

Sr. No-39/2019

1

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

AT JAIPUR

Coram: DR. DEEPTI MUKESH MEMBER (Judicial)

CAA-06/230-232/JPR/2019

CONNECTED WITH

CA (CAA)-33/230-232/JPR/2018

IN THE MATTER OF:

(SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN

**APM INDUSTRIES LIMITED
SP-147, RIICO INDUSTRIAL AREA,
BHIWADI- 301019 (RAJASTHAN)**

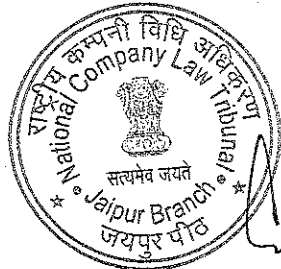
**...DEMERGED COMPANY /
PETITIONER COMPANY NO.1**

AND

**APM FINVEST LIMITED
SP-147, RIICO INDUSTRIAL AREA,
BHIWADI- 301019 (RAJASTHAN)**

**..RESULTING COMPANY /
PETITIONER COMPANY NO.2**

APM Industries Ltd.
And
APM Finvest Ltd.



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**FOR THE PETITIONERS: ASHUTOSH GUPTA, ADV.
NISHANT JAIN, ADV.
MANISH SANCHETI, ADV.**

FOR INCOME TAX: PRATEEK KEDAWAT, ADV.

FOR RD: Dr. AMOL SHINDE, DROC-DOL

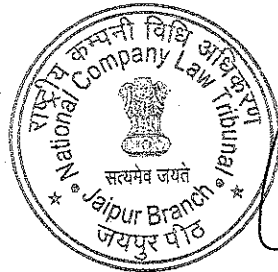
ORDER

Delivered on: 24.05.2019

1. This Joint petition has been filed by the Petitioner companies under Section 230 to 232 and other applicable provisions of the Companies Act, 2013(for brevity 'the Act') read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') for approval of the Scheme of Arrangement for the Demerger (hereinafter referred to as the 'SCHEME') of Finance & Investment Undertaking (the "Demerged Undertaking") of Demerged Company/Petitioner Company no. 1 and subsequent amalgamation of Demerged Undertaking with Resulting Company/ Petitioner Company No. 2 and the said Scheme is also annexed as Annexure - 1 to the petition.

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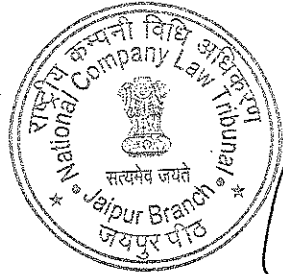
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2. From the records, it is seen that the First Motion seeking directions for dispensing the requirement of convening the meeting of the Equity Shareholders and Secured and Unsecured Creditors of the Petitioner Companies was filed before this Tribunal vide CA (CAA) No. 33/230-232/JPR/2018 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, wherein the meeting of the Equity Shareholders and the Unsecured Creditors of the Demerged company were directed to be held on 08.12.2018 and the meeting of the Equity Shareholders of Resulting Company and of the secured Creditors of the Demerged Company was dispensed with vide order dated 26.10.2018. It was also represented that there were no secured creditors and unsecured creditors of the Resulting Company, therefore, the necessity of convening the meeting did not arise. As per the directions in order dated 26.10.2018 the corresponding meetings were held and reports of Chairperson for holding of meetings of Equity Shareholders of the Demerged/Petitioner Company No. 1 and of Unsecured Creditors of Demerged / Petitioner Company No. 1 were filed on 17.12.2018.
3. Thereafter, the Petitioner Companies filed 2nd motion joint petition for sanction of the Scheme of Amalgamation before this Tribunal on 21.12.2018 which is in time. On 01.02.2019 this Tribunal passed

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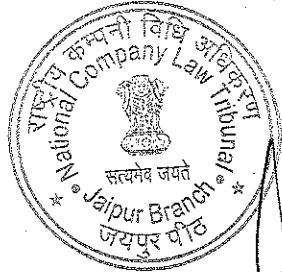
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an order to issue Notice in this Second Motion of the above petition, to the Central Government, Registrar of Companies, Income Tax Department, RBI, SEBI and concerned Stock Exchange in which the shares are listed of the Petitioner Companies, as well as other sectoral regulators and to such other objector(s), if any. The Petitioners were also directed vide said order to carry out publication in the newspapers "Times of India" (English) and "Dainik Navajyoti" (Hindi).

