

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Misc. A No. 123/KB/2018
IN
C.A.(CAA) NO . 517/ KB / 2017

In the matter of :

Sections 230 to 232 read with Section
66 of the Companies Act, 2013
read with Companies(Compromises
Arrangements,Amalgamations)Rules,
2016

AND

In the matter of :

Speedcrafts Limited (the First Applicant
Company/Demerged Company), a
company incorporated under the
provisions of Companies Act,
1956, having its registered Office at
Layak Bhawan, Boring Canal
Road, Patna - 800 001

..... Demerged Company/First Applicant

AND

Phooltas Technologies Private Limited
(Resulting Company of Second Part),
a company incorporated under the
Companies Act, 2013 having its
registered Office at Layak
Enclave(East), Sahay Nagar, Phulwari
Sharif, Patna - 801506

... Resulting Company/ Second
Applicant

Date of pronouncement of order: 16-04-2018

Coram : Mr. Jinan K.R. Member(Judicial)
Mr. Madan Balachandra Gosavi, Member(Judicial)

For the Applicants :

Ms. Sanchari Chakraborty, Advocate
Mr. Soumik Chakraborty, Advocate
Ms. Debaleena Ganguly, Advocate

CORRIGENDUM TO ORDER DATED 22-03-2018

Per Mr. Jinan K.R. Member(Judicial)

The Applicant Companies have filed an Application bearing No. Misc. A. No. 123/KB/2018 for modification of a portion of the Order of this Tribunal dated 03-01-2018 passed in CA(CAA) No. 517/KB/2017 with regard to place mentioned for holding meetings of the shareholders, secured creditors and the unsecured creditors as referred to at Page 7 of the Order dated 03-01-2018, with regard to change in the date of meeting suitably and also the name of the local daily Hindi newspaper as appearing at page 8 of the aforesaid Order passed by this Tribunal on 03-01-2018.

Accordingly the following amendments in the Order dated 03-01-2018 passed by this Tribunal in CA(CAA) No. 517/KB/2017, in terms of the prayers, were made in the Application on 22-03-2018 :

Sd

Sd

1. As mentioned in page 7, Point Nos. 1 to 3 of the Order dated 03-01-2018, the venue for holding the meeting of shareholders, the secured and unsecured Creditors will be at "Layak Enclave(East), Sahay Nagar, Phulwari Sharif, Patna - 801506, being the registered Office of the Second Applicant/Resulting Company instead of "Layak Bhawan, Boring Canal Road, Patna - 800 001" ;
2. As mentioned in page 8, Point No.6 of the Order dated 03-01-2018, the name of the local daily Hindi Newspaper will be "Dainik Jagaran" instead of "Viswakarma".
3. The date for holding the meetings will be 10-05-2018 instead of 23rd February, 2018.

Consequent to above, further modification of date of meeting has to be made in the Corrigendum Order dated 03-01-2018, as pronounced on 22-03-2018, as below :

The date of meeting as mentioned in paragraph 6, sub-paragraph 3 of the Corrigendum to Order dated 03-01-2018, as pronounced on 22-03-2018, will be 18-05-2018 instead of 10-05-2018.

The above rectification of the order dated 22-03-2018 has been made in terms of the power conferred upon the Tribunal under Rule 154 of the NCLT Rules, 2016.

Accordingly, the order dated 03-01-2018, in the matter, stands rectified as above and this order shall form integral part of the order dated 03-01-2018 and the Corrigendum to Order dated 22-03-2018.

The amended order shall be uploaded immediately and one copy of the order may also be kept in the file.

Sd

Sd

Urgent copy of this order be supplied to the party.

Signed on 16th April, 2018

Sd
16/4/18

(Madan Balachandra Gosavi)
Member(Judicial)

Sd

16/4/18
(Jinán K.R.)
Member(Judicial)

GOUR_STENO

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

C.A. (CAA) NO . 517/ KB / 2017

In the matter of :

Sections 230 to 232 read with Section 66 of
the Companies Act, 2013 read with
Companies (Compromises Arrangements,
Amalgamations) Rules, 2016

AND

In the matter of :

Speedcrafts Limited (the First Applicant
Company/Demerged Company), a
company incorporated under the provisions
of Companies Act, 1956, having its
registered Office at Layak Bhawan,
Boring Canal Road, Patna – 800 001

