute, execute, carry out, equip, improve work and advertise research and development centers, industrial parks, sheds, laboratories, commercial complexes and various kinds of buildings.

The Authorized Share Capital of the Petitioner/Resulting Company as on 05.10.2016, is Rs.9,00,00,000/- divided into 90,00,000 Equity Shares of Rs.10/- each. The Issued, subscribed & Paid up capital of the company is Rs.4,88,50,000/- divided into 48,85,000equity shares of Rs.10/- each.

5 The object of Scheme of Arrangement i.e. the acquisition, integration and consolidation of the Demerged Business with the Resulting Company would inter-alia be expected to have the following benefits:

- a) Enhance growth prospects for the people and organizations connected with Demerged and Resulting Company whilst unlock shareholder value and create long term value for all the other stakeholders.
- b) Focused approach on the business of developing, building and leasing research and development facilities and provide greater flexibility to Demerged and Resulting Company to meet the needs while carrying out its operations in the best interests of the their shareholders and creditors.



- c) Re-organise the operations to provide focused attention on management and leadership.
- d) Greater leverage in operations planning and process optimization and enhanced flexibility in product offerings.

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

- a) The Appointed Date for the purpose of this Scheme is 01.10.2016.
- b) With effect from the Appointed Date and the Scheme becoming effective, the Demerged Undertaking shall vest in the Resulting Company, as a going concern and shall include all its properties and assets, whether movable or immovable, tangible or intangible, balance in bank, cash or investments and other assets of whatsoever nature such as approvals, quotas, rights, consents, entitlements, licenses, and other certificates and permits issued by the Government of India and/or Government Authorities, and tenancies, privileges and benefits of all contracts, agreements and all other rights, including, lease rights of every kind and description whatsoever, letter of intent, permissions, permissions under Income-tax Act, 1961 and/or any other statutes, incentives if any without any further act or deed so as to become the business, properties and assets of the Resulting Company.

- c) The Demerged Company is a subsidiary of the Resulting Company wherein majority shareholding of the Demerged Company is held by the Resulting Company. Therefore, there will be no issue/allotment of shares as consideration for transfer of Demerged Undertaking to the extent of shareholding in the Demerged Company as held by the Resulting Company and such investment held by the Resulting Company in the Demerged Company shall get adjusted.

- d) However, in case of shareholders of the Demerged Company, other than the Resulting Company, the consideration for Demerger of Demerged Undertaking shall be furthered as provided below:



- i) Upon the Scheme becoming effective and in consideration of transfer and vesting of the Demerged Undertaking, the Resulting Company shall, without any further application or deed, issue and allot equity shares having face value of Rs.10/- (Rupees Ten Only) credited as fully paid-up to the extent indicated below, to the other shareholders of the Demerged Company as on the Record Date holding fully paid-up shares and whose name appear in the register of members or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title, as may be recognized by the Board of Directors.

1 (One) equity share in the Resulting Company of the face value of Rs.10 (Rupees Ten Only) each credited as fully paid-up for every 6 (Six) equity share of Rs.10/- (Rupees Ten Only) each fully paid-up held in the Demerged Company.

- ii) The equity shares to be issued to the members of the Demerged Company in the Resulting Company pursuant to Clause 5.2 (i) of the Scheme shall be subject to the memorandum and articles of association of the Resulting Company and shall rank paripassu in all respects with the existing shares of a similar class, if any, in Resulting Company.



- e) Upon the Scheme becoming effective, all staff, workmen and employees of the Demerged Undertaking in service on the Effective Date shall be deemed to have become staff, workmen and employees of the Resulting Company with effect from the Appointed Date or the date of joining whichever is later, without any break or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Resulting Company (i.e. cost-to-company basis, in monetary terms) shall not be less favourable than those applicable to them with reference to their employment with the Demerged Company on the Effective Date.

