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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL


ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 24.01.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (CAA) No.627/230/HDB/2018
NAME OF THE COMPANY	NCL Alltek & Seccolor Ltd (Demerged Co.) & NCL Holdings (Resulting Co.)
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	230

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
HARISH KUMAR VILLADATH SHEILA VILLADATH	ADVOCATES	harish.v@talvlegal.com 9848019373	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
C. Sridhar, For B. Sithender For Poc	Advocate	9866663528	

ORDER

Orders passed vide separate orders


Member (J)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT, HYDERABAD**

CP(CAA) 627/230/HDB/2018
CA (CAA) No.333/230/HDB/2018
U/S 230 to 232 of the Companies Act, 2013

In the matter of

NCL Alltek & Seccolor Limited
Registered office: 4th Floor,
Plot No.1, Ganga Enclave,
Kompalli Road,
Petbasheerabad,
Hyderabad 500 067.

...1st Petitioner/
Transferor Company/
Demerged Company/

AND

NCL Holdings (A&S) Limited
Registered office: Plot No.1,
4th Floor,
Survey No.12&14,
Ganga Enclave,
Petbasheerbagh,
Quthbulla,
Hyderabad 500 055.

... 2nd Petitioner/
Resulting Company

Date of order: 24.01.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / Parties Present:

For the Petitioners: Mr. V.Harish Kumar & Ms. V. Sheila,
Advocates

For the Respondent: Mr.B.Jithender, Advocate for R.D




Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

ORDER


1. The present Joint Company Petition bearing CP(CAA) No.627/230/HDB/2018 is filed by NCL Alltek & Seccolor Limited (Transferor/ Demerged Company) and NCL Holdings (A&S) Limited, (Resulting Company) under sections 230 to 232 and other applicable provisions of the Companies Act,2013, praying for an order for sanctioning the Scheme of Arrangement between NCL Alltek & Seccolor Limited ("Transferor/ Demerged Company") and NCL Holdings (A&S) Limited ("Resulting Company") and their respective Shareholders and Creditors, in terms of Scheme of Arrangement shown as Annexure A-13 to the Petition.

2. Brief facts, leading to filing of the present joint company petition, are as follows:

NCL Alltek & Seccolor Limited (Transferor Company/ Demerged Company)

- (1) NCL Alltek & Seccolor Limited, (Transferor/ Demerged Company), was incorporated under the Companies Act, 1956 on 11.07.1986, and it was originally incorporated as "NCL Finance and Leasing Limited" in the erstwhile State of Andhra Pradesh. The Corporate Identity Number of the Transferor/Demerged Company is U72200TG1986PLC006601. Subsequently , the name of the Transferor/Demerged Company was changed to "NCL Alltek Limited" vide fresh CIN issued by the Registrar of Companies, Hyderabad on 09/05/1991. The name of the Transferor/Demerged Company was further changed to "Alltek Coating Products Limited" on 13/12/1996 .
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- (2) Board for Industrial and Financial Reconstruction (BIFR) passed an order dated 20/11/2003 the NCL Seccolor Limited, a listed Company which was a sick industrial Company was merged with the Transferor/Demerged Company in terms of a Scheme of Merger approved by BIFR. In terms of the said Scheme approved by BIFR, the name of the Transferor/Demerged Company has been changed to NCL Alltek & Seccolor Limited in terms of a fresh Certificate of Incorporation dated 24/03/2004 issued by the Registrar of Companies, Hyderabad. In pursuance to the said Scheme approved by BIFR, the shareholders of the erstwhile NCL Seccolor Limited were issued shares in the Transferor/Demerged Company, which still continues to be an unlisted public limited company. The merger of the sick industrial company (NCL Seccolor Limited) into the Transferor/Demerged Company has resulted in benefit to the shareholders, since the Transferor/Demerged Company has been paying dividends every year since date of merger.
- (3) The Transferor/Demerged Company is engaged in the business of manufacture of various building materials like window profiles, paints emulsions and putties, AAC Bricks etc. The Transferor/Demerged Company also holds investments in various subsidiaries engaged in different activities like real estate, seeds and agro products, energy, chemicals etc.
- (4) The authorized, subscribed and paid up share capital of the Transferor/Demerged Company as on 31/03/2017 was as follows:



Particulars	Rs
Authorised Capital	
1,50,00,000 Equity Shares of Rs.10/- each	15,00,00,000.00
Subscribed and Paid-up Capital	
57,84,868 Equity Shares of Rs.10/- each	5,78,48,680.00

There have been no changes in the share capital structure of the Transferor/Demerged Company subsequent to 31st March 2017.

NCL Holdings (A&S) Limited, (Resulting Company)

- (1) The Resulting Company was incorporated as a limited company on 05th January 2018 under the Companies Act, 1956. The Corporate Identity Number of the Resulting Company is – U65920TG2018PLC121664.
- (2) The Resulting Company was incorporated with the objective to acquire all the investments in the non-building material segment currently held by NCL Alltek & Seccolor Limited through a Scheme of Arrangement for Demerger and to make and hold investments in corporate or non-corporate entities engaged in manufacturing, trading or provision of services etc., whether or not with the right to manage such entities and to hold and trade in various securities issued by corporate bodies, statutory corporations, Government or non-government agencies.
- (3) The authorized, subscribed and paid up share capital of the Resulting Company as on 10/01/2018 was as follows:

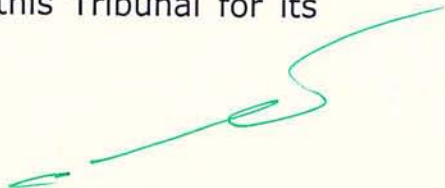
Particulars	Rupees
Authorised Capital 20,00,000 Equity Shares of Rs.10/- each	2,00,00,000.00
Subscribed and Paid-up Capital 70 Equity Shares of Rs.10/- each	700.00


The Authorised Share Capital was subsequently increased to Rs.6,00,00,000/- to accommodate the shares to be issued under the Scheme.


The details of the share capital as on the date of filing of this petition is as follows:

Particulars	Rupees
Authorised Capital 60,00,000 Equity Shares of Rs.10/- each	6,00,00,000.00
Subscribed and Paid-up Capital 70 Equity Shares of Rs.10/- each	700.00

- The Learned Counsel for the Petitioner Companies contended that the Board of Directors of the Transferor/Demerged Company and Resulting Company vide its meetings dated 11.01.2018, approved the Scheme with the appointed date being 01.04.2017 which will be binding on Petitioner Companies and their respective shareholders and creditors. The Board Resolutions are annexed to the Joint Company Petition as Annexure A11 & A12.