..... Demerged Company/First Applicant

AND

Phooltas Technologies Private Limited
(Resulting Company of Second Part), a
company incorporated under the Companies
Act, 2013 having its registered Office at
Layak Enclave(East), Sahay Nagar, Phulwari
Sharif, Patna – 801506

... Resulting Company/ Second Applicant

Date of pronouncement of order: 3/1/2018

sd

sd

Mr. V.P. Singh, Member(Judicial)

Mr. Jinan K.R. Member(Judicial)

For the Applicants :

Mr. Rudranan Bhattacharya, Advocate

Ms. Sanchari Chakraborty, Advocate

Mr. Soumik Chakraborty, Advocate

Per Mr. V.P. Singh, Member(Judicial)

The purpose of this Application is to obtain the sanction under Sections 230 to 232 read with Section 66 of the Companies Act, 2013, read with Companies(Compromises, Arrangements, Amalgamations) Rules, 2016 of the Scheme of Arrangement for demerger of rail Business Undertaking of Speedcrafts Limited, First Applicant/Demerged Company) in Phooltas Technologies Private Limited, Second applicant/Resulting Company) and reduction of issued and paid up capital of the Applicant Companies.

A copy of the Scheme of Arrangement is annexed with the application and marked as Annexure "A".

It is submitted in the application that the business of First Applicant Company carried on by itself and through its subsidiaries/affiliate companies/strategic investments in other companies, can broadly be segregated into the following :

- i) Rail Business Undertaking ; and
- ii) Road Business Undertaking

The second applicant company is inter alia authorised to engage in the rail business including rail-maintenance services and other allied activities.

sd

sd

In order to achieve efficiency of operations and management and with the intent of realigning the business operations of the First Applicant Company enabling distinct focus on each of the businesses (Rail and Road), Demerged company proposes to demerge the Rail Business Undertaking into the Second applicant company such that the Demerged company can focus on Road Business and the Resulting Company can focus on the Rail Business.

It is further submitted in the application that the proposed segregation will create enhanced value for shareholders and allow a focussed strategy in operations, which would be in the best interest of the Applicant Companies.

The demerger proposed by the Scheme of Arrangement cum demerger will enable investors to separately hold investments in businesses with different investment characteristics thereby enabling them to select investments which best suit their investment strategies and risk profiles.

The demerger will also provide scope for independent collaboration and expansion without committing the existing organisation in its entirety.

It is further submitted in the Application that the Scheme of Arrangement does not envisage any loss of employment and specifically provides that on the Scheme of Arrangement becoming effective, all the staff, workmen and employees of the rail Business Undertaking of the First Applicant Company shall be deemed to have become the employees of the Second applicant company, without any break or interruption in their services, on not less favourable terms and conditions on which they are engaged as on the effective date.

The financial position of the First Applicant Company can be reviewed from the last audited financial statements as on 31-03-2016. The financials for the year ending 31-03-2017 is yet to be adopted and approved by the shareholders of the Company. The Applicant company has undertaken to provide the audited accounts as and when the same is approved.

sd

sd

The Audited Statements of Account as on 31-03-2016 is annexed with the application and marked Annexure "D".

The Second applicant company is a newly incorporated company. Hence, the audited financials are not available. The current financial position of the second applicant company can be reviewed from the unaudited provisional statement of accounts as on 31-03-2017, which is yet to be adopted by the shareholders. The applicant company has undertaken to provide the audited accounts as and when the same is approved by the members.

The unaudited provisional statement of accounts as on 31-03-2017 of the Second Applicant/Resulting Company, are annexed with the application and marked as Annexure "K"

The Board of Directors of the respective Applicant Companies vide resolution dated 29-08-2017 and dated 20-09-2017 respectively, approved the Scheme of Arrangement.

A certified copy of the Board Resolution of the First Applicant company is annexed with the application and marked as Annexure "F" and the certified copy of the Board Resolution of the Second Applicant Company is annexed with the application and marked as Annexure "N".

It is stated in the application that the First Applicant Company has 12(twelve) equity shareholders.

The list of equity shareholders as on 20-09-2017 of the First Applicant Company is annexed with the application and marked as Annexure "G".

It is also stated in the application that the First Applicant Company is closely held company wherein the entire share capitals is held by Agarwala family or their close relatives or entities controlled by them. No part of the share capital is held by public or any financial institutions.

