



Kkalpana Industries (India) Limited

Date: 5th March, 2022

To

The Listing Department BSE Limited P.J. Towers, Dalal Street Mumbai – 400 001	The Listing Department Calcutta Stock Exchange Limited 7, Lyons Range, Dalhousie Kolkata – 700 001
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Sub: Disclosure under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI Listing Regulations”) with respect to the Scheme of Arrangement between Kkalpana Industries (India) Limited (“Demerged Company”) and Ddev Plastiks Industries Limited (“Resulting Company”) and their respective shareholders and creditors under sections 230 to 232 read with section 66 and other applicable provisions of Companies Act, 2013 (“Scheme”)

Respected Sir / Madam,

We would humbly like to intimate that the petition for approval of the Scheme was heard by the Hon’ble National Company Law Tribunal, Kolkata Bench (“Hon’ble NCLT”) on 22nd February, 2022.

Thereafter, *vide* its order pronounced on 4th March, 2022, the Hon’ble NCLT has sanctioned the Scheme with effect from Appointed Date, i.e., 1st April, 2021. Copy of the said order, as downloaded from the Hon’ble NCLT’s website, is annexed herewith.

This is for your information and record please.

Thanking you,

Yours faithfully,

For **Kkalpana Industries (India) Limited**

Tanvi Panday

Tanvi Panday

Company Secretary and Compliance Officer

Encl: as above



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CIN : L19202WB1985PLC039431

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH-II, KOLKATA**

C.P. (CAA) No. 132/KB/2021

connected with

C.A. No. (CAA) No. 106/KB/2021

In the matter of:

The Companies Act, 2013;

And

In the matter of :

Section 230 read with Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013;

And

In the matter of:

KKALPANA INDUSTRIES (INDIA) LIMITED, having its registered office at 2B, Pretoria Street, Kolkata – 700 071.

... Demerged Company

And

In the matter of:

DDEV PLASTIKS INDUSTRIES LIMITED, having its registered office at 2B, Pretoria Street, Kolkata – 700 071;

... Resulting Company

And

1. KKALPANA INDUSTRIES (INDIA) LIMITED

2. DDEV PLASTIKS INDUSTRIES LIMITED

... PETITIONERS

Date of Hearing: 22.02.2022

Date of pronouncement of order: 04.03.2022

Coram:

Shri Rohit Kapoor, Hon'ble Member (Judicial)

Shri Harish Chander Suri, Hon'ble Member (Technical)

Appearances:

For the Petitioners

- :
1. Ms. Shruti Swaika, Advocate
 2. Ms. Iram Hassan, Advocate

3. Mr. Sanket Sarawgi, Advocate

ORDER

Per Harish Chander Suri, Member (Technical):

1. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition to the Scheme of Arrangement.
2. The instant second motion petition has been filed under Section 230 read with Section 232 of the Companies Act, 2013 for sanction of Scheme of Arrangement between Kkalpana Industries (India) Limited (hereinafter referred to as “Kkalpana”) and Ddev Plastiks Industries Limited (hereinafter referred to as “Ddev”). Copy of the Scheme is annexed as **Annexure A** at pg. 32 of the petition.
3. The Ld. Counsel for the Petitioners submits that the Demerged Company is primarily engaged into the business of manufacturing plastic compounds and reprocessing/ recycling of plastic and Resulting Company has been recently incorporated for demerging the compounding business undertaking of the Demerged company to the resulting company.
4. The Ld. Counsel submits that the circumstances and/ or reasons and/ or grounds that have necessitated and/ or justified the arrangement are stated in the said Scheme of Arrangement. They are inter alia, as follows:
 - a. The Demerged Undertaking and the Remaining Undertaking have their own set of strengths and dynamics in the form of nature of risks, competition, challenges, opportunities and business methods, leading to different growth potentials. Hence, segregation of the two undertakings would enable a focused management to explore the potential business opportunities effectively and efficiently;
 - b. The demerger would result in achieving efficiency in operational processes by designing and implementing independent strategies specifically designed for the two businesses and in optimizing profitability. This would in turn enhance the shareholders’ wealth.
 - c. Targeting and attracting new investors with specific focus and expertise in the two businesses, thereby providing the necessary funding impetus to the long-term growth strategy of the two businesses;

