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27/03/24

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SPECIAL BENCH
COURT - 1

C.P.(CAA)/57(AHM)2023 in
C.A.(CAA)/47(AHM)2023

IN THE MATTER OF:

Mahalaxmi Rubtech Limited
Mahalaxmi Fabric Mills Private Limited
Globale Tessile Private Limited

.....Applicants

Date : 04.03.2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Dr. V. G. Venkata Chalapathy , Hon'ble Member(T)

Order under Rule 154 of NCLT Rules, 2016

1. This Tribunal is empowered under Rule 154(1) of NCLT Rules, 2016 to correct any error in its order. Following corrections are made by us *suo moto*.
2. This matter was pronounced on 04.03.2024. However, on perusal of the order passed in the captioned matter, it is seen that there is a pagination error i.e. the total number of pages at the end of the aforementioned order shown as 28. There are only 27 pages. Further, at the 5th line of sub-clause (vi) of Clause 26 of the order, it is inadvertently mentioned as Company No.1 instead of Company No.2. We hereby rectify the said errors.
3. The rectified order be uploaded.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.301
C.P.(CAA)/57(AHM)2023 in
C.A.(CAA)/47(AHM)2023

Order under Sections 230-232 of the
Companies Act 2013

IN THE MATTER OF:

Mahalaxmi Rubtech Limited
Mahalaxmi Fabric Mills Private Limited
Globale Tessile Private Limited

.....Applicants

Order delivered on ..04/03/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Dr. V. G. Venkata Chalapathy , Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT-1**

C.P.(CAA)/57(AHM)2023
in
C.A.(CAA)/47(AHM)2023

[Application under Sections 230-232 and other relevant provisions of the Companies Act, 2013 and Rules framed thereunder]

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

In the matter of:-

Mahalaxmi Rubtech Limited

CIN No: L25190GJ1991PLC016327
having its Corporate Office at:
"Mahalaxmi House", YSL Avenue,
Opp. Ketav Petrol Pump, Polytechnic
Road, Ambawadi, Ahmedabad,
Gujarat 380 015 and having its
Registered Office at: 47, New Cloth
Market, Outside Raipur Gate,
Ahmedabad, Gujarat - 380 002.

....Petitioner Company No.1/
Demerged Company No.1

**Mahalaxmi Fabric Mills Private
Limited**

CIN No: U17100GJ1991PTC015345
[Formerly known as "Sonnet Colours
Pvt.Ltd."]
Registered Office at: "Mahalaxmi
House", YSL Avenue, Opp. Ketav Petrol
Pump, Polytechnic Road, Ambawadi,
Ahmedabad, Gujarat 380 015.

....Petitioner Company No.2/
Resulting Company No.1

Globale Tessile Private Limited

CIN No: 17299GJ2017PTC098506
Registered Office at:
"Mahalaxmi House", YSL Avenue,
Opp. Ketav Petrol Pump, Polytechnic
Road,



Ambawadi, Ahmedabad, Gujarat - 380 015.Petitioner Company No.3/
Resulting Company No.2

Order delivered on 04.03.2024

CORAM:

MR. SHAMMI KHAN, MEMBER (JUDICIAL)
DR. V. G. VENKATA CHALAPATHY, MEMBER (TECHNICAL)

APPEARANCE:

For the Petitioners : Mr. Jaimin Dave, Advocate.
For the Regional Director : Mr. Shiv Pal Singh, Deputy Director
For the Income Tax : Ms. Riya Navin, Proxy Advocate for
Ms. Maithili Mehta, Advocate

ORDER

1. The present joint Company Petition has been filed by the Petitioner Companies under Sections 230-232 and other relevant provisions of the Companies Act, 2013 and Rules framed thereunder, seeking approval of the Scheme of Arrangement, in the nature of Demerger, between M/s. Mahalaxmi Rubtech Limited (Demerged Company), M/s. Mahalaxmi Fabric Mills Private Limited (Resulting Company No.1) and M/s. Globale Tessile Private Limited (Resulting Company No.2) and their respective Shareholders and Creditors (the "Scheme"). The said Scheme is annexed at "Annexure E" along with the petition.
2. The Scheme of Arrangement proposes to demerge the Traditional Textiles Processing Division located at Narol, Ahmedabad and Wind Power Division of Mahalaxmi Rubtech Limited (Demerged Company) along with existing investment of Mahalaxmi Rubtech