Sd

Sd

It is further submitted in the application that as on 31-08-2017, the First applicant company has 245 Unsecured Creditors.

A copy of the certificate issued by the chartered Accountant dated 19-09-2017 certifying the list of aforementioned Unsecured Creditors of First Applicant Company is annexed with the application and marked as Annexure "H" and "I".

As on 31-08-2017, the First Applicant Company has 4 Secured Creditors.

A copy of the certificate issued by the Chartered Accountant dated 19-09-2017 certifying the list of Secured Creditors of the First Applicant Company is annexed with the application and marked as Annexure -"H".

The second applicant company has 3 equity shareholders.

The list of equity shareholders as on 20-09-2017 of the second applicant company is annexed with the Application and marked as "M".

It is also stated in the application that the Second Applicant Company is closely held company wherein the entire share capitals is held by Agarwala family or their close relatives or entities controlled by them. No part of the share capital is held by public or any financial institutions.

Accordingly, all the shareholders vide their respective affidavits all dated 21-09-2017, have consented to the waiver of the meeting to be convened for the sanctioning of the Scheme of Arrangement.

The consent of the shareholders vide affidavits dated 21-09-2017 are annexed with the application and collectively marked as Annexure "O".

As on 31-08-2017, the Second applicant company has nil secured and unsecured creditors.

sd

sd

A copy each of the certificate issued by the Chartered Accountant dated 20-09-2017 certifying the list of unsecured and secured creditors of the Second Applicant company is annexed with the application and marked as Annexure "P" and Annexure "Q".

It is submitted in the application that no investigation or proceedings under the Companies Act, 1956/Companies Act, 2013, have been instituted or are pending in relation to the First Applicant company and the Second applicant company.

It is also submitted in the application that no winding up petition is pending against the applicant companies.

In terms of Section 230(2)(b) of the Act, it is declared by the applicant companies that the Scheme envisages reduction of share capital of the demerged and the resulting company as stated in the Scheme of Arrangement.

It is further submitted that in terms of Section 230(2)(c) of the Act, the proposed Scheme of Arrangement is not a corporate debt restructuring scheme.

The accounting treatment specified in the Scheme of Arrangement is in conformity with the accounting standard prescribed under Section 133 of the Companies Act, 2013.

The certificate issued by the respective statutory auditors of the First Applicant company and the Second applicant company, to the effect are annexed with the application and marked as Annexure "R" and Annexure "S", respectively.

Heard the learned Advocate of the applicants, perused the records documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed by this Tribunal :

sd

sd

1. That a meeting of equity shareholders of the First Applicant Company/Demerged Company shall be convened and held on 23rd February, 2018 at 2.00 P.M at Layak Bhawan, Boring Canal Road, Patna – 800 001 for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement.
2. That a meeting of Secured creditors of the First Applicant Company/Demerged Company shall be convened and held on 23rd February, 2018 at 3.00 P.M at Layak Bhawan, Boring Canal Road, Patna – 800 001 for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement.
3. That a meeting the Unsecured creditors of the First Applicant Company/Demerged Company shall be convened and held on 23rd February, 2018 at 4.00 p.m. at Layak Bhawan, Boring Canal Road, Patna – 800 001 for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement.
4. In view of the consent given by the shareholders of the Second Applicant Company/Resulting Company as per the affidavits collectively marked as Annexure "O" of the application, convening and holding of separate meeting of the shareholders of the Second Applicant Company/Resulting Company, for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement, is dispensed with.

sd

sd

5. There being 'Nil' secured and 'Nil' unsecured creditors of the Second Applicant Company/Resulting Company, convening and holding of separate meetings of the secured and the unsecured creditors of the Second Applicant Company/ Resulting Company, for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement, is dispensed with.
6. That at least 30 (thirty) clear days before the date of the said separate meetings of the equity shareholders, secured creditors and the unsecured creditors of the First Applicant Company/Demerged Company, an advertisement convening the meetings and stating that copies of the said Scheme of Arrangement and of the Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and a form of proxy can be obtained free of charge at the Registered Office of the concerned applicant companies or at the office of their Advocate, Ms. Sanchari Chakraborty, Advocate, be inserted once each in the 'Viswakarma', local daily Hindi newspaper and in the English Newspaper "Economic Times".
7. That in addition, at least 30 (thirty) clear days before the separate meetings to be held as aforesaid, a notice convening the said meetings of the equity shareholders, secured creditors and the unsecured creditors of the First Applicant Company 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 e-mail, both addressed to each of the equity shareholders, secured creditors and the unsecured creditors of the concerned applicant Company at their respective or last known addresses.