- d. The Compounding Business Undertaking of the Demerged Company is an old and diverse undertaking, that caters to a range of sectors *viz.*, house wiring, high voltage cables, packaging, white goods, automotive, footwear, to name a few. The Compounding Business Undertaking has proved its significant resistance to market volatility over the years and therefore, on a standalone basis, it has scope for enhanced valuation and entry of strategic domestic/ international players by way of technological tie-ups/ direct acquisition of stake in the business. Hence, demerger of the Compounding Business Undertaking would help in targeting and attracting new investors with specific focus and expertise in the business, thereby providing the necessary funding impetus to the long-term growth strategy of the businesses.
- e. The remaining Undertaking of the Demerged Company, *inter alia*, comprises of a Reprocessing Business Unit located in Falta, West Bengal, and it holds a license for reprocessing of plastic waste which has restriction on transferability. A similar license is also held in a Dubai based wholly owned subsidiary ['WOS'] of the Demerged Company. Since ultimate ownership of such licenses relating to the Remaining Undertaking rests with the Demerged Company, the Reprocessing Business Undertaking along with its corresponding licenses as aforesaid, would be continued to be retained by the Demerged Company.
- f. Further, given the recent international trends and demand for recycling of plastics (recognized as upcycling across the world), the Reprocessing Business Undertaking has significant long-term growth prospects. Moreover, growth potential of the Reprocessing Business Undertaking is substantially high. Hence, demerger of the Compounding Business Undertaking would also enhance the standalone valuation for Reprocessing Business Undertaking. Such higher growth and valuation potentials would be attractive to specific set of strategic domestic/ international players who would look to target direct acquisition of stake in the business. The transfer and vesting of the Demerged Undertaking to the Resulting Company will enable better focus and management of the Demerged Undertaking and the Remaining Undertaking.
- g. The Reprocessing Business Undertaking is a debt free unit and has significantly lower working capital requirement as compared to the

Compounding Business Undertaking. Hence, demerger of the Compounding Business Undertaking would help in independently managing the different funding requirements of the two business, both in terms of type of funds and amount of infusion required for the businesses.

- h. As part of expansion plans for Reprocessing Business Undertaking, the Demerged Company intends to explore chemical recycling and other recycling activities, which are also expected to attract strategic domestic and international investors.
 - i. Pursuant to the Scheme, the equity shares issued by the Resulting Company would be listed on BSE. Therefore, the existing shareholders of the Demerged Company would hold the shares of two listed entities after the Scheme becoming effective. Such shareholders would then be able to choose whether they want to remain invested in either or both the businesses/ operations of the Demerged Company, giving them flexibility in managing their investment in the two businesses having differential dynamics.
5. The Scheme was approved by the respective Board of Directors of the Petitioner Companies at their meetings held on 11th December, 2020.
 6. The statutory Auditors of the Petitioners have by their certificate dated 9th December, 2020 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standard prescribed under Section 133 of the Companies Act, 2013.
 7. A report from a Registered Valuer, Abhinav Agarwal (Regn. No. IBBI/RV/06/2019/12564) on fair share exchange ratio is annexed to the petition at pg. No. 988 being **Annexure M**. Further, fairness opinion issued by the SEBI Registered Category I Merchant Banker providing that the share entitlement ratio is fair and reasonable to the equity shareholders is annexed to the petition at pg. No. 997 being **Annexure N**.
 8. The Learned Counsel for the petitioners submit that the company petition have been filed in consonance with the Order of this Tribunal dated 14th June, 2021 in C.A. (C.A.A.) No. 106/KB/2021.
 9. In terms of the directions passed separate meeting of the equity shareholders, the secured creditors and unsecured creditor of the Demerged Company were held on 29th July, 2021 and the Chairperson Mr. Deepak Kumar Khaitan filed his report which is annexed to the Petition at pg. No. 922 being **Annexure K**. From the report, it is

observed that the shareholders and creditors have approved the scheme in their respective meetings.