Limited (Demerged Company) in its wholly owned subsidiary company namely Mahalaxmi Exports Private Limited (CIN:U17299GJ2019PTC110673) and vesting the same into Mahalaxmi Fabric Mills Private Limited (Resulting Company No.1). It is also proposes to simultaneously demerge the Trading Textiles Division of Mahalaxmi Rubtech Limited (Demerged Company) and vesting the same into Globale Tessile Private Limited (Resulting Company No.2) which is a wholly owned subsidiary Company of Mahalaxmi Rubtech Limited (Demerged Company). After Demerger, Rubber /Technical Textiles Division and Weaving Division located at Sanand, Dist. Ahmedabad, shall be remaining business of Mahalaxmi Rubtech Limited (Demerged Company).

3. An affidavit in support of petition has been sworn by Mr. Jeetmal B. Parekh, authorised signatory of the Petitioner Companies and the same is annexed with the petition. The above-named authorised signatory of the Petitioner Companies has been authorised vide Board Resolutions dated 16.02.2023.
4. The Petitioner Companies had filed a joint Company Application before this Tribunal being CA (CAA) No. 47 of 2023, inter alia, sought dispensation of the meeting of secured creditor of the Demerged Company and sought directions for convening and holding meetings of Equity Shareholders and Unsecured Creditors of all the applicant companies. Since there were no secured creditors in the Resulting Companies as well as there were no preference shareholders in the applicant companies, meetings of the secured creditors of the Resulting Companies as well as meetings of the preference shareholders were not required.



5. By an order dated 19.10.2023 passed in CA (CAA) /47(AHM)2023, this Tribunal directed to convene meetings of Equity Shareholders and Unsecured Creditors of the Demerged Company, Resulting Company No. 1 and Resulting Company No. 2 on 30.11.2023. The meeting of Equity Shareholders of the Demerged Company was ordered to be convened through VC/OAVM. This Tribunal appointed Dr. Deepti Mukesh as Chairperson and Ms. Gauri Sethi as Scrutinizer for the above said meetings and gave further directions to comply with various stipulations contained in the Order including filing of the Chairman's Report. This Tribunal also directed issuance of notices to the Statutory/Regulatory Authorities viz. (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, (iii) Income Tax Authorities with copy to the Principal Commissioner of Income Tax Office, (iv) BSE Limited, National Stock Exchange of India Limited, and Securities and Exchange Board of India, to such other sectoral regulatory authorities who may govern the working of the Applicant Companies.
6. In compliance of the order dated 19.10.2023 passed by this Tribunal in CA (CAA) No. 47 of 2023, the Petitioner Companies filed affidavit of service of notice of meetings and publication of advertisements, along with proof of paper publication, on 22.11.2023 vide Inward No. D4581. Separate meetings of Equity Shareholders and Unsecured Creditors of Petitioner Companies were duly convened on 30.11.2023. The Chairman has filed Reports along with Scrutinizers Reports on the above said meetings on 04.12.2023, vide Inward No.D4859 & D4860 report of meetings of the Equity Shareholders and Unsecured



Creditors of the Demerged Company, vide Inward No. D4861 & D4862 report of meetings of Equity Shareholders and Unsecured Creditors of the First Resulting Company, vide Inward No.D4863 & D4864 report of meetings of Equity Shareholders and Unsecured Creditors of the Resulting Company No.2. The said reports confirm the approval to the proposed Scheme with requisite majority by the Equity Shareholders and Unsecured Creditors of the Petitioner Companies. Thus, all the stakeholders have approved the Scheme of Arrangement with requisite majority.

The material provisions of the proposed scheme are mentioned in Para 12 of the application in Page 17 to 26 as Part B, C and D. The prayers are mentioned in Para 45 of the application in terms of Sec 230 to 232 of Companies Act 213 read with Rule 15 and 16 of the Companies (Compromise, Arrangements and Amalgamations) Rules 2016. The applicant was directed on 14 12 2023 to advertise notice of hearing in two newspapers and also serve notices on respondents mentioned in the order which was complied.