Sd

Sd

8. 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 of Arrangement and the Statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, Patna; and the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN numbers of the Applicant Companies having jurisdiction over the Applicant Companies 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 , through E-Mail and by Speed Post, special messenger or by registered post, both, within 14 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 Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies (Compromises, Arrangements & Arrangement) Rules, 2016 with necessary variations incorporating the directions therein.
9. That Shri Vijay Bahadur Rai, Senior Advocate, (Mobile No. 9835109287) shall be the Chairperson for the said meetings of the equity shareholders, secured creditors and the unsecured creditors of the First Applicant Company/Demerged Company to be held as aforesaid at a consolidated remuneration of Rs. 80,000/- (Rupees eighty thousand

sd

sd

only)

10. That the Chairperson appointed for the said meetings or any person authorised by him do issue and send out the notice of the said meetings referred to above.
11. The quorum for the meetings of the Equity Shareholders of the First Applicant Company/Demerged Company and the quorum for the meeting of the secured creditors and the unsecured creditors of the First Applicant Company/Demerged Company, be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
12. 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 Applicant Company at their Registered Office not later than forty eight hours before the meetings. 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.
13. That the value of each creditor shall be in accordance with the respective books of the concerned applicant Company and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.
14. That the Chairperson do report to this Court the results of the said meetings within four weeks from the date of the conclusion of the respective meetings and his report shall be verified by his affidavit.

sd

sd

The petition bearing No. CA(CAA) No. 517/KB/2017 is, accordingly,
disposed of.

Parties and the Chairpersons to act on the order.

Urgent certified copy of this order, if applied for be issued upon compliance
with all requisite formalities.

Sd

(Jinan K./R.)
Member(Judicial)

Sd

11/18

(V.P. Singh)
Member(Judicial)

GOUR_STENO

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Misc. A No. 123/KB/2018
IN
C.A .(CAA) NO . 517/ KB / 2017

In the matter of :

Sections 230 to 232 read with Section
66 of the Companies Act, 2013
read with Companies(Compromises
Arrangements,Amalgamations)Rules,
2016

AND

In the matter of :

Speedcrafts Limited (the First Applicant
Company/Demerged Company), a
company incorporated under the
provisions of Companies Act,
1956, having its registered Office at
Layak Bhawan, Boring Canal
Road, Patna - 800 001

..... Demerged Company/First Applicant

AND

Phooltas Technologies Private Limited
(Resulting Company of Second Part),
a company incorporated under the
Companies Act, 2013 having its
registered Office at Layak
Enclave(East), Sahay Nagar, Phulwari
Sharif, Patna - 801506

... Resulting Company/ Second
Applicant

Date of pronouncement of order: ~~23~~-03-2018

Coram : Mr. Jinan K.R. Member(Judicial)

For the Applicants :

Ms. Sanchari Chakraborty, Advocate

Mr. Soumik Chakraborty, Advocate

Ms. Debaleena Ganguly, Advocate

CORRIGENDUM TO ORDER DATED 03-01-2018

Per Mr. Jinan K.R. Member(Judicial)

The Applicant Companies have filed an Application bearing No. Misc. A. No. 123/KB/2018 for modification of a portion of the Order of this Tribunal dated 03-01-2018 passed in CA(CAA) No. 517/KB/2017 with regard to place mentioned for holding meetings of the shareholders, secured creditors and the unsecured creditors as referred to at Page 7 of the Order dated 03-01-2018 and also the name of the local daily Hindi newspaper as appearing at page 8 of the aforesaid Order passed by this Tribunal on 03-01-2018.

It has been stated in the application Misc. A No. 123/KB/2018 filed by the Applicants that the place of the meeting as mentioned in the Order is insufficient to accommodate the large number of unsecured creditors and hence it is prayed that the place of the said meeting as appearing at page 7 of the said order being Layak Bhawan, Boring Canal Road, Patna – 800

001 be changed to Layak Enclave(East), Sahay Nagar, Phulwari Sharif, Patna – 801506, being the registered Office of the Second Applicant.