4. It is seen from the records that the Petitioners have filed an affidavit affirming compliance of the order dated 01.02.2019 passed by the Tribunal. Accordingly, the concerned regulatory/ sectoral authorities have filed their response to which the petitioners here have filed rejoinder.
5. That the Regional Director, North Western Region, MCA to whom notice was issued has made following observation before this Tribunal.

A. The Authorized Share Capital of the Demerged Company cannot be transferred as given in clause no. 2 of Part C of the Scheme, as this was allowed in case of amalgamation by this Hon'ble Tribunal and this is a case of demerger of undertaking. Therefore, the petitioner companies be directed to amend the scheme accordingly and comply with the provisions of Sec. 61, 64, r/w 117 of Companies Act, 2013

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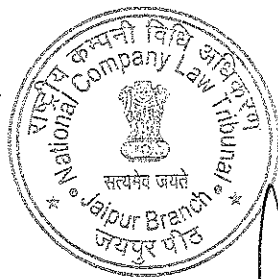


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for increasing the authorized share capital of Resulting Company which is required for further issue of shares by resulting company as per the scheme;

- B. In demerged Company 2,06,356 (0.95%) number of equity shares of Rs. 2 each are held by NRIs. Thereby the demerged company be directed to ensure about the compliance of FEMA and RBI guidelines in this regard;
- C. The petitioner companies have not clearly disclosed the complete list of the assets and liabilities which are proposed to be demerged and transferred to the resulting company through this scheme.
- D. The petitioner companies be directed to undertake the compliance of Section 2 (19 AA) of the Income Tax Act.
- E. The Demerged Company be directed to comply with the requirement of SEBI Circular Issued on 04.02.2013, 21.05.2013 and 10.03.2017.
- F. The Regional Director is not aware as to whether the Demerged Company has served the notice to RBI/ SEBI and obtained any licenses, approvals and other permissions from the regulatory authority/ concerned Ministry, to carry on the activities of the Finance and Investment of the Company. Therefore, the Demerged Company be directed to put as record all the facts.

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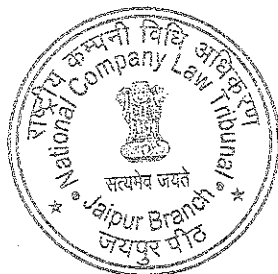


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- G. The Hon'ble NCLT may be pleased to direct the Resulting Company to undertake the necessary compliances in this present matter with respect to NBFC; and
- H. The Demerged Company has not filed its Annual Return and Balance Sheets as at 31.03.2018 with MCA portal. The Demerged Company be directed to file the Annual Return and Balance Sheet before passing of order of the scheme.
6. The Resulting Company being Petitioner Company No. 2 has filed reply to the observations of Regional Director and respondent to all the observations of the Regional Director, pointwise.
- I. The Hon'ble NCLT, Ahmedabad in the matter of demerger between Tesla Transformers Limited and Tesla Transformers (Global) Private Limited and Tesla Transformers (India) Limited, vide its order dated 31st October, 2018 wherein same objection was raised by the Regional Director has approved the scheme of arrangement.

"Further, there is a consequential reduction due to transfer of two separate divisions of the Petitioner De-Merged Company and with respect to the Compliance of the provisions of Sections 61, 64 and 117 of the Companies Act, 2013 by the petitioner Resulting Companies the same has already been provided in the Scheme of Arrangement. It is further submitted that the present Scheme of

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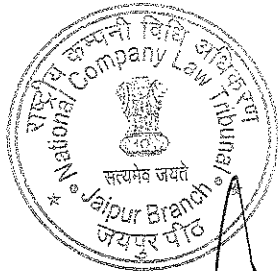
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Arrangement is under Section 230 to 232 of the Act, is a complete code in itself and considering principle of Single window Clearance it is not necessary for the petitioner Resulting Companies to separately comply with the Provisions of Sections 61, 64 r/w 117 of the Companies Act, 2013.

Pertaining to the above-mentioned grounds the Tribunal found the observations of Regional Director to be not sustainable and approved the scheme of arrangement, by which the transfer of authorised share capital by the Demerged Company to the Resulting Companies as mentioned in the existing scheme has been approved. Similarly, on the basis of principle of single window clearance, the Tribunal has also stated that the Resulting companies are not required to separately comply with the Provisions of Sections 61, 64 r/w 117 of the Companies Act, 2013."

