

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH**

**CA(CAA) No. 12/KB/2018**

In the matter of:

The Companies Act, 2013;

And

In the matter of :

An application under Section 230 to 232 of  
the Companies Act 2013 ;

In the matter of:

1. ABC CONSULTANTS PVT LTD, a company  
incorporated under the Companies Act,  
1956 and having its registered office at 3  
Decres Lane Kolkata - 700069 West Bengal,  
India within the aforesaid jurisdiction and  
having CIN - U65110WB1973PTC028870  
and PAN AAECA0115F.

.....Demerged Company/Applicant

And

2. QUETZAL ONLINE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at, B-701, Manu Smriti Dongri Pada, Ghod Bunder Road, Thane West Mumbai - 400601 Maharashtra, India, within the jurisdiction of National Company Law Tribunal, At Mumbai and having CIN - U72300MH2007PTC171256 and PAN AAACQ1543K.

..... Resulting Company/APPLICANT

For the Applicants :

Swapna Choubey, Advocate  
CS Mohan Ram Goenka, PCS,

**Date of pronouncement of Order : 16-02-2018**

***CORAM : Mr. Jinan K. R., Member(Judicial)***

ORDER

**Per : Mr. Jinan K. R., Member (Judicial)**

This is an Application filed by the Applicant No. 1/ Demerged Company ABC CONSULTANTS PVT LTD for sanctioning of the Scheme for Arrangement of M/s. ABC Consultants Pvt. Ltd., Demerged Company and the Applicant No.1

with Quetzal Online Private Limited, resulting Company and Applicant No.2 under the provisions of section 230-232 of the Companies Act, 2013 whereby and where under "HEADHONCHOS Undertaking" of the Demerged Company together with all the assets and liabilities relating thereto as going concern is proposed to be transferred to and vested in the Resulting Company on the terms and conditions fully stated in the Scheme of Arrangement (with effect from the Transfer Date or Appointed Date being 1<sup>st</sup> September, 2017), annexed with the Application as "Annexure A-21".

It is stated by the applicant that the aforesaid Scheme of Arrangement will be of benefit to all concerned and is not opposed to public policy.

The object of this Application is to ultimately obtain sanction of this Tribunal to the scheme of Arrangement proposed between /s. ABC Consultants Pvt. Ltd., Demerged Company and the Applicant No.1 with Quetzal Online Private Limited, resulting Company and Applicant No.2 and their respective shareholders whereby and where under "HEADHONCHOS Undertaking" of the Demerged Company is proposed to be demerged and transferred to resulting Company.

Demerged/Applicant Company is presently engaged in the business of Manpower recruitment services, Human Resources Consultancy and management consulting as stated in its Memorandum of Association of the Company.

The reconstruction of the Demerged Company under the Scheme will also allow the Demerged Company to retain its focus on its placement and recruitment divisions and pursue its turnaround plans and strategies, therefore with the restructured capital and asset base more effectively and advantageously. The Scheme will have beneficial results for both the

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Demerged Company and the Resultant Company, their shareholders, employees and all concerned.

The proposed re-alignment will create enhanced value for all stakeholders of the companies as it would facilitate focused strategy, direction and business planning to optimize operational, managerial financial, technical and marketing capabilities of each business.

The Demerged Company desires to continue its placement and recruitment business, as an exclusive entity, which is in operation for about 40(Forty) years and have been able to create a brand image and niche clientele over the period.

The Board of Directors of the Demerged Company and the Resulting Company respectively have at their Board Meetings, held on 10<sup>th</sup> October, 2017 approved and resolved to carry out the said Scheme of Arrangement. The copies of the resolution passed by the applicant Companies are annexed with the Application as "Annexure A-26".

It is submitted by the applicants that there are no investigation proceedings pending under the applicable sections of the Companies Act, 1956 or any other proceedings under the Companies Act of 2013 against any of the Applicant Companies. No proceeding under Section 397 or 398 of the Companies Act of 1956 or applicable section under Companies Act, 2013 has ever been launched against any of the applicant companies.

The Resulting Company, i.e. QUETZAL ONLINE PRIVATE LIMITED having registered office in state of Maharashtra, have filed separate application for directions with the National Company Law Tribunal, Mumbai Bench and has obtained an order no. CSA No. 1024 of 2017 dated 05.01.2018 from the Hon'ble Bench. The Resulting Company is in the process of complying with the directions of the Hon'ble Bench.

It is stated in the application that there are total 6(Six) Equity Shareholders in the Demerged Company/ Applicant No. 1 as on 31.08.2017. The list of shareholders of the Demerged Company/ Applicant No. 1 is annexed as "Annexure A-4".

The shareholders of the Demerged Company / Applicant No. 1 have consented to the Scheme of Arrangement by way of Affidavit to waive the convening and holding of meeting for consideration and approval of the Scheme of Arrangement.

An Affidavit verifying list of shareholders and Affidavit verifying Consent of shareholders for all the applicant companies are annexed with the original application and supplementary documents submitted thereafter.

The NIL list of Debenture Holders as on 31.08.2017 and Affidavits verifying the above lists of Debenture Holders in all the applicant Companies are annexed with the original application.