7. In response to the notice served upon the Regional Director (RD), a Representation dated 31.01.2024 was filed by the RD, North-Western Region, along with the report from the Registrar of Companies (RoC), on 11.01.2024 vide Inward No.R49. Their main observations are as under:-

- i) In para 5(ii) of RD report as well as para14(4) of the RoC report it is stated that, there is no provision in the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to transfer the authorised capital of



Demerged Company into Resulting Company(s). Thus, Resulting Companies shall be required to comply with Section 61 and 64 of the Companies Act, 2013 and shall file necessary e-form for increase or division of its authorised capital under the MCA portal along with payment of Fee/ Additional Fee and necessary Stamp Fee, as applicable.

- ii) In para 5(iii) of RD report as well as 14(5) of the RoC report it is stated that, the proposed Scheme provides for conversion of Resulting Companies from Private Limited to Public Limited. Hence, procedure laid down under Section 14 of the Companies Act, 2013 and other applicable provisions and Rules made thereunder shall be followed by the Resulting Companies and shall file necessary applications in prescribed e-forms with MCA along with requisite fees/ additional Fees for necessary approval.
- iii) In para 6(i) it is stated that, the Demerged Company is listed with BSE & NSE, it has to place confirmation/ undertaking that Demerged Company has complied with the observations in the letters dated 01.08.2023 of the stock exchanges i.e., BSE and NSE.
- iv) In para 6(ii) it is stated that, there is no provision in the Companies Act for reduction of the authorized capital of Demerged Company & increase of the authorized capital of resulting companies by virtue of demerger scheme. Thus, this Tribunal may not allow clause 3.1 of Part-B



of the scheme for transfer of authorised capital of Demerged Company to the authorized capital of the Resulting Companies.

- v) In para 6(iii) it is stated that, the Petitioner Companies has to undertake that the Scheme enclosed to Company Application and Company Petition are one and the same and there is no discrepancy or no change is made.
- vi) In para 6(iv) it is stated that, the Assets of Rs.8728.78 lakhs & Rs.2925.25 lakhs and Liabilities of Rs.5306.57 lakhs and Rs.1722.04 lakhs to be transferred from Demerged Company to Resulting Company No.1 and Resulting Company No.2 respectively. Since Assets to be transferred are more than liabilities, the Petitioner Companies shall undertake to serve details to creditors of Demerged Company as on Appointed Date.
- vii) In para 6(v) it is stated that, since Foreign National/ NRI/ Foreign Bodies Corporate are holding shares in Demerged Company, the Petitioner Companies to undertake about the compliances of FEMA and RBI guidelines.
- viii) In para 6(vi) it is stated that as per charge Index available on MCA 21 portal, the Demerged Company having four open secured charge. The Demerged Company shall explain about the discrepancy in the number of Secured Creditors of the Demerged Company and place on record all the relevant facts of the matter.



- ix) In para 6(vii) it is stated that, the Appointed Date is 01.04.2022 and company application was filed on 14.08.2023, i.e., after one year from Appointed Date and no justification is mentioned in the Scheme about gap of more than one year in filing of application and appointed date. Therefore, this Tribunal to direct the Petitioner Companies to comply the same and place on record all the relevant facts of the matter.
- x) In para 7(i) it is stated that, Petitioner Companies be directed to furnish clarification, if any, regarding observations made by Registrar of Companies and this Directorate (NWR) in forgoing Paragraph No. 5 & 6 respectively and the scheme may be approved only in case of satisfactory clarification.
- xi) In para 7(ii) it is stated that, Petitioner Companies be directed to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the Provision Section 239 of the Companies Act, 2013.
- xii) In para 7(iii) it is stated that, Petitioner Companies be directed to ensure statutory compliance of all applicable Laws and on sanctioning of the present Scheme, the Petitioner Companies shall not be absolved from any of its statutory liabilities, in any manner.



- xiii) In para 7(iv) it is stated that, necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.
- xiv) In para 7(v) it is stated that, the petitioner companies involved in the scheme to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.
- xv) In para 7(vi) it is stated that, the Petitioner companies shall undertake comply with Income Tax /GST law and any demand /taxes payable on implementation of the said scheme as per law.
- xvi) In para 14(1) of RoCs report it is stated that, Equity Shares of Demerged Company are listed on BSE and NSE. The BSE and NSE have issued observation letters dated 01.08.2023. This Tribunal to direct the Demerged Company to ensure the directive issued by SEBI from time to time.