10. Affidavit of service/ compliance in terms of the order dated 14th June, 2021 is filed and is also annexed to the petition at pg. No. 282 being **Annexure J** to the petition.
11. This second motion petition was admitted by order dated 20th October, 2021 read with order dated 3rd November, 2021. Upon admission directions were given for publication of notice of hearing and service upon the sectoral authorities.
12. Learned Counsel for the petitioners submit that in compliance of the order dated 20th October, 2021 read with order dated 3rd November, 2021, the petitioner has published the notice of hearing and also served the sectoral authorities being Registrar of Companies, Central Government through the Office of Regional Director, Eastern Region, BSE Limited, Calcutta Stock Exchange Limited, Income Tax Authorities and Competition Commission of India. It is further submitted that affidavit of compliance dated 18th November, 2021 has been filed before this Tribunal.
13. It is submitted that the Central Government through the office of Regional Director has filed an affidavit dated 24th December, 2021 by which they have given their observations. Their observations of the RD(ER) and responses of the petitioners are given below:

Paragraph 2 (a) of RD Affidavit:

2 (a) It is submitted that on examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and /or representation regarding the proposed Scheme of Amalgamation has been received against the Petitioner Companies, Further, as per available records all the petitioner companies are updated in filing their Statutory Returns. The ROC, WB in its report also stated that the amount of active charge against the Company namely Kkalpana Industries (India) Limited is Rs.682,00,00,000/- (Copy of the said report of ROC, WB marked as Annexure-1 is enclosed herewith for perusal and ready reference).

Paragraph 2 of Rejoinder:

With regard to para 2(a) of the said affidavit, we submit that the same is matter of record.

Paragraph 2 (b) of RD Affidavit:

2 (b) It is submitted that the Demerged Company namely KKALPANA INDUSTRIES (INDIA) LIMITED is listed on BSE Ltd and CSE Ltd. The BSE Ltd

by letter dated 01/04/2021 and the CSE Ltd by letter dated 08/04/2021 have issued their 'Observation letter regarding the Scheme of Arrangement' between Kkalpana Industries (India) Limited with the Ddev Plastiks Industries Limited (Resulting Company). Copy of the said letters of the Stock Exchanges collective marked as Annexure-II is enclosed with the affidavit for perusal and ready reference.

Paragraph 3 of Rejoinder:

With regard to para 2(b) of the said affidavit we submit that the same is matter of record and that the petitioner companies shall comply with all the relevant provisions, application to them.

Paragraph 2 (c) of RD Affidavit:

2 (c) According to clause 6.3 of the scheme the immovable properties of the demerged undertakings shall be transferred and vested in the resulting company and the title to such properties shall be deemed to have been mutated and recognized as that of the Resulting Company. In view of the judgment of Hon'ble Supreme Court in (2004)9 SCC 438 Hindustan Lever & Anr Vs State of Maharashtra and the judgment of Hon'ble Delhi High Court in Delhi Towers Limited Vs GNCT of Delhi (2009), the Transferee company may be directed to pay the applicable stamp duty for the transfer of the properties by virtue of the scheme.

Paragraph 4 of Rejoinder:

With regard to para 2(c) of the said affidavit we submit that the Resulting Company shall pay, if applicable, the applicable stamp duty on the transfer of the immovable properties from the Demerged Company to it.

Paragraph 2 (d) of RD Affidavit:

2 (d) In Clause 16.7 of Part-B of the scheme, it is envisaged to transfer Authorized Capital of Rs.10.00 crore to the Resulting Company. The said clause of the scheme is defective. The "authorized share capital" of a company is the maximum amount of share capital that the company is authorized by its constitutional documents to issue (allocate) to shareholders. In this case the Demerged Company is not getting dissolved pursuant to the scheme. There is no system and manner provided under Companies Act, 2013 to ascertain the unit-wise/ undertaking-wise authorized share capital in case of demerger, thus business-wise bifurcation is not lawful. The Authorized Share Capital being the authorization for the company as a whole not

specifically relevant for any particular activity or group of assets of the company, a part thereof cannot get transferred upon mere transfer of one of the undertakings of the company to another company.