It has also been stated in the Application that the local Hindi daily newspaper, namely, "Viswakarma" as appearing at page number 8 of the said Order dated 03-01-2018 of this Tribunal be modified to "Dainik Jagaran" since no such newspaper by the name of "Viswakarma" is in circulation in Patna.

It has further been stated that the date of holding the meeting may be extended suitably otherwise the applicant will be unable to comply with the statutory requirement period of thirty days as per statutory compliance.

Heard the Ld. Counsel for the applicants.

The following amendments in the Order dated 03-01-2018 passed by this Tribunal in CA(CAA) No. 517/KB/2017, in terms of the prayers made in the Application, are made :

1. As mentioned in page 7, Point Nos. 1 to 3 of the Order dated 03-01-2018, the venue for holding the meeting of shareholders, the secured and unsecured Creditors will be at "Layak Enclave(East), Sahay Nagar, Phulwari Sharif, Patna – 801506, being the registered Office of the Second Applicant/Resulting Company instead of "Layak Bhawan, Boring Canal Road, Patna – 800 001" ;
2. As mentioned in page 8, Point No.6 of the Order dated 03-01-2018, the name of the local daily Hindi Newspaper will be "Dainik Jagaran" instead of "Viswakarma".
3. The date for holding the meetings will be 10-05-2018 instead of 23rd February, 2018.

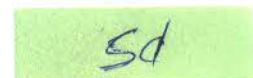
The above rectification of the order dated 03-01-2018 has been made in terms of the power conferred upon the Tribunal under Rule 154 of the NCLT Rules, 2016.

Accordingly, the order dated 03-01-2018, in the matter, stands rectified as above and this order shall form integral part of the order dated 03-01-2018.

The amended order shall be uploaded immediately and one copy of the order may also be kept in the file.

Urgent copy of this order be supplied to the party.

Signed on 22nd day of March, 2018.



(Jinān K.R.)
Member(Judicial)

GOUR_STENO

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

C.A .(CAA) NO . 517/ KB / 2017

In the matter of :

Sections 230 to 232 read with Section 66 of
the Companies Act, 2013 read with
Companies (Compromises Arrangements,
Amalgamations) Rules, 2016

AND

In the matter of :

Speedcrafts Limited (the First Applicant
Company/Demerged Company), a company
incorporated under the provisions of
Companies Act, 1956, having its
registered Office at Layak Bhawan, Boring
Canal Road, Patna – 800 001

..... Demerged Company/First Applicant

AND

Phooltas Technologies Private Limited
(Resulting Company of Second Part), a
company incorporated under the Companies
Act, 2013 having its registered Office at
Layak Enclave(East), Sahay Nagar, Phulwari
Sharif, Patna – 801506

... Resulting Company/ Second Applicant

Date of pronouncement of Amended order: ~~23~~-03-2018

Sd

oram : Mr. Jinan K.R. Member(Judicial)

For the Applicants :

Mr. Rudranan Bhattacharya, Advocate

Ms. Sanchari Chakraborty, Advocate

Mr. Soumik Chakraborty, Advocate

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

O R D E R

The purpose of this Application is to obtain the sanction under Sections 230 to 232 read with Section 66 of the Companies Act, 2013, read with Companies(Compromises, Arrangements, Amalgamations) Rules, 2016 of the Scheme of Arrangement for demerger of rail Business Undertaking of Speedcrafts Limited, First Applicant/Demerged Company) in Phooltas Technologies Private Limited, Second applicant/Resulting Company) and reduction of issued and paid up capital of the Applicant Companies.

A copy of the Scheme of Arrangement is annexed with the application and marked as Annexure "A".

It is submitted in the application that the business of First Applicant Company carried on by itself and through its subsidiaries/affiliate companies/strategic investments in other companies, can broadly be segregated into the following :

- i) Rail Business Undertaking ; and
- ii) Road Business Undertaking

The second applicant company is inter alia authorised to engage in the rail business including rail-maintenance services and other allied activities.

sd

In order to achieve efficiency of operations and management and with the intent of realigning the business operations of the First Applicant Company enabling distinct focus on each of the businesses (Rail and Road), Demerged company proposes to demerge the Rail Business Undertaking into the Second applicant company such that the Demerged company can focus on Road Business and the Resulting Company can focus on the Rail Business.