8. The Petitioner Companies have filed affidavit on 14.02.2024 vide Inward No.D1258 in response to the Representation / Observations of the Regional Director, North Western Region.

- i) In response to para 5(ii) of RDs report as well as para 14(4) of the ROCs report, it is submitted that Clause No. 3.6 of the Scheme of Demerger envisages that consent of the



Shareholders of the Demerged Company, First Resulting Company and Second Resulting Company to the scheme shall be deemed to be sufficient for the purpose of effecting amendment to the Authorised Share Capital of the Demerged Company, First Resulting Company and Second Resulting Company. It also provides that no separate resolution(s) under Section 13(1) of Companies Act, 2013, Section 61 of Companies Act, 2013 or any other applicable provisions of Companies Act would be required to be separately passed for amendment in the Authorized Share Capital of the Demerged Company, First Resulting Company and Second Resulting Company. It is further submitted that Sections 230–232 of the Companies Act, 2013 provides for a single window clearance and a separate procedure is not required to be followed under Section 61 of Companies Act, 2013 read with Section 64 of Companies Act, 2013. It is also submitted that Clause 16.1 and Clause 29.1 of the Scheme provide for issue and allotment of new shares of the Resulting Companies to over 4,000 public shareholders of the Demerged Company on the effective date, and it is therefore required that there is an adequate Authorised Share Capital available in both the Resulting Companies for issue and allotment of such new shares. It is, therefore, submitted that single window clearance of the Scheme will facilitate issue and allotment of new shares by the Resulting Companies with simultaneous increase in their Authorised Share Capital. The Petitioner Companies undertake to file the relevant e-forms with the MCA portal for change in Authorised Share Capital of Demerged Company, First Resulting Company and Second Resulting



Company. It is further submitted that, in accordance with the scheme, after utilizing the filing fees and stamp duty already paid by the Demerged Company on its Authorised Share Capital; the First Resulting Company and Second Resulting Company will pay the differential / additional filing fees and stamp duty to the extent applicable in accordance with the law. Reliance is placed on following cases whereby this Tribunal has permitted similar arrangement:

- C.P.(CAA)/75(AHM) of 2022 in case of Aadarshini Construction Pvt Ltd & Others; and
- C. P. (CAA)/25(AHM) of 2023 in case of Nalwa Chrome Pvt. Ltd. & Vrindavan Services Pvt. Ltd.

ii) In response to para 5(iii) of RDs report as well as 14(5) of the ROCs report, it is submitted that Clauses 14.2 and 27.2 provides that the conversion of First Resulting Company and Second Resulting Company is an integral part of the scheme and under the accepted principles of single window clearance. It is also provided that the approval accorded by the Equity Shareholders of the First Resulting Company and Second Resulting Company at the meeting convened for approving the scheme shall be deemed to be the approval envisaged under the provisions of Section 14 of Companies Act, 2013 and other applicable provisions of the Act. Furthermore, no separate procedure shall be required to be followed for the said purpose. Even otherwise, it is stated that Sections 230-232 of the Companies Act, 2013 provides for a single window



clearance and a separate procedure is not required to be followed under Section 14 of Companies Act, 2013. It is also submitted that Clause 16.1 and Clause 29.1 of the Scheme provide for issue and allotment of new shares of the Resulting Companies to over 4,500 public shareholders of the Demerged Company on the effective date, and it is required that both the Resulting Companies are simultaneously converted into public companies to enable them issue and allot new shares to more than 200 persons. It is, therefore, submitted that single window clearance of the Scheme will facilitate issue and allotment of new shares by the Resulting Companies with simultaneous conversion of both Resulting Companies into public companies. Furthermore, the First Resulting Company and the Second Resulting Company have undertaken to file requisite e-forms with the MCA along with requisite fees/ additional fees for the approval.

- iii) In response to observation at para 6(i), the Petitioner Companies have confirmed and undertaken that they have complied with all the observations of letter of stock exchanges i.e., BSE and NSE dated 01.08.2023.
- iv) In response to observation at para 6(ii), it is submitted that Section 230-232 of the Companies Act, 2013 provides for a single window clearance and reduction of the Authorized Share Capital of the Demerged Company and increase of Authorized Share Capital of Resulting Companies by virtue of a scheme of demerger is permissible under law.
- v) In response to observation at para 6(iii), the Petitioner Companies have stated that scheme enclosed to the Company Application and Company Petition are one and



the same and there is no discrepancy, or no change in the scheme of demerger as enclosed with the Company Application and Company Petition.