Paragraph 2 (e) of RD Affidavit:

2 (e) Furthermore, Section 232(3)(i) of the Companies Act 2013 provides "The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely (i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation". Therefore transfer of the authorized Share Capital can be possible only in the case of dissolution of the Transferor Company pursuant to a scheme of merger and amalgamation. It cannot happen in the case of demerger. This deponent therefore objects to the said clause in the scheme. There have been orders of Hon'ble Tribunal allowing demerger schemes after the applicant undertook to pay the requisite fee for increase in authorized capital of the resulting company, departing from earlier prayer for addition of part of Authorized Capital of demerged company with that of the resulting company. CP(CAA) No. 1904/KB/2019 [order of Kolkata Bench of Hon'ble NCLT], CP(CAA) No. 1992/KB/2019 [order of Kolkata Bench of Hon'ble NCLT] and Company petition No. 129/PB/2018 [order of Principal Bench of Hon'ble NCLT] are relevant in this regard.

Paragraph 5 of Rejoinder:

With regard to para 2(d) and 2(e) of the said affidavit we submit that save and except what are matters of record allegations to the contrary are denied and disputed. It is denied that clause 16.7 of Part B or any other clause of the scheme is defective as alleged or at all. We say that in several schemes, proposing the transfer of authorized share capital from the demerging/ transferor entity to the resulting/ transferee entity and set off fees thereon paid by the demerging/ transferor entity have been sanctioned earlier by the Hon'ble Tribunals. The prayer of the Petitioners as to transfer of authorized share capital of the Demerged Company to Resulting Company and set off of fees on authorized share capital paid thereon by the Demerged Company cannot be said to be unlawful and ought to be allowed under

the provisions of law. Further, the judgments relied upon in the said affidavit are distinguishable on facts. In the said judgments relied upon, there was no prayer for transfer of authorized share capital. Hence, the same cannot be made applicable to the instant case. However without prejudice to the above, we submit that in case this Hon'ble Tribunal directs that the authorized share capital of the Demerged Company cannot be transferred and the Resulting Company to increase its authorized share capital after paying the requisite fee, the Petitioners undertake to abide by such directions of this Hon'ble Tribunal.

Paragraph 2 (f) of RD Affidavit:

Regarding the undertaking of the demerged company to be demerged to the resulting company, no description of the immovable properties and movable properties mentioned in the scheme has been provided. Hence the scheme is not complete and material information were suppressed. Nothing further can be observed in this regard by this deponent.

Paragraph 6 of Rejoinder:

With regard to para 2(f) of the said affidavit we submit that the Statement of Assets, indicating the property of the Demerged Company to be transferred to the Resulting Company will be duly filed along with the application for certified true copy of the order sanctioning the Scheme.

Paragraph 2 (g) of RD affidavit:

2 (g) The scheme provides (paragraph 18 of Part-C) for reduction of the equity share capital of the resulting company. Section 66(3) of the Companies Act 2013 provides that the Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit. Therefore section 66(3) requires consent of each and every creditor contrary to the provisions of section 232(1)(d) of the Companies Act 2013. Hence the provisions of section 66 are more protective for creditors compared to the provisions of section 232 of the Act. The scheme therefore should be modified so that the application for reduction of capital is applied for separately by the transferee company.

Paragraph 7 of Rejoinder

With regard to para 2 (g) of the said affidavit it is submitted that in explanation to section 230 of the Companies Act, 2013, it has been clearly provided that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section. Reliance can also be placed on the decision of Hon'ble NCLAT in R Systems International Limited [Company Appeal (AT) No. 416 of 2017] wherein it was held that capital reduction is permissible by way of a separate clause in the scheme approved by the order of the Tribunal, without following the compliances under Section 66 of the Companies Act, 2013. Following the provisions of section 230(6) of the Companies Act, 2013 consent of the creditors of the Demerged Company has already been taken in the meetings held for this purpose. 100% of the Secured Creditors gave their consents and 104 out of 105 unsecured creditors gave their consent. Further, the Resulting Company does not have any creditors and hence meeting of creditors for approval was dispensed by the Hon'ble Tribunal. It is further submitted that it is not required to modify the scheme in view of the provisions of the Companies Act, 2013 and judgments thereof.