It is further submitted in the application that the proposed segregation will create enhanced value for shareholders and allow a focussed strategy in operations, which would be in the best interest of the Applicant Companies.

The demerger proposed by the Scheme of Arrangement cum demerger will enable investors to separately hold investments in businesses with different investment characteristics thereby enabling them to select investments which best suit their investment strategies and risk profiles.

The demerger will also provide scope for independent collaboration and expansion without committing the existing organisation in its entirety.

It is further submitted in the Application that the Scheme of Arrangement does not envisage any loss of employment and specifically provides that on the Scheme of Arrangement becoming effective, all the staff, workmen and employees of the rail Business Undertaking of the First Applicant Company shall be deemed to have become the employees of the Second applicant company, without any break or interruption in their services, on not less favourable terms and conditions on which they are engaged as on the effective date.

The financial position of the First Applicant Company can be reviewed from the last audited financial statements as on 31-03-2016. The financials for the year ending 31-03-2017 is yet to be adopted and

approved by the shareholders of the Company. The Applicant company has undertaken to provide the audited accounts as and when the same is approved.

The Audited Statements of Account as on 31-03-2016 is annexed with the application and marked Annexure "D".

The Second applicant company is a newly incorporated company. Hence, the audited financials are not available. The current financial position of the second applicant company can be reviewed from the unaudited provisional statement of accounts as on 31-03-2017, which is yet to be adopted by the shareholders. The applicant company has undertaken to provide the audited accounts as and when the same is approved by the members.

The unaudited provisional statement of accounts as on 31-03-2017 of the Second Applicant/Resulting Company, are annexed with the application and marked as Annexure "K"

The Board of Directors of the respective Applicant Companies vide resolution dated 29-08-2017 and dated 20-09-2017 respectively, approved the Scheme of Arrangement.

A certified copy of the Board Resolution of the First Applicant company is annexed with the application and marked as Annexure "F" and the certified copy of the Board Resolution of the Second Applicant Company is annexed with the application and marked as Annexure "N".

It is stated in the application that the First Applicant Company has 12(twelve) equity shareholders.

The list of equity shareholders as on 20-09-2017 of the First Applicant Company is annexed with the application and marked as Annexure "G".

It is also stated in the application that the First Applicant Company is closely held company wherein the entire share capitals is held by Agarwala family or their close relatives or entities controlled by them. No part of the share capital is held by public or any financial institutions.

It is further submitted in the application that as on 31-08-2017, the First applicant company has 245 Unsecured Creditors.

A copy of the certificate issued by the chartered Accountant dated 19-09-2017 certifying the list of aforementioned Unsecured Creditors of First Applicant Company is annexed with the application and marked as Annexure "H" and "I".

As on 31-08-2017, the First Applicant Company has 4 Secured Creditors.

A copy of the certificate issued by the Chartered Accountant dated 19-09-2017 certifying the list of Secured Creditors of the First Applicant Company is annexed with the application and marked as Annexure -"H".

The second applicant company has 3 equity shareholders.

The list of equity shareholders as on 20-09-2017 of the second applicant company is annexed with the Application and marked as "M".

It is also stated in the application that the Second Applicant Company is closely held company wherein the entire share capitals is held by Agarwala family or their close relatives or entities controlled by them. No part of the share capital is held by public or any financial institutions.

Accordingly, all the shareholders vide their respective affidavits all dated 21-09-2017, have consented to the waiver of the meeting to be convened for the sanctioning of the Scheme of Arrangement.

The consent of the shareholders vide affidavits dated 21-09-2017 are annexed with the application and collectively marked as Annexure "O".

As on 31-08-2017, the Second applicant company has nil secured and unsecured creditors.

A copy each of the certificate issued by the Chartered Accountant dated 20-09-2017 certifying the list of unsecured and secured creditors of the Second Applicant company is annexed with the application and marked as Annexure "P" and Annexure "Q".

It is submitted in the application that no investigation or proceedings under the Companies Act, 1956/Companies Act, 2013, have been instituted or are pending in relation to the First Applicant company and the Second applicant company.

It is also submitted in the application that no winding up petition is pending against the applicant companies.

In terms of Section 230(2)(b) of the Act, it is declared by the applicant companies that the Scheme envisages reduction of share capital of the demerged and the resulting company as stated in the Scheme of Arrangement.