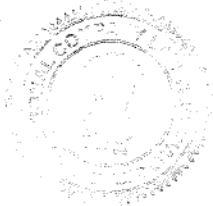
- vi) In response to para 6(iv), it is submitted that the Demerged Company has already served requisite details, including details about transfer of assets being more than the liabilities to the creditors of the Demerged Company as on appointed date. That after considering these details, scheme of demerger is approved by requisite statutory majority of creditors of the Demerged Company. Under the circumstances, no separate details are required to be served to the creditors of the Demerged Company to the effect that assets to be transferred are more than liabilities.
- vii) In response to para 6(v), the Petitioner Companies have confirmed that they have duly complied with all the applicable provisions of FEMA and RBI guidelines. They undertake to follow the applicable rules and guidelines while implementing the proposed scheme, as and when it may be applicable.
- viii) In response to para 6(vi), it is submitted that as on 31.03.2023, the Demerged Company had only 1 Secured Creditor. Accordingly, vide certificate dated 09.08.2023 Chartered Accountant had opined that there was only 1 (one) Secured Creditor as on 31.03.2023. That after 31.03.2023, the Demerged Company availed two auto loans which are duly repaid on 09.02.2024. The documents indicating repayment of auto loans on 09.02.2024 are produced at "Annexure R2". Further, the Demerged Company has also taken steps for reporting details about satisfaction of charge on MCA portal. Under



the circumstances, it is stated that the said observation made by RD stands explained.

- ix) In response to para 6(vii), it is submitted that the Petitioner Companies have passed board resolution approving scheme of amalgamation on 16.02.2023 i.e., within one year from the appointed date. Thereafter, the Petitioner Companies forwarded scheme of demerger before the stock exchanges i.e., BSE and NSE. That observation letters from stock exchanges i.e., BSE and NSE were received on 01.08.2023. Under the circumstances, the application was filed on 14.08.2023. It is further submitted that appointed date of 01.04.2022 is not against the public interest in any manner whatsoever. It is also submitted that MCA Circular No. 9/2019 dated 21.08.2019 does not prohibit a scheme of amalgamation/ demerger where appointed date is ante dated beyond a period of one year. It only provides that justification for such appointed date must be contained in the scheme and it should not be against public interest. In the present case, delay in filing the application was on account of non-receipt of observation letters from stock exchanges i.e., BSE and NSE between the period of 16.02.2023 to 01.08.2023. That immediately upon receipt of the observation letters from stock exchanges i.e., BSE and NSE, the Petitioner Companies have filed the application on 14.08.2023.

It is further submitted that appointed date is ascertained considering all the commercial aspects, the commercial interest of all the Petitioner Companies. Furthermore, the shareholders of the Petitioner Companies have approved



the scheme and approved the Appointed Date of 01.04.2022. That all the three Petitioner Companies have carried out the business activities in line with the proposed Appointed Date. Thus, reversing the same would prejudice the interest of stakeholders of all the three Petitioner Companies. It is also submitted that First Resulting Company and Second Resulting Company are closely held companies and hence the proposed Appointed Date is not against the public interest and also as per the MCA General Circular No. 09/2019 dated 21.08.2019. Reliance is placed on C.P.(CAA)/1(AHM) of 2023 in case of Ideal Stationery Mfging Company Pvt Ltd & Others, wherein this Tribunal has been pleased to approve scheme of amalgamation with ante dated appointed date.

- x) In response to para 7(i), it is stated that the Petitioner Companies have duly provided satisfactory clarifications to all the observations made by the Registrar of Companies and Regional Director. Thus, it is urged to sanction the proposed scheme of demerger.
- xi) In response to para 7(ii), the Petitioner Companies have undertaken to preserve the books of accounts, papers and records and it shall not be disposed of without prior permission of Central Government as per the provisions of Section 239 of the Companies Act, 2013.
- xii) In response to para 7(iii), the Petitioner Companies have undertaken to ensure statutory compliances of all applicable laws for the time being in force.
- xiii) In response to para 7(iv), the Petitioner Companies have stated that they will pay requisite/ necessary stamp duty as per the applicable rate in accordance with the



provisions contained under the Gujarat Stamp Act.