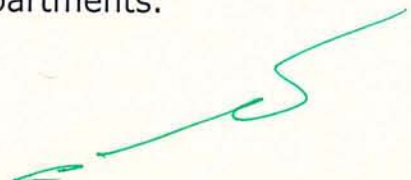
4. The Objects of the proposed demerger between the Transferor/Demerged Company and Resulting Company, will inter-alia have the following benefits:
 - a. The Transferor/Demerged Company is engaged in the business of manufacture of various building materials like Window profiles, Paints, Emulsions and Putties, AAC Bricks etc. The Transferor/Demerged Company also holds investments in various subsidiaries engaged in different activities like Real Estate, Seeds and Agro Products, Energy, Chemicals etc.
 - b. The Transferor/Demerged Company's investments in companies with diverse activities has resulted in the dilution of the identity of the Transferor/Demerged Company as a building materials company, though it's primary activity consists of manufacturing and trading in various building materials.
 - c. The Board of Directors of the Transferor/Demerged Company felt that it is desirable to re-establish its identity as a business entity primarily focusing on manufacture of building materials, and that such a focused activity will enhance the shareholders' value.
 - d. The Board of Directors of the Transferor/Demerged Company has therefore decided to retain the activity of manufacturing of building materials and to transfer all its other investments at their book values, to a separate company, i.e., to the Resulting Company which has been formed with the specific purpose of taking over such investments.
 - e. Accordingly, a Scheme of Arrangement for demerger (referred to as **"Scheme" or "Scheme of Arrangement"** in the Joint Company Petition) has been prepared and is now submitted to this Tribunal for its approval.
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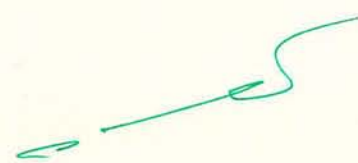
- f. Upon the transfer of the investments and assets pursuant to the Scheme, all the shareholders of the Transferor/Demerged Company will be allotted shares in the Resulting Company in the same proportion as they currently hold in the Transferor/Demerged Company. The Resulting Company shall without any further act or deed and without any further payment, issue and allot to each member of the Transferor Company, whose name is recorded in the Register of Members of the Transferor company, on a date (Record Date) to be fixed in that behalf by the Board of Directors of the Transferor Company, Equity shares of the Resulting Company in the ratio of One Equity share in the Resulting Company of Rs.10/- credited as fully paid up for every One Equity share of Rs.10/- each, fully paid up held by such member in the Transferor Company to replicate or mirror the shareholding of the Transferor Company in the Transferee Company, excepting for the 70 equity shares of Rs. 10/- each taken by the subscribers to the Memorandum of Association of the Resulting Company.
- g. On the said allotment in the Resulting Company, the Share Capital of the Transferor/Demerged Company shall not stand reduced but the Share Premium and/or Reserves standing in the accounts of the Transferor/Demerged Company shall stand reduced to the extent of the value of the investments and assets transferred to the Resulting Company.
- h. The Share Premium and/or Reserves so reduced will stand transferred to the Resulting Company and will be shown as the Share Capital and Reserves of the Resulting Company in the following manner.
- a. **The Share Capital** of the Resulting Company created for the issue of shares to the shareholders
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- of the Transferor/Demerged Company as a result of the Scheme being implemented; and
- b. **The Reserves** of the Resulting Company to represent the difference between the share capital so created in the Resulting Company and the book value of the assets transferred from the Transferor/Demerged Company to the Resulting Company.
 - i. The demerger of the other investments would help the Transferor/Demerged Company and the Resulting Company to focus on their respective businesses more effectively which requires diversified strategies and planning, and also seek further investments from different sets of investors interested in their respective focused activities.
 - j. The bifurcation of the Transferor/Demerged Company into two Companies by virtue of the Scheme will also give an option to the shareholders to sell their shares from either the Transferor/Demerged Company or the Resulting Company in which they are not interested, while retaining their investment in the activity in which they are interested. The Scheme would benefit the shareholders, creditors and employees of both the companies and the public in general.
5. It is averred in the first stage this Tribunal had vide orders passed in CA (CAA) No.333/230/HDB/2018 dated 02.04.2018, directed for convening meetings of the Equity Shareholders, the Secured Creditors, Unsecured Creditors, of the Transferor Company/Demerged Company and dispensed with the meeting of the equity shareholders of the Transferee Company/Resulting Company for the proposed scheme of Arrangement. All the shareholders of
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the Transferee Company/Resulting Company had filed their respective consent affidavits with this Tribunal.

6. The Learned Counsel for the Petitioner Companies further stated that on the direction of this Tribunal, notices were served on the Income Tax Department, the Regional Director, South East Region, Registrar of Companies for the States of Andhra Pradesh and Telangana, and Commercial Tax Department. Further as per directions, publication was also carried out in Hans India, English Daily (Hyderabad Edition) and Nava Telangana, Telugu Daily (Hyderabad Edition) on 06.12.2018.
7. The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad vide his Affidavit dated 11.12.2018 has stated that he has examined the report of the Registrar of Companies, Hyderabad and stated that the case may be disposed of on merits while considering certain observations. The Petitioner Companies have filed reply Affidavit in response to the observations made by The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad where under the petitioner companies gave undertaking to appropriately comply the observations made therein. I have seen the undertaking affidavit given by Petitioner Companies. Basing on the reply this Tribunal further directed RD to furnish comments on the explanation. The Regional Director vide its report dated 09.01.2019 prayed the Tribunal:
 - a. To direct the petitioner companies to file copies of the joint affidavits filed with this Tribunal declaring that they shall comply with all tax demands that may be raised against them, subject to their appellate rights, as required by the Income Tax and Commercial Tax Departments, with the respective Departments.