It is further submitted that in terms of Section 230(2)(c) of the Act, the proposed Scheme of Arrangement is not a corporate debt restructuring scheme.

The accounting treatment specified in the Scheme of Arrangement is in conformity with the accounting standard prescribed under Section 133 of the Companies Act, 2013.

The certificate issued by the respective statutory auditors of the First Applicant company and the Second applicant company, to the effect are annexed with the application and marked as Annexure "R" and Annexure "S", respectively.

Heard the learned Advocate of the applicants, perused the records documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed by this Tribunal :

1. That a meeting of equity shareholders of the First Applicant Company/Demerged Company shall be convened and held on 10-05-2018 at 2.00 P.M at Layak Enclave(East), Sahay Nagar, Phulwari Sharif, Patna – 801 506 for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement.
2. That a meeting of Secured creditors of the First Applicant Company/Demerged Company shall be convened and held on 10-05-2018 at 3.00 P.M at Layak Enclave(East), Sahay Nagar, Phulwari Sharif, Patna – 801 506 for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement.
3. That a meeting the Unsecured creditors of the First Applicant Company/Demerged Company shall be convened and held on 10-05-2018 at 4.00 p.m. at Layak Enclave(East), Sahay Nagar, Phulwari Sharif, Patna – 801 506 for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement.
4. In view of the consent given by the shareholders of the Second Applicant Company/Resulting Company as per the affidavits collectively marked as Annexure "O" of the application, convening and holding of separate meeting of the shareholders of the Second

Sd

Applicant Company/Resulting Company, for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement, is dispensed with.

5. There being 'Nil' secured and 'Nil' unsecured creditors of the Second Applicant Company/Resulting Company, convening and holding of separate meetings of the secured and the unsecured creditors of the Second Applicant Company/ Resulting Company, for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Arrangement, is dispensed with.

6. That at least 30 (thirty) clear days before the date of the said separate meetings of the equity shareholders, secured creditors and the unsecured creditors of the First Applicant Company/Demerged Company, an advertisement convening the meetings and stating that copies of the said Scheme of Arrangement and of the Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and a form of proxy can be obtained free of charge at the Registered Office of the concerned applicant companies or at the office of their Advocate, Ms. Sanchari Chakraborty, Advocate, be inserted once each in the 'Dainik Jagaran', local daily Hindi newspaper and in the English Newspaper "Economic Times".

7. That in addition, at least 30 (thirty) clear days before the separate meetings to be held as aforesaid, a notice convening the said meetings of the equity shareholders, secured creditors and the unsecured creditors of the First Applicant Company 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 e-mail, both

addressed to each of the equity shareholders , secured creditors and the unsecured creditors of the concerned applicant Company at their respective or last known addresses.

8. 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 of Arrangement and the Statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, Patna; and the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN numbers of the Applicant Companies having jurisdiction over the Applicant Companies 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 , through E- Mail and by Speed Post, special messenger or by registered post, both, within 14 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 Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies (Compromises, Arrangements & Arrangement) Rules, 2016 with necessary variations incorporating the directions therein.

sd

9. That Shri Vijay Bahadur Rai, Senior Advocate, (Mobile No. 9835109287) shall be the Chairperson for the said meetings of the equity shareholders, secured creditors and the unsecured creditors of the First Applicant Company/Demerged Company to be held as aforesaid at a consolidated remuneration of Rs. 80,000/- (Rupees eighty thousand only)
10. That the Chairperson appointed for the said meetings or any person authorised by him do issue and send out the notice of the said meetings referred to above.
11. The quorum for the meetings of the Equity Shareholders of the First Applicant Company/Demerged Company and the quorum for the meeting of the secured creditors and the unsecured creditors of the First Applicant Company/Demerged Company, be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
12. 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 Applicant Company at their Registered Office not later than forty eight hours before the meetings. 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.
13. That the value of each creditor shall be in accordance with the respective books of the concerned applicant Company and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.

14. That the Chairperson do report to this Court the results of the said meetings within four weeks from the date of the conclusion of the respective meetings and his report shall be verified by his affidavit.

The petition bearing No. CA(CAA) No. 517/KB/2017 is, accordingly, disposed of.

Parties and the Chairpersons to act on the order.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

Sd

(Jinān K.R.)
Member(Judicial)

GOUR_STENO