- ix) In response to para 7(v), the Petitioner Companies have undertaken to comply with the provisions of Section 232(5) of Companies Act, 2013 with respect to filing certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from the date of passing of order.
- x) In response to para 7(vii), it is submitted that the Petitioner Companies have duly undertaken to comply with the Income Tax as well as GST Laws for the time being in force. Further, it is submitted that all the Petitioner Companies shall continue to remain in existence even after sanctioning of the proposed scheme of demerger. Thus, even in case, if there are any outstanding demands towards Income Tax Act and/ or Goods and Service Tax Act against the Petitioner Companies, the Petitioner Companies have confirmed and undertaken that, subject to availability of all the remedies under the law, the Petitioner Companies will be liable to make payment as and when the demands, if any, are finally crystallized after exhausting all remedies under the law for the time being in force. The Petitioner Companies have also undertaken to abide by all the applicable provisions of the Income Tax Act and/or Goods and Service Tax Act.
- xi) In response to para 7(viii), the Petitioner Companies have undertaken to pay the legal fees/ expenses of the office of the Regional Director for submitting the said representation and representing the matter, to the Central Government that may be considered appropriate by this Tribunal.



9. In response to notice served upon Income Tax Department, the Assistant Commissioner of Income Tax, Central Circle-2(3), Ahmedabad has filed its report vide letter dated 19.12.2023 with respect to the Demerged Company, wherein it is stated that there is a total outstanding demand of Rs.57,38,746/- against the Demerged Company for different assessment years.
10. The Petitioner Companies stated during the hearing on 29.02.2024 and by way of affidavit that have confirmed and undertaken that, subject to availability of all the remedies under the law, the Petitioner Companies (as it is demerger scheme and entities exist) they will be liable to make payment as and when the demands, if any, including the present demand are finally crystallized after exhausting all remedies under the law for the time being in force. The petitioner companies undertake to abide by all the applicable provisions of the Income Tax Act.
11. In response to the notice upon the BSE, NSE and SEBI, no objections/reply has been received.
12. The Petitioner Companies had filed second motion joint petition being CP (CAA) No. 57/(AHM)2023 before this Tribunal seeking sanction of the Scheme (e-filed on 07.12.2023 and physical copy thereof was filed on 08.12.2023).
13. This Tribunal by order dated 14.12.2023 admitted the petition and directed for publication of hearing in "Financial Express" and in "Business Standard" both in Ahmedabad edition not less than ten days before the next date of hearing, calling upon objections, if any. This Tribunal also directed to issue notice informing the date of hearing of this petition to the Regional



Director, the Registrar of Companies, the Official Liquidator and the Income Tax Department.

14. The petitioner companies had filed Comp. App.2/NCLT/(AHM)/2024 sought rectification in the order dated 14.12.2023 i.e. to delete the direction regarding serving notice of hearing of petition to the Official Liquidator as it is a Scheme of Demerger. This Tribunal vide order dated 17.01.2024 had allowed Comp. App.2/NCLT/(AHM)/2024.
15. Pursuant to the order dated 14.12.2023, the petitioner companies published the notice of hearing of the petition in "Financial Express" (Gujarati) and in "Business Standard" (English) both in Ahmedabad edition on 31.01.2024. The notice in respect of hearing of the Company Petition was served upon 09.01.2024 to the statutory/regulatory authorities . Affidavit to that effect is also filed by the petitioner companies on this Tribunal on 06.02.2024 vide Inward No.D 1041.
16. Pursuant to the order dated 14.12.2023 and issuance of notices to the statutory authorities and publication of the notice in the local dailies, no representation is received.
17. The petitioner companies have placed on record a copy of the Valuation Report dated 12.02.2023 obtained from Mr. Dilipkumar Shah, D. Shah & Associates, Chartered Accountants, Registered Valuer – Securities & Financial Assets, Reg. No.IBBI / RV/06/2020/12730, read with clarification letter dated 15.03.2023.
18. It is submitted that the proposed scheme of arrangement in the nature of demerger is in conformity with the Accounting



Standards prescribed under Section 133 of the Act. Copies of the certificates issued by the statutory auditor is produced on record.