- b. To refer to the chairpersons reports of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors held under the directions of this Tribunal dated 13.08.2018, and 16/08/2018 respectively, before passing orders.
8. It is observed from the report of the chairperson appointed for the secured creditors meeting that out of the seven (7) Secured Creditors of the Transferor/Demerged Company, three (3) of them, viz., holding 98.68% of the total amounts due by the Transferor/Demerged Company had cast their vote through postal ballot, in favour of the Scheme.
9. The Scrutinizer and the Chairperson had held that the votes cast by the Secured Creditors were invalid on technical grounds. The said report of the Chairperson, while holding that the votes cast by the Secured Creditors were invalid, had also clearly recorded that the votes cast by the Secured Creditors were 100% in favour of the Scheme, thereby clearly capturing the intent of the said Secured Creditors.
10. The counsel for the Transferor / Demerged Company averred that the Transferor / Demerged Company had informed the three (3) secured creditors who had cast their votes that the same were held to be invalid by the Scrutinizer and the Chairperson who had convened the said meeting and the said secured creditors had, on learning that the votes cast by them had been held invalid, reaffirmed / reconfirmed / reiterated their consent to the Scheme through consent affidavits / letter of consent.
11. The counsel for the Transferor / Demerged Company further averred that in the light of the consent affidavits and
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letter of consent received from the secured creditors, the requirement of obtaining the consents of the secured creditors by the provisions of the Companies Act, 2013 and the rules made thereunder is complied with.

12. The Petitioner Companies have, vide their affidavit filed for furnishing additional documents and information, filed the Original Consent Affidavits furnished by State Bank of India and Hero Fincorp Limited and the Original Consent Letter furnished by Axis Bank, the secured creditors of the Transferor / Demerged Company, reiterating their consents to the Scheme.
13. The counsel for the Petitioner Companies takes the support of the decision of the Hon'ble High Court of Karnataka in *Krita Engineering Private Limited* where the secured creditors of the Transferor Company had secured "No Objections" of the secured creditors subsequent to the convening of the meeting of the secured creditors which were accepted by Hon'ble High Court. The relevant portion of the said Order of the Hon'ble High Court of Karnataka is reproduced hereinbelow:

Para.10 Insofar as second observation made by Registrar of Companies which relates to convening of the meeting of secured creditors is concerned, records would indicate that as per report of the Chairman which is at annexure-K secured creditors did not participate in the meeting convened by the Chairman appointed by this Court though public notice had been issued. Thereafter transferor company has secured 'no objection' for sanction/approval of Scheme of Arrangement and according their consent for demerger namely by secured creditors. Said 'no objection'



by the two secured creditors are appended to the reply affidavit as per Annexure-B, C and D. In view of the same second observation made by Registrar of Companies would also stand complied.

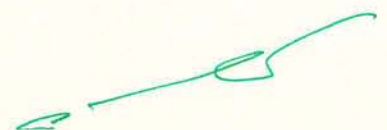
14. In view of the aforesaid submissions made and the consents provided by the secured creditors through their consent affidavits and letter of consent, supported by the decision of the Hon'ble High Court of Karnataka, I am also of the considered view that the Scheme of Arrangement has received the consents of the secured creditors.
15. The Equity Shareholders and the Unsecured Creditors of the Demerged Company have already given their consent through the resolutions passed at their respective meetings and the same have been reported to this Tribunal by the respective Chairpersons through their Reports filed before this Tribunal.
16. The Equity Shareholders of the Resulting Company had filed their consent affidavits in the connected Company Application and this Tribunal was pleased to dispense with their meeting. The Resulting Company does not have any secured or unsecured creditors. Hence the issue of obtaining consents in this regard did not arise.
17. The Counsel further avers that the statutory auditors of the Transferor/Demerged Company Anant Rao & Mallik, Chartered Accountants vide certificate dated 04.07.2018, and the statutory auditors of the Resulting Company Subrahmanyam & Sivudu, vide certificate dated 14.03.2018 stated that the Accounting Treatment adopted in the scheme is in compliance with Section 133 of the Act. Copies