Paragraph 2 (h) of RD Affidavit:

2 (h) The demerged company is having active charge of Rs. 682.00 crore in favour of State Bank of India. In the scheme, it is stated that the demerged company has two business undertakings, viz. Compounding Business Undertaking and Reprocessing Business Undertaking. The scheme provides for demerger of Compounding Business Undertaking. Reprocessing Business Undertaking shall be the remaining undertaking. It is also stated in the scheme that the Reprocessing Business Undertaking is a debt free unit. Therefore the active charge of Rs. 682.00 crore pertains to the demerged unit only. But in clause 7.2 of the scheme it is stated "All the debts and liabilities, secured and unsecured, relating to the remaining undertaking shall continue to be the debts and liabilities of the demerged company". The scheme is self-contradictory.

Paragraph 8 of Rejoinder:

With regard to para 2(h) of the said affidavit it is denied that the scheme is self-contradictory as alleged or at all. It is submitted that in clause 7.2 of the scheme a standard statement has been made and the fact that the Reprocessing Business Undertaking is a debt free unit, does not ipso facto make the scheme contradictory in any manner whatsoever.

Paragraph 2 (i) of RD Affidavit:

2 (i) In the latest financial statement of the demerged company for 2019-20 it is stated under the heading for details of shareholding of top 10 shareholders, that M/s Liable Textiles Private Limited holds 44,65,969 nos. shares. But in MGT-9 it is stated that M/s Liable Textiles Private Limited holds 77,50,00 nos. shares in the company. Since the share entitlement ratio shall grant shares of the resulting company to M/ s Liable Textiles Private Limited, the differences between the shareholding positions reported in the financial statement of the company requires to be explained by the Applicant.

Paragraph 9 of Rejoinder:

With regard to para 2(i) of the said affidavit it is denied that Liable Textiles holds 77,50,000 shares as alleged or at all. We submit that in MGT-9, it has been clearly mentioned that M/s Liable Textiles Private Limited holds 44,65,969 and not 77,50,000 as referred to by the Learned Regional Director in his report. Hence, it is humbly submitted that there is no difference in the shareholding pattern as reported in the Annual Report of the Demerged Company. A copy of the Form MGT-9, Extract of Annual return as on the financial year ended on 31 March 2020 is attached to the rejoinder and marked with the letter “P1”.

Paragraph 2(j) of RD Affidavit:

2 (j) That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph 10 of Rejoinder:

With regard to para 2(j) of the said affidavit we submit that the Resulting Company shall pay, if applicable, the applicable stamp duty on the transfer of the immovable properties from the Demerged Company to it.

Paragraph 2(k) of RD Affidavit:

2 (k) In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 or IND-AS-8 etc.

Paragraph 11 of Rejoinder:

With regard to para 2(k) of the said affidavit we submit that both the Petitioner Companies shall pass the necessary accounting entries as per the applicable Accounting Standards.

Paragraph 2(l) of RD Affidavit:

2 (l) The Hon'ble Tribunal may kindly seek the undertaking that this scheme is approved by the requisite majority of members and creditors as per section 230(6) of the Companies Act 2013 in meeting duly held in terms of section 230(1) read with sub-sections (3) to (5) of section 230 of the said Act and the Minutes thereof are duly placed on record.

Paragraph 12 of Rejoinder:

With regard to para 2(l) of the said affidavit we submit that in terms of the order dated 14th June, 2021 being C.A. (C.A.A.) No. 106/KB/2021, the Hon'ble Tribunal was pleased to pass an order *inter alia* directing a meeting of the equity shareholders of the Demerged Company and meetings of secured and unsecured creditors of the Demerged Company via video conferring or other audio-visual mode for the purpose of considering and, if thought fit, approving with or without modifications. Meetings of the shareholders and creditors of Resulting Company were dispensed with. The resolution for the sanction of the Scheme was passed by requisite majority in the said meetings. The Chairperson so appointed by this Hon'ble has also filed his report before this Hon'ble Tribunal in this regard. A copy of the said order is attached to the rejoinder marked collectively with the letter "P2".

Paragraph 2(m) of RD Affidavit:

2 (m) The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph 13 of Rejoinder:

With regard to para 2(m) of the said affidavit we submit that the Scheme of Arrangement enclosed to the company application and the company petition are one and the same and there is no discrepancy or change in the said Scheme.