19. It is further submitted that the Scheme does not in any way violate, override or circumscribe any provisions of the Act and the Rules, Regulations and Guidelines made thereunder;
20. During the hearing on 29.02.2024 Learned Counsel for the applicant companies stated that he has already filed a synopsis on 18.02.2024, as well as an additional affidavit to the report of the RD office as well as to the Income Tax Department on 13.02.2024, and has taken care of all the observations made by the RD office as well as the Income Tax Department. Further, Mr. Shiv Pal Singh, Deputy Director, the Office of the Regional Director stated that in view of the additional affidavit filed by the applicant company to the observations of the RD office, they have no objections to approval of the scheme of demerger.
21. We have heard Ld. Counsel for the applicant companies and representative of the Office of the Regional Director, counsel for Income Tax also gone through the material available on record.
22. It becomes relevant to discuss that in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation:-

*“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in **RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj)** and the same being*



also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned”.

23. On the basis of above facts and submissions made by the Learned Counsel for the petitioner companies and the submission/no objection of the representative of the Regional Director and by considering the entire facts and circumstances of the aforesaid company petition and on perusal of the Scheme and the proceedings, it appears that the requirements of the provisions of section 230 and 232 are satisfied by the petitioner companies. We are of the considered view that the proposed Scheme of Arrangement in the nature of Demerger is bona fide and in the interest of the shareholders and creditors. In the result, Company Petition No. CP (CAA) No. 57 of 2023 is allowed. The Scheme envisages Arrangement between M/s. Mahalaxmi Rubtech Limited (Demerged Company), M/s. Mahalaxmi Fabric Mills Private Limited (Resulting Company No.1) and M/s. Globale Tessile Private Limited (Resulting Company No.2) and their respective Shareholders and Creditors.
24. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or



regulation, the sanction granted by this Tribunal to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

25. While approving the Scheme as above, we further clarify that this order should not be construed as an order in granting any exemption from payment of stamp duty, taxes including income tax, GST, etc. or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. It is further clarified that Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and sanction of the Scheme of arrangement given hereunder shall not adversely affect the rights of Income Tax Department on any past, present or future proceedings.

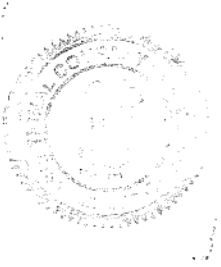
26. This Tribunal orders as under:-

- (i) The Scheme of Arrangement as annexed herewith as **“Annexure A”** is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies and their Shareholders and Creditors and all concerned under the Scheme. It is observed from the submissions that the petitioners are closely held companies. All reliefs are considered, subject to the compliance of the applicants to abide by applicability of the Act or provision and discharge of liabilities if any to the appropriate authorities. As regards unwinding of investment sought by Petitioner demerged company in its wholly owned subsidiary viz



Mahalakshmi Exports Private Limited and transferring the same in to Resulting Company No.1 and transfer of Trading Textiles Division of the Petitioner demerged company on a going concern basis in to the Petitioner Resulting Company No.2 which is a wholly owned subsidiary of the Petitioner, the same may be done with specific approval of the Board of Directors of the respective companies and procedures and in compliance as applicable on such transfer or reduction of compliance by all stake holders including creditors, if any.

- (ii) The Appointed Date for the Scheme shall be 1st April, 2022.
- (iii) All the properties annexed herewith in the schedule as “**Annexure B**”, rights and powers of the Demerged Company specified in the schedule hereto and all the other property, rights and powers of the Demerged Company be transferred without any further act or deed to the **Resulting Company No. 1** and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and vested in the Resulting Company No. 1 for all the estates and interest of the Demerged Company, therein but subject nevertheless to all charges now affected the same, if any.
- (iv) All the properties annexed herewith in the schedule as “**Annexure C**”, rights and powers of the Demerged Company specified in the schedule hereto and all the other property, rights and powers of the Demerged Company be transferred without any further act or deed to the **Resulting Company No. 2** and accordingly the same



shall, pursuant to Section 232 of the Act, be transferred to and vested in the Resulting Company No. 2 for all the estates and interest of the Demerged Company, therein but subject nevertheless to all charges now affected the same, if any.