The Demerged Company/ Applicant No. 1 have 75 (seventy five) Unsecured Creditors and NIL Secured Creditors as on 31.08.2017. The list of Unsecured and Secured Creditors are collectively marked as "Annexure A-6" and affidavit verifying the same is annexed as "Annexure A-7".

A Certificate from the Auditor certifying the List of Creditors, shareholders and Debenture holders of the Demerged Company/ Applicant No. 1 is annexed as "Annexure A-10" to the Original application.

In view of the fact that the Demerged Company/ Applicant No. 1 has NIL Secured Creditors, the Applicant Company has prayed that the convening and holding of meeting of the Secured Creditors of the Demerged Company/ Applicant No. 1 may be dispensed with.

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Heard the learned counsels for the Applicant No. 1, perused the records/documents annexed to the application and the affidavits and supplementary documents filed in the instant proceedings and after hearing the submissions made on behalf of the Applicant No. 1, the following orders are passed:

- a) In view of the consents given in affidavit form by all the Shareholders of the Demerged Company/ Applicant No. 1, meeting of shareholders of the Demerged Company/ Applicant No. 1 is hereby dispensed with.
- b) In view of the fact Demerged Company/ Applicant No. 1 have NIL Secured Creditors as on 31.08.2017, therefore, the question of convening and holding of separate meeting of the Secured Creditors of the Demerged Company/ Applicant No. 1, does not arise.
- c) In view of the fact Demerged Company/ Applicant No. 1 has 75 (Seventy Five) Unsecured Creditors as on 31.08.2017, therefore, the meeting of the Unsecured Creditors of the Demerged Company/ Applicant No. 1 shall be convened and held at 6A, Middleton Street, 1st Floor, Kolkata – 700 071 on Thursday, the 29th day of March, 2018 at 3:00 P.M. for the purpose of considering, and if thought fit approving with or without modification the proposed scheme of Arrangement between M/s. ABC Consultants Pvt. Ltd., Demerged Company and the Applicant No.1 with Quetzal Online Private Limited, resulting Company and Applicant No.2 and their respective shareholders
- d) That at least one month before the aforesaid date of the said meetings of the Demerged Company/ Applicant No. 1, an advertisement convening the meetings of the Unsecured creditors of the Demerged

Company/ Applicant No. 1, indicating the place, date and time as aforesaid shall be published in the local daily Bengali newspaper and in the widely circulated English newspaper. The Publication shall indicate the time within which the copies of the scheme of Arrangement shall be made available to the concerned persons free of charge from the registered office of the Demerged Company / Applicant No. 1 or from the office their Authorised Representative, M/s M R & Associates. The publication shall also indicate that the statement containing necessary details required to be furnished pursuant to section 102 read with sections 230 of the Companies Act 2013 can be obtained free of charge from the registered office of the Demerged Company in accordance with second proviso to sub section (3) of Section 230 of the Companies Act 2013 and rule 7 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

- e) That at least one month before the aforesaid date of the said meetings of the Demerged Company/ Applicant No. 1 a notice convening the said meetings at the place and time as aforesaid together with a copy of the said Scheme of Arrangement, a copy of the Statement required to be sent under the Act and the prescribed form of Proxy be sent by registered post or by hand or by courier or by email, addressed to each of the Unsecured creditors of the concerned Demerged Company/ Applicant No. 1 at their respective or last known addresses.
- f) To serve the notice as per requirements of sub-section (5) of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme and the Statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal; and the concerned Income Tax Assessing Officer along with the Chief Commissioner of Income Tax with PAN Numbers of the





Applicant Companies as also on the Official Liquidators attached to the Hon'ble High Court, Calcutta, having jurisdiction over the Demerged Company/ Applicant No. 1 and such other relevant sectoral regulators/ authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through special messenger or through email or by registered post or speed post, both, within 30 days from the date of this order for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the applicants and/or their Advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

- g) Mr. C. R. Das, Mobile No. 9830541235, shall be the Chairperson for the said meeting of the Unsecured creditors of the Demerged Company/ Applicant No. 1 to be held as aforesaid at a consolidated remuneration of Rs.60,000/- (Rupees Sixty thousand only).
- h) The Chairperson appointed for the said meeting or any person authorised by him/her do issue and send out the notice of the said meeting referred to above.

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- i) The quorum for meeting of the Unsecured creditors of the Demerged Company/ Applicant No. 1 be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
- j) That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the meeting, is filed with the concerned Demerged Company/ Applicant No. 1 at their Registered Office not later than forty eight hours before the meetings.
- k) The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.
- l) The value of each member/creditor shall be in accordance with the respective books of the concerned Demerged Company/ Applicant No. 1 and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.
- m) The Chairperson do report to this Court the results of the said meetings within four weeks from the date of the conclusion of the meeting and his report shall be verified by his affidavit.

The application bearing No. CA(CAA) No. 12/KB/2018 is, accordingly, disposed of.

Parties and the Chairpersons to act on the order.

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Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

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**(Jinan K. R.)**

**Member(Judicial)**

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