Paragraph 2 (n) of RD Affidavit:

2 (n) The Petitioners under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the Petitioner Company (s) concerned.

Paragraph 14 of Rejoinder:

With regard to para 2(n) of the said affidavit we submit that the petitioners have served all the authorities as applicable under Section 230 (5) of the Companies Act, 2013 and affidavit of compliance in this regard was also filed in the Hon'ble Tribunal.

Paragraph 2 (o) of RD Affidavit:

2 (o) It is submitted that the Income Tax Department by letter no. ACIT CC1(4)/Kol/Amalgamation/Demerger/2020-21 dated 29/07/2021 submitted that there are confirmed demands outstanding against the Assessee Company namely Kkalpana Industries India Limited (Demerged Company) and the Income Tax Department has objection to the proposed Scheme. (Copy of the said letter of Income Tax Department marked as Annexure - III is enclosed herewith for perusal and ready reference).

Paragraph 15 of Rejoinder:

With regard to para 2 (o) of the said affidavit, we say that by letter dated 29th July, 2021, the office of the Assistant Commissioner of Income Tax, Central Circle-1(4) of the Income Tax, Kolkata being the office of the jurisdictional assessing officer of the Demerged Company have given their observations. Such observations have been duly dealt with by the rejoinder dated 29th November, 2021 of the Demerged Company and a copy of the same is also annexed to the rejoinder and marked with the letter "P3".

14. It is submitted that the office of the Assistant Commissioner of Income Tax, Central Circle-1(4) of the Income Tax, Kolkata being the office of the jurisdictional assessing officer of the Demerged Company (hereinafter referred to as the "Learned AO"), furnished their representation dated 29th July 2021 in connection with the Scheme. The Petitioners have furnished an affidavit providing their response thereof, as given below:

“3. In the said representation, the Learned AO has given a chart of outstanding income-tax demand against the Demerged Company. It is humbly submitted that the outstanding demand so mentioned in the said representation is either paid or is disputed or is erroneous. The company’s response against such outstanding demand is mentioned herein below:

<i>AY</i>	<i>Section</i>	<i>Date of demand</i>	<i>Outstanding demand amount</i>	<i>Our comments</i>
2018	143(3)	17-06-2021	10,08,810	<i>Matters is under appeal. The Demerged Company expects the appeals to be disposed in its favour, pursuant to which, the demand would be vacated.</i>
2019	143(1)(a)	12-05-2020	30,36,990	<i>Without prejudice to the above, reference is drawn to clause 11.1 of the Scheme, in pursuance of which, the proceedings, if any may continue against the Demerged Company and demand, if any, would be borne by the Demerged Company. Hence, the interest of the Revenue Authorities would not be prejudiced pursuant to the Scheme coming into effect.</i>

<i>AY</i>	<i>Section</i>	<i>Date of demand</i>	<i>Outstanding demand amount</i>	<i>Our comments</i>
2009	154	08-02-2013	474,690	<p><i>The computation made by the Revenue Authorities being incorrect, rectification petition was filed by the Demerged Company and the same is pending. The Demerged Company expects the proceedings to be disposed in its favour, pursuant to which, the demand would be vacated.</i></p> <p><i>Without prejudice to the above, reference is drawn to clause 11.1 of the Scheme, in pursuance of which, the proceedings shall be continued against the Demerged Company and demand, if any, would be borne by the Demerged Company. Hence, the interest of the Revenue Authorities would not be prejudiced pursuant to the scheme coming into effect.</i></p>
2005	143(1)	21-09-2006	55,575	<i>Demand have been paid off by the Company. Copy of the challans in this regard are collectively annexed and</i>
2009	115-WE	03-12-2010	46,199	
2005	220(2)	03-04-2014	18,383	