II. The Demerged Company is a manufacturing Company and for the manufacturing companies 100% Foreign Direct Investment (FDI) is allowed via automatic route and as per FEMA Regulation 13(3) the demerged company is required to file, Form FLA (Foreign Liabilities and Assets) to the Reserve Bank on or before the 15th day of July of each year, and in compliance with the same, the Demerged

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Company has regularly filed FLA return with RBI within the prescribed time limits, in respect of investment by Non Resident individuals.

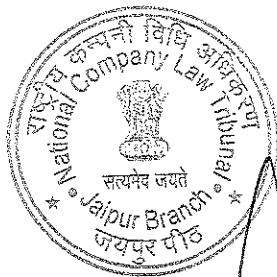
III. It is submitted that the complete list of the assets and liabilities pertaining to demerged undertaking which is proposed to be demerged and transferred to the resulting company has been furnished as a part of Scheme of Arrangement for the demerger, along with the present petition.

IV. The petitioner companies undertakes the compliance of Sec. 2(19AA) of the Income Tax Act, upon Scheme of Arrangement for demerger becoming effective.

V. The Demerged Company has duly complied with the provisions of the Circular dated 10.03.2017 issued by SEBI. Further, the SEBI circulars dated 04.2.2013 and 21.05.2013 were in line with the Erstwhile Section 391 to 394 of Companies Act, 1956 and the Erstwhile Listing Agreements, accordingly the same are not applicable to the Company as the same have become redundant with the Commencement of new sections 230 to 240 of Companies Act, 2013 and SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015.

VI. The principal business of the Demerged Company has always been manufacturing of fiber spun yarn and not finance and business

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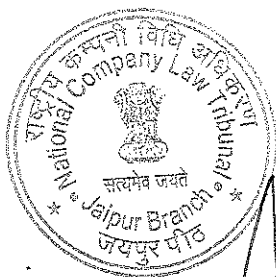
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activities. Further as per RBI Act, 1934, non-banking financial company (NBFC) means a company engaged in the business of financial institution as contained in Section 45 I (a) of the RBI Act, 1934. For this purpose RBI Circular No. RBI/2006-07/158 dated 19th October, 2006, defined "Principal Business" as: *The Company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) and income from financial assets is more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company.*

Therefore, as the principal business of the Demerged Company is manufacturing spun yarn and the company has been undertaking the financial and investment business activities in a small way, they will not be regulated by the RBI, accordingly no licenses, approvals and other permissions is required from any regulatory authority/ concerned ministry for carrying on the finance and investment business activities by the Demerged Company.

VII. The RBI vide Letter dated 14th May, 2018 has issued written approval regarding change in the shareholding of the Resulting Company as result of the said demerger. Further, the approval of RBI is valid for 6 (six months) only, therefore resulting company has filed application for

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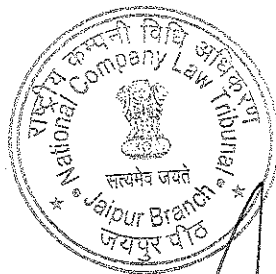


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extension of further 6 months and obtained the approval of the extension till 05.06.2019 from RBI vide letter dated 05.12.2018.

- VII. It is submitted that the Ministry of Corporate Affairs vide its General Circular No. 10/2018 dated 29th October, 2018 extended the time period for filling of Financial Statements of the Company in Form AOC-4 and Annual Return of the Company in Form MGT-7 up to 31th December, 2018. Therefore, in compliance with the aforesaid circular, the Demerged Company (AIL) duly filed its Balance Sheet as at 31.03.2018 in Form AOC-4 on 27th November, 2018 and Form MGT-7 for the year 2017-2018 has been filed on 24th December, 2018, within the prescribed time period.
7. The representative from Regional Director office stated that no further query is raised after receiving reply to Petitioner company no. 2 hence, this tribunal is thus of the view, that all the observations made by the Regional Director stands satisfied.
8. It is pertinent to note that vide letter dated 25.04.2019 the Income tax Department has filed its no objection the scheme.
9. The petitioner companies have annexed no objection letter dated 14.05.2018 from Reserve Bank of India which was for validity of 6 months from date of issue. Hence Petitioner no. 2 Company had again approached RBI for extension of said no objection and accordingly RBI had issued letter dated