f) If any suit, appeal or other proceeding of whatever nature by or against the Demerged Business are pending, including those arising on account of taxation laws and other allied laws under any statute, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the Demerger and by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against Resulting Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Demerged Company, as if this Scheme had not been made. In the event that the legal proceedings referred to herein require the Demerged Company and Resulting Company to be jointly treated as parties thereto, Resulting Company shall be added as party to such proceedings and shall prosecute and defend such proceedings in co-operation with the Demerged Company. In the event of any difference or difficulty in determining as to whether any specific legal or other proceeding relates to the Demerged Business/Demerged Undertaking or not, a certificate issued by the Board of Directors of the Demerged Company as to whether such proceeding relates to the Demerged Business /Demerged Undertaking or not, shall be conclusive evidence of the matter.

g) Upon coming effect of the Scheme, with effect from the Appointed Date, all the assets and liabilities of the Demerged Business appearing in the books of accounts of the Demerged Company including but not limited to loans and advances, trade payables, provisions, fixed assets, etc. shall stand transferred to and vested in the Resulting Company, pursuant to the Scheme.

h) Upon the Scheme becoming effective, the same shall be binding on the Demerged Company and the Resulting Company and all the concerned parties without any further act, deed, matter or thing.

7. The Board of Directors of the Petitioner/Demerged Company at their meeting held on 05.10.2016 approved the Scheme in question.



8. It is further stated that the Hon'ble High Court by Orders dated 14.11.2016 passed in C.A.No.1569/2016, has dispensed with convening the meeting of the shareholders of the Petitioner/Demerged Company as there are two equity shareholders in the Petitioner/Demerged Company and they have given their consent letters to the proposed scheme.
9. It is further stated that the Hon'ble High Court by Orders dated 14.11.2016 passed in C.A.No.1570/2016, has dispensed with convening the meeting of the shareholders and unsecured creditors of the Petitioner Company as there are two equity shareholders and one unsecured creditor in the Petitioner Company and they have given their consent letters to the proposed scheme of arrangement.
10. It is further stated that the Petitioner/Demerged Company has no secured or unsecured Creditors.

The Petitioner/Resulting Company has only 1 (one) secured creditor for Rs.167.50 Crores, who is the Non-Convertible Debenture Holder i.e. D.B. International (Asia) Limited, Singapore and IDBI Trusteeship Services Limited acts as a Debenture Trustee for Non-Convertible Debenture Holder. The said Non-Convertible Debentures are listed on the Debt segment of the Bombay Stock Exchange and they have given their consent. The Petitioner/Resulting Company filed an Affidavit dated 16.06.2017 stating that as per Clause 11(a)(ii) of the Debenture Trust Deed dated 27.09.2016 entered between the Company and Debenture Trustee, Debenture Trustee is authorised to execute and deliver all documents, agreements, instruments etc., and further authorised to do all other actions as may be necessary or desirable in connection with the protection and preservation of the rights of the Debenture Holders.



11. The Learned Counsel filed an Affidavit dated 21.01.2017 before the Hon'ble High Court stating that as per the directions of the Hon'ble High Court, the petitioner got published Newspaper advertisement of the "Notice of Petition" in English Daily (Business Standard – Hyderabad Edition) and Telugu Daily (Andhra Bhoomi – Hyderabad Edition) on 10.12.2016 and filed a proof of the same before the Hon'ble High Court on 23.01.2017. The learned Counsel

further submits that in pursuant to the Orders dated 05.12.2016 of the Hon'ble High Court, notice was also issued to the Regional Director (SER) on 14.12.2016 and filed proof of the same.

12. The Counsel for the Petitioner filed a Memo dated 12.09.2017 sated as under:-

Shareholding pattern of Petitioner/Resulting Company as on the Appointed Date and as on Date

| S.No. | Name of the shareholder | No. Of equity shares of Rs.10/- each | Percentage (%) |
|-------|---|--------------------------------------|----------------|
| 1 | LC Cerestra Core Opportunities Fund Pte. Ltd. | 48,84,999 | 99.99% |
| 2 | Canton Real Estate Pte. Ltd. | 1 | 0.01% |

Shareholding pattern of Petitioner/Resulting Company as on the Appointed Date, Post Demerger.

| S.No. | Name of the shareholder | No. Of equity shares of Rs.10/- each | Percentage (%) |
|-------|---|--------------------------------------|----------------|
| 1 | LC Cerestra Core Opportunities Fund Pte. Ltd. | 49,75,461 | 99.99% |
| 2 | Canton Real Estate Pte. Ltd. | 1 | 0.01% |

It is also stated that the Petitioner Companies has issued reminders to the Income Tax authorities and filed proof of the same. It is further stated that the Petitioner Companies have not accepted any public deposits and only security deposits received towards; lease rentals.