of certificates issued by the Chartered Accountants are annexed to the Joint Company Petition as Annexure-14 & 15.

18. The Counsel further avers that no valuation of shares has been carried out since the entire shareholding of the Transferor/Demerged Company is being replicated in the Resulting Company at face value, by reducing the share premium and /or Reserves in the Transferor/Demerged Company, with the paid-up Capital of the Transferor/Demerged Company remaining unchanged.
19. The observations received from the Regional Director has been complied with and the same has been reported to this Tribunal by the Petitioner Companies through Joint Reply Affidavit dated 03.01.2019 in reply to the Regional Directors Report.
20. No opposition to the Scheme has been received from anyone in response to the Notice of the date of hearing of the instant joint company petition published on 06.12.2018 in the Hyderabad editions of Hans India (English) and Nava Telangana (Telugu) newspaper dailies.
21. After hearing the Counsel for the Petitioner Companies and considering the material on record, I am of the view the Scheme is not opposed to public interest and hence the Scheme can be approved.

THIS TRIBUNAL DO FURTHER ORDER

1. While approving the Scheme of Arrangement, I make it clear that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes



or any other charges, if any, payable in accordance with law or in respect of any permission/compliance with any other requirement which may be specially required under law.

2. The Demerged Undertaking of the Demerged Company be transferred without any further act or deed to the Resulting Company pursuant to Section 232 of the Companies Act, 2013 and also in accordance with Section 2(19AA) of the Income Tax Act, 1961 and accordingly the same shall be transferred to and vest in the Resulting Company as a going concern;
3. The whole of the assets, property, rights and powers of the Demerged Undertaking of the Demerged Company be transferred without any further act or deed to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 be transferred to and vest in the Resulting Company to become the assets, property, rights and powers of the Resulting Company; and
4. If Demerged Company or Resulting Company restructures its equity share capital by way of any corporate actions during the pendency of the Scheme, the same shall be done with the approval of the Tribunal.
5. All the liabilities including taxes and charges if any and duties of the Demerged Undertaking of the Demerged Company be transferred without any further act or deed to the Resulting Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013 and also in accordance with Section 2(19AA) of the Income Tax Act, 1961 be transferred to and become the liabilities including taxes and charges if any and duties of the Resulting Company;
6. The tax implications, if any, arising out of the Scheme is



subject to final decision of concerned tax authorities and the decision of the Concerned Tax Authorities shall be binding provided however the same would be subject to the appellate provisions available to the Petitioner Companies under the respective tax laws.

7. The Petitioner Companies are directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.
8. All the proceedings now pending by or against the Demerged Company to the extent related to the Demerged Undertaking, if any, be continued by or against the Resulting Company, and
9. The Petitioner Companies shall within thirty days of the date of receipt of this order cause a certified copy of this order along with a copy of scheme of Demerger to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamation) Rules, 2016.
10. The Scheme of Arrangement shall be effective from the appointed date as mentioned in the Scheme of Arrangement i.e. 01.04.2017, so as to be binding on all the members, employees, creditors of the Petitioner Companies.
11. The Resulting Company shall pay the difference of stamp duty, if any payable over the increase in the share capital after setting off the fee if any paid by the Demerged Company.



12. The petitioner Companies should ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme the Petitioner Companies shall not be absolved for any of its statutory liability in any manner.
13. Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.


24.1.19
RATAKONDA MURALI
MEMBER (JUDICIAL)

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