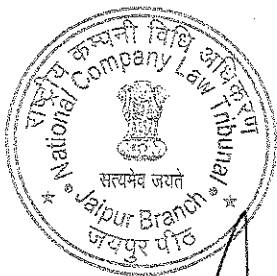
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- 0512.2018 expressing the renewal of their said no objection granted on 14.05.2018.
10. In the joint petition separate affidavits by both the petitioner companies are filed that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 are pending against the Petitioner Companies.
 11. In compliance with the proviso to sub-section (7) of Section 230 of the Companies Act, 2013, the Demerged Company and Resulting Company have placed on record the certificates of the Chartered Accountant dated 11.01.2018 and 10.01.2018 respectively confirming that the accounting treatment envisaged under the Scheme of Arrangement is in compliance with the applicable accounting standards notified by the Central Government in Section 133 of the Companies Act, 2013 and placed on record as Annexure -12 to the Petition.
 12. It is also submitted on behalf of the Petitioner Companies that they had received no complaint and/or representation against the Petitioner Companies including any Complaint/ Representation in respect of the proposed scheme of arrangement not even from the public at large and have also filed affidavit in respect to the same on 26.3.2019.
 13. Heard learned counsel for petitioners and on perusal of documents placed on record and also considering the approval accorded by the members and

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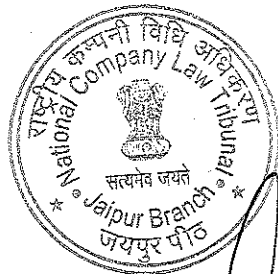
creditors of the Petitioner Companies to the proposed Scheme, and the affidavits/ no objection filed by the respective sectoria./regulatory authorities, there appears to be no impediment in sanctioning the present scheme. Consequently, sanction is hereby granted to the scheme under section 230 to 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

14. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court 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.
15. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any granting 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.

16. THIS TRIBUNAL DO FURTHER ORDER

1. All property, rights and powers of Demerged Undertaking be transferred without further act or deed, to the Resulting Company and accordingly

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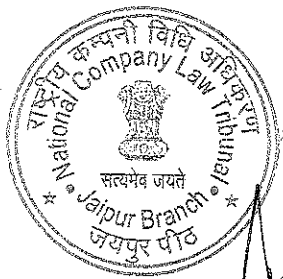


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the same shall pursuant to Section 232 of the Act, be transferred to and vested in the Resulting Company for all intents, purposes and interests of the Demerged Undertaking subject nevertheless to all changes now affecting the same and;

2. All the liabilities (if any) and duties of Demerged Undertaking be transferred without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Resulting Company; and
3. Any proceedings pending by or against Demerged Undertaking be continued by or against the Resulting Company, and
4. All the services of all Employees of the Demerged Company employed in the Demerged undertaking shall stand transferred to the Resulting Company on the same terms and conditions at which these employees are engaged by the Demerged Company without any interruption of service as a result of the transfer; and
5. The Resulting Company APM Finvest Ltd. shall, without any further act or deed, issue and allot to the equity shareholders of all, whose names appear in the Register of Members of APM Industries Ltd, on a date to be fixed in that behalf by the Board of Directors of Demerged Company in consultation with Resulting Company, for the purpose of reckoning the

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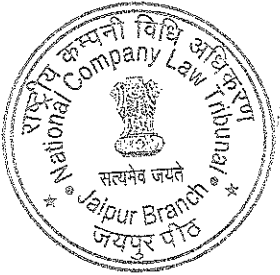


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names of the equity shareholders of Demerged Company, in consideration for the transfer of the Demerged Undertaking in the following proportion namely,

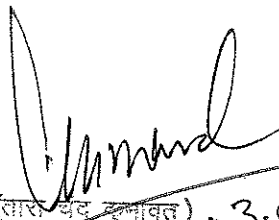
- 1(One) Equity Shares of face value of Rs. 2 (Rupees Two) each at par in Resulting Company for every 1 (One) Equity shares of face value of Rs. 2 (Rupees Two) each held by them in Demerged Company; and
6. The Petitioner Companies shall within thirty Days of the date of the receipt of this order cause a certified copy of this order delivered to the Registrar of Companies for registration and the Demerged Undertaking shall be deemed to be transferred.
7. Any person shall be at liberty to apply to the Tribunal in above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.




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(सारा चंद कुमावत)
(Tara Chand Kumawat)
सहायक रजिस्ट्रार
Assistant Registrar
राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
जयपुर, राजस्थान
Jaipur, Rajasthan

03.06.2019


(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

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