13. The Learned Counsel filed another affidavit dated 23.02.2017 before this Bench submitting that they have not received any complaints/objections against the proposed scheme of arrangement.

14. The Regional Director(SER),Hyderabad has filed a common affidavit dated 15.02.2017 in C.P.Nos.394/2016 and 395/2016, by inter-alia stating that the Petitioner Companyis regular in filing statutory returns, and no complaints, no investigations and no inspections are pending against it.



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 21.12.2016 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. However, no comments/objections of the Income Tax Department were received in response to the said notice till date.

15. We have carefully perused all the pleadings, Report of the Regional Director (SER) and also relevant provisions of the Companies Act, 1956.

16. As generally known the duties of the Debenture Trustee among others are creation of security, creation of Debenture Redemption Reserve, enforce security, protection of the Debenture Holders, ensure payment of interest, monitor utilisation of the funds raised.

17. From the records, it is observed that the Resulting Company has only one secured creditor. The Resulting Company has issued Non-Convertible Debenture Certificates to D.B. International (Asia) Limited, Singapore for Rs.167.50 Crores. IDBI Trusteeship Services Limited acts as a Debenture Trustee for Non-Convertible Debenture Holder. It is also observed from records that original Debenture holder has not given any consent for the proposed scheme of arrangement, whereas, the Debenture Trustee viz. IDBI Trusteeship Services Limited has given the consent vide its letter No.4978/ITSL/OPR/2016-17; dated 15.11.2016.


18. The Bench is of the considered view that the Debenture Trustee cannot exercise the voting rights on behalf of the original debenture holders. As discussed supra the role of the Debenture Trustee is to protect and preserve the rights of the Debenture Holder and the Debenture Trustee cannot enter into the shoes of Debenture Holder and exercise rights on their behalf. Though a clarification was sought when the case was posted on 12.09.2017, the learned Counsel for the Resulting Company appeared and relied upon the terms and conditions [Clause 11.1 (a) (ii)] of the Debenture Trustee Agreement. Counsel failed to clarify



inspite of repeated queries/clarifications raised in this regard. Upon perusal of the same, it is amply clear that the Debenture Trustee can do actions in connection with protection/preservation of rights of the Debenture Holder. However, in the instant case as discussed above, the Debenture Trustee has entered into the shoes of the Debenture Holder and has given the consent for the Scheme, which in our considered view, is not entitle for. Upon perusal of the same, this Bench was not convinced with the condition, where by no express permission/right was given to the Debenture Trustee to exercise the rights on behalf of Debenture Holder.

19. Having considered the entire facts and circumstances and legal points/powers and duties of the Debenture Trustee, the Bench is of the considered view that necessary approval of sole Secured Creditor/Non-Convertible Debenture Holder of the Resulting Company aggregating to Rs.167.50 Crores was not obtained, which is very important/significant in the instant matter. Therefore, the Bench is not inclined to approve the Scheme of Arrangement as prayed for in the Company Petitions i.e. C.P.No.394/2016 [CP(TCAA)No.55/HDB/2017] and C.P.No.395/2016 [CP(TCAA)No.56/HDB/ 2017]. However, liberty is granted to the Petitioner Companies to approach the Tribunal after obtaining all the necessary approval from the concerned parties in accordance with law. With the above directions, C.P.No.394/2016 and C.P.No.395/2016 are disposed of.

20. No order as to costs.


RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)


RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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OF THE ORIGINAL**


For Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

**प्रमाणित प्रति
CERTIFIED TRUE COPY**
केस संख्या
CASE NUMBER C.P.No. 394/2016 (CP(TCAA) No. 55/17
निर्णय का तारीख
DATE OF JUDGEMENT 18.10.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 25.10.2017