<i>AY</i>	<i>Section</i>	<i>Date of demand</i>	<i>Outstanding demand amount</i>	<i>Our comments</i>
				<i>marked with the letter 'B'</i>
2011	154 / 153A	31-03-2021	1,313,0,940	<i>Matters are under appeal. The Demerged Company expects the appeals to be disposed in its favour, pursuant to which, the demand would be vacated.</i>
2012	154 / 147	31-03-2021	16,774,270	<i>Without prejudice to the above, reference is drawn to clause 11.1 of the Scheme, in pursuance of which, the proceedings shall be continued against the Demerged Company and demand, if any, would be borne by the Demerged Company. Hence, the interest of the Revenue Authorities would not be prejudiced pursuant to the scheme coming into effect.</i>

4. *The Learned. AO has further stated that the scrutiny assessment proceedings for assessment years 2016-17 and 2020-21 are pending. Reference in this regard is once again drawn to clause 11.1 of the Scheme, pursuance of which, the proceedings, if any shall be continued against the Demerged Company and demand, if any, would be borne by the Demerged Company. Hence, the interest of the Revenue Authorities would not be prejudiced pursuant to the Scheme coming into effect.*

5. *The Ld. AO has also stated that if any information comes in their possession from investigation agencies or from external agencies, assessment proceedings may*

be initiated against the Demerged Company in such event, leading to tax demands. In this connection, it may be noted that as on date, the Demerged Company does not have any ongoing investigations. Further, after the Scheme becoming effective, the Remaining Undertaking of the Demerged Company would continue to operate as a going concern. Hence, any future proceedings that may be instituted against the Demerged Company would be taken care by the Demerged Company and demand, if any thereon, shall be borne by the Demerged Company. Hence, the interest of the Revenue Authorities would not be prejudiced pursuant to the Scheme coming into effect.”

15. The regulatory authorities have not found the Scheme itself to be violative of any statute. Technical issues such as the ones pointed out by the Regional Director (ER) would not be enough to withhold sanction of Scheme itself. Any allegations of violation will not stand in the way of sanctioning of Scheme of Amalgamation. Therefore, while we are inclined to accord sanction to the Scheme, such sanction shall not stand in the way of any action to which the Petitioner Companies may be liable.
16. From the material on record, the Scheme appears to be fair and reasonable and is not violative to any provisions of law, nor is contrary to public interest.
17. Since all requisite compliance has been fulfilled, the following orders in terms of prayers made in the petition, with modification by the Tribunal are passed:
 - a. The Scheme of Arrangement being Annexure “A” herein is sanctioned to be binding with effect from 1st April, 2021, being the Appointed Date as mentioned in the Scheme, their respective shareholders and all concerned including those mentioned in the Scheme of Arrangement;
 - b. Pursuant to Section 230 to 232 of the Companies Act, 2013 and as stated in the Scheme of Arrangement all properties, rights, powers, interests, assets pertaining to the Demerged Undertaking of the Demerged Company as on the Appointed Date be transferred as a going concern on “as is where is” basis by way of Demerger without any act deed or thing to the Resulting Company;
 - c. Pursuant to Section 230 to 232 of the Companies Act, 2013 and as stated in the Scheme of Arrangement, all liabilities and duties of the Demerged Undertaking of the Demerged Company as on the Appointed Date be transferred as a going

- concern on “as-is-where-is” without any act deed or thing to the Resulting Company;
- d. All suits and/or appeals and/or any proceedings, of whatsoever nature now pending by or against the Demerged Undertaking of the Demerged Company be transferred as per the Scheme of Arrangement to the Resulting Company, if any, be continued by or against the Resulting Company;
- e. The existing equity share capital of the Resulting Company shall stand reduced and extinguished in terms of Part C of the Scheme.
- f. The Resulting Company do within 90 days from the date of this order but not exceeding 30 days of the date of obtaining certified copy of the order to be made herein, cause certified copies of the said order to be delivered to the Registrar of Companies, West Bengal for registration;
- g. Leave is given to file the Schedule of Assets of the Demerged Undertaking of the Demerged Company within four weeks from the date of the order to be passed herein;
- h. Any person interested shall be at liberty to apply to this Hon’ble Tribunal in the above matter for such directions as may be necessary;
- i. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.
18. The Company Petition being C.P. (CAA) 132/KB/2021 connected with CA (CAA) No. 106/KB/2021 is disposed of.
19. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Singed on this, the 04th day of March, 2022.

M_Jana_Steno.