- (v) The Demerged Undertaking No. 1 pertaining to Traditional Textiles Processing Division and Wind Power Division of the Demerged Company shall, together with all its property, rights and powers be transferred without further act or deed to the Resulting Company No. 1 and accordingly the same shall, pursuant to Section 232 of the Act, stand transferred to and vest in the Resulting Company No. 1 for all the estate and interest of the Demerged Undertaking No. 1.
- (vi) The Demerged Undertaking No. 2 pertaining to Trading Textiles Processing Division of the Demerged Company shall, together with all its property, rights and powers be transferred without further act or deed to the Resulting Company No. 2 and accordingly the same shall, pursuant to Section 232 of the Act, stand transferred to and vest in the Resulting Company No. 2 for all the estate and interest of the Demerged Undertaking No.2
- (vii) All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Demerged Undertaking Nos. 1 and 2 shall stand transferred to and vest in the Resulting Company Nos. 1 and 2 respectively, without any further act or deed. The Resulting Companies shall be bound by the terms thereof,



the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Resulting Companies.

- (viii) All the liabilities of the Demerged Undertaking Nos. 1 and 2 of the Demerged Company be transferred, without further act or deed, to the Resulting Company Nos. 1 and 2 respectively and accordingly the same shall pursuant to Section 230 and 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Companies.
- (ix) All contracts, agreements, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Demerged Undertaking Nos. 1 and 2 of the Demerged Company, shall stand transferred to and vested in the Resulting Company Nos. 1 and 2 respectively and be in full force and effect in favour of the Resulting Companies and may be enforced by or against it as fully and effectually against the Resulting Companies.
- (x) All taxes paid or payable by the Demerged Undertaking Nos. 1 and 2 of the Demerged Company including existing and future incentives, un-availed credits and exemptions, benefit of carried forward losses and other statutory benefits, shall be available to and vest in the Resulting Company Nos. 1 and 2 respectively.
- (xi) All proceedings now pending by or against the Demerged Undertaking Nos. 1 and 2 of the Demerged Company shall be continued by or against the Resulting Company Nos. 1 and 2 respectively.
- (xii) All employees in the service of the Demerged Undertaking Nos. 1 and 2 of the Demerged Company shall be deemed



to have become the employees and the staff of the Resulting Company Nos. 1 and 2 respectively on date on which the scheme finally takes effect on the basis that their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer and on terms and conditions no less favourable than those on which they were/ are engaged, as on the Effective Date

- (xiii) The Petitioner Companies are directed to lodge a copy of this Order, the approved Scheme and the Schedule of Assets of the Demerged Company duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for adjudication of stamp duty, and pay requisite stamp duty payable, if any, within 60 days from the date of this Order.
- (xiv) The Petitioner Companies are further directed to file a copy of this order along with the copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry as per relevant provisions of the Act.
- (xv) All concerned Authorities to act on copy of this order along with the Scheme authenticated by the Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately.
- (xvi) The legal fees/ expenses of the office of the Regional Director are quantified at Rs.25,000/- in respect of the Petitioner Companies. The said fees to the Regional Director shall be paid by the Resulting Companies.



- (xvii) The Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and if it is found that the Scheme of Demerger ultimately results in tax avoidance or is not in accordance with the applicable provisions of Income Tax Act, then the Income Tax Department shall be at liberty to initiate appropriate course of action as per law. Any sanction of the Scheme of Demerger under Sections 230-232 of the Companies Act, 2013 shall not adversely affect the rights of Income Tax Department or any past, present or future proceedings and the sanction of the scheme shall not come in its way for the appropriate course of action as per law for the tax liabilities, if any. The Petitioners will also comply with the orders if any on assessment of income tax or any other tax of state authorities, if any, due of the petitioners including the demerged entity (Petitioner No.1) and make provisions/acknowledging the liability in their balance sheet accordingly on or before 31 March 2024 and no reliefs are granted by this order.
- (xviii) Any person aggrieved shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary
- (xix) Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the authenticated copy of this order along with Scheme immediately.



27. The Company Petition CP (CAA) No. 57 of 2023 connected with
CA (CAA) No. 47 of 2023 is disposed of.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

Prepared by Vishwa
Signature Vishwa
Date 27/3/24

Certified to be True Copy of the Original

Shammi Khan
27/3/24
Assistant Registrar
NCLT, Ahmedabad Bench
Ahmedabad

Date of pronouncement of Order: 4/3/24
Date on which application for Certified Copy was made: 26/03/24
Date on which Certified Copy was ready: 27/03/24
Date on which Certified Copy delivered:

