

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI SPECIAL BENCH**

(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)

: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 10.01.2024 AT 10:15 A.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(CAA)/5/230/AMR/2023		230	Mangal Industries Limited (Demerged Company) & Amara Raja Batteries Limited (Resulting Company)

ORDER

Mr.Rohan, Proxy Counsel for the Petitioners present. Orders pronounced.

CP(CAA)/5/230/AMR/2023 is allowed, vide separate sheets.

Sd/-
SANJAY PURI
MEMBER (TECHNICAL)

Sd/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI SPECIAL BENCH**

**CP (CAA)/5/230/AMR/2023
Connected with
CA (CAA)/2/230/AMR/2023**

In the matter of Section 230 to 232 of the Companies Act, 2013
AND

In the matter of Scheme of Arrangement of between MANGAL INDUSTRIES LIMITED (Demerged Company) and AMARA RAJA BATTERIES LIMITED (Resulting Company) (having its registered offices in Andhra Pradesh)

BETWEEN:

Mangal Industries Limited,
(CIN: U15122AP1990PLC011932)

Registered office at:
Renigunta, Chuddapah Road,
Karakambadi, Tirupati,
Andhra Pradesh -517520

Represented by its Company Secretary
Mr.P.Ravi Kumar

....1st Petitioner/ Demerged Company

AND

Amara Raja Batteries Limited,
CIN: L31402AP1985PLC05305

Registered office at:
Renigunta, Chuddapah Road,
Karakambadi, Tirupati,
Andhra Pradesh -517520

Represented by its Company Secretary
Mr.Vikas Sabharwal

.... 2nd Petitioner/Resulting Company

Orders pronounced on: 10.01.2024

CORAM

**SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)
SHRI SANJAY PURI, MEMBER (TECHNICAL)**

Appearance:

For the Petitioners : Mr. S. Ravi, Sr. Advocate

ORDER
(Per: Bench)

1. The present Joint Company Petition has been filed by M/s. Mangal Industries Limited, Demerged Company (1st Petitioner) and M/s.Amara Raja Batteries Limited, Resulting Company (2nd Petitioner) under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Compromises, Arrangements and Amalgamations) Rules, 2016 seeking for sanctioning of the Scheme of Arrangement (the **Scheme** for short) between the respective companies.
2. The Demerged Company and Resulting Company registered offices are situated in the state of Andhra Pradesh and therefore, it is within the jurisdiction of this Tribunal.
3. The Petitioner Companies have jointly filed the first motion application bearing CA(CAA)/2/230/AMR/2023 before this Tribunal seeking for:
 - i) to dispense with convening the meeting of the Equity Shareholders and Secured Creditors of the 1st Petitioner;

- ii) to convene and hold the meeting of Unsecured Creditors of the 1st Petitioner/Demerged Company; and
- iii) to convene and hold the meeting of Unsecured Creditors and Equity Shareholders of the 2nd Petitioner/Resulting Company.

The first motion application was disposed of by order dated 09.02.2023, the meetings of Equity Shareholders and Secured Creditors of the 1st Petitioner Company were dispensed with for the reasons mentioned in the aforesaid order. The meetings of unsecured creditors of the 1st Petitioner and unsecured creditors and equity shareholders of the 2nd petitioner were to be convened on 12.04.2023 for which the chairpersons and scrutinizers were also appointed.

4. Brief facts leading to the filing of the present case are as follows:

- i. M/s. Mangal Industries Limited (CIN: U15122AP1990PLC011932), 1st Petitioner/Demerged Company was incorporated on 09.11.1990 under the Companies Act, 1956 in the name and style of Harsha Electronics Private Limited and further the Central Government approved vide letter No.RAP/Sec.17/11932/2004, dated 21.10.2014, changed its name to Mangal Precision Products Private Limited and the status of the company was changed from Private Limited to Public Limited on 19.03.2009. Subsequently, the 1st

Petitioner Company name was changed to Mangal Industries Limited on 30.07.2012. The Authorized Share Capital as on 31.03.2022, was Rs.15,00,00,000/-, divided into 1,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.13,90,38,770/- divided into 1,39,03,877 equity shares of Rs.10/- each. The main objects of the Company are to carry on the business of manufactures, producers, assemblers, dealers, importers, exporters, stockists, distributors, agents or otherwise deal in storage batteries used in industries, railways, posts & telegraphs, navigation, ships army tanks, mining, power plants, automobiles and other industrial, commercial purposes and in manufacture of dry batteries, button batteries, battery plates, battery separators, battery containers, cells, lids and battery components, and voltage regulators, laminations for transformers, U.P.S systems, chargers, invertors, etc., and other allied activities.

- ii. M/s. Amara Raja Batteries Limited, 2nd Petitioner/Resulting Company was initially incorporated on 13.02.1985 as a Private Limited Company and the status of the company was changed from Private Limited to Public Limited on 08.11.1990. Subsequently, the 2nd Petitioner name was changed to Amara Raja Batteries Limited. The Authorized Share Capital as on 31.03.2022, was Rs.20,00,00,000/-, divided into 20,00,00,000 equity shares of Rs.1/- each. The

issued, subscribed and paid-up share capital is Rs.17,50,28,500/- divided into 17,50,28,500 equity shares of Rs.1/- each. The main objects of the Company are to carry on the business of manufactures, producers, assemblers, dealers, importers, exporters, stockists, distributors, agents or otherwise deal in storage batteries used in industries, railways, posts & telegraphs, navigation, ships army tanks, mining, power plants, automobiles and other industrial, commercial purposes and in manufacture of dry batteries, button batteries, battery plates, battery separators, battery containers, cells, lids and other battery components, etc., and other allied activities.

- iii. Accordingly, pursuant to the Scheme, the plastic component for Battery business will be demerged into the Resulting Company and the Demerged Company would continue to run and operate the Retained business. The Scheme is being proposed with a view to simplify the existing operations between both the Petitioner Companies in order to increase efficiencies.
- iv. According to the Petitioner Companies, the Scheme of Arrangement (Demerger) of the Petitioner Companies would help with a unified approach on supply chain management and consequent synergies leading to optimization of resources utilization, reduced operational, logistics, supervisory and overhead/utilities costs, reduce duplication

of administrative efforts and better procurement policies and prices, for the Resulting company and covers in the facilities of Demerged Undertaking, thereby stabilizing the procurement process and adding further synergies in the combined business. The Board of Directors of both the Petitioner Companies have considered it desirable and expedient to demerge the Demerged Undertaking of the 1st Petitioner Company and vest the same with the 2nd Petitioner Company. Such demerger is expected to be in the best interest of both companies, their respective shareholders, creditors, employees and other stakeholders.

- v. The Board of Directors of both the Petitioner Companies, in their respective Board Meetings held on 26.09.2022 have approved the Scheme of Arrangement with appointed date as 01.04.2022, subject to the approval of their shareholders and creditors.
- vi. No investigation or proceedings have been instituted or are pending in relation to both the Petitioner Companies. The NSE and BSE have issued observation letters respectively giving in-principle approval to the demerger of the Demerged Undertaking of the 1st Petitioner Company into the 2nd Petitioner Company.

5. As per Chairperson Ms. Manoranjani report dated 18.04.2023, the scheme has been unanimously approved by the unsecured creditors of the 1st Petitioner Company with 100% voting, Chairperson Mr. Naresh Kumar report dated 18.04.2023, the Scheme has been unanimously approved by the Unsecured Creditors of the 2nd Petitioner Company with 100% voting and another Chairperson Mr. M.Parameswara Reddy, report dated 19.04.2023, the Scheme has been approved by the equity shareholders of the 2nd Petitioner Company with 98.19%. The scheme of arrangement was approved by the board of directors and others.
6. In the second motion proceedings, certain directions were issued by this Tribunal vide order dated 28.06.2023 and the same were complied by filing a memo by dairy No.6209 dated 28.08.2023. The notice of hearing was published in Business Line (English Daily) and Eenadu (Telugu Daily) on 05.07.2023. It has also stated in the memo that the copies of notices were served upon the (a) Regional Director (SER), Hyderabad, MCA; (b) Registrar of Companies, AP, MCA, (c) Income Tax Department by way of hand delivery and also sent notices to NSE and BSE on 11.07.2023 and all the acknowledgment receipts evidencing the delivery of notices are also attached to the memo.

7. The Regional Director (RD) filed his first report by dairy no.6211 dated 28.08.2023 and raised the following objections and the Petitioner Companies replied to the same as detailed below:

S.No.	RD's Observations	Reply of the Petitioner Companies by way of affidavit
1	As per the Auditor's Certificate dated 30.09.2022 and also as per the reply of the resulting company, there are no secured creditors for Resulting Company. However, as per MCA data, there exists an open charge for a sum of Rs.118,00,00,000/-. In this regard, the Resulting Company may clarify the same.	The clarification for the above mentioned open charge was sought by the learned RD and the same was duly furnished by submitting a clarification letter dated August 22, 2023.
2	The Directorate has received letter dated 03.08.2023 from the ROC, Andhra Pradesh by pointing out certain observations as under:-	Undertaking given by the Petitioner Companies:

<p>(a) The Regional Director (RD) sought this Tribunal to direct the Petitioner Companies to preserve its books of accounts and papers and records and shall not be disposed of without the prior permission of the Central Government in terms of Section 239 of the Companies Act, 2013.</p>	<p>The Petitioner Companies given undertaking to preserve the books of accounts and records of the Petitioner Companies in terms of Section 239 of the Companies Act, 2013.</p>
<p>(b) The Regional Director (RD) sought this Tribunal to direct the Petitioner Companies to 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 liabilities in any manner.</p>	<p>The Petitioner Companies given their undertaking that the Petitioner Companies comply with all statutory requirements of applicable laws. Further, the Petitioner Companies shall not be absolved from any statutory liabilities and hereby undertake to discharge those liabilities as and</p>

		when demand to pay the same would arise.
	(c) The Regional Director (RD) sought this Tribunal to direct the Petitioner Companies, involved in the scheme to comply with Rule 17(2) of Companies (Compromise, Arrangement and Amalgamation) Rules, 2013 with respect to filing of order for confirmation of scheme to be filed in Form No.INC-28 with the concerned office of RoC by the Petitioner Companies.	The Petitioner Companies given their undertaking that they would comply with the provisions of the Companies Act, 2013 and file final order passed by Hon'ble Tribunal in INC-28 in accordance with Rule 17 (2) of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for confirmation of Scheme with the concerned Registrar of Companies Post the receipt of Final Order.
	(d) The Regional Director (RD) sought this Tribunal to direct the Petitioner Transferee Company to file an application with RoC indicating the revised	The Resulting Company undertakes that if any valid demand arises in future with respect to the Demerged Company (in relation to the Demerged

	authorised capital and proof of paying prescribed fees due on revised capital after setting of that fee already paid by Transferor Companies.	Undertaking) and Resulting Company, the Resulting Company will pay such dues to the Income Tax Authorities as per law.
3	The Regional Director (RD) sought this Tribunal to direct the Petitioner Companies to furnish an undertaking stating that the transactions are at arms length and complied with the provisions of section 188 of the Act. It is observed that as per the latest balance sheet dated 31.03.2021, there are related party transactions during the last two years in the Demerged and Resulting Companies.	The Petitioner Companies given their undertaking that they would comply the same.
4	The Regional Director (RD) sought this Tribunal to direct the Petitioner Companies to make it as	The Statement of Accounts along with the set of the Joint Company Petition were also

	part of the scheme to give accounting treatment in the books of the Petitioner Companies on post sanction of the scheme by this Tribunal. It is observed that the scheme is silent about details of assets and liabilities with their respective values of the demerged company to the resulting company on approval of the scheme.	submitted with the learned RD. Subsequently, the petitioner submitted a copy of the Audited Statement of Accounts of the Demerged Company, as at March 31, 2022, and June 30, 2022 certified by the Statutory Auditors of the Demerged Company, clearly bifurcating the same for the Demerged Undertaking and the Retained Business.
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8. The Regional Director (RD), after considering the said reply by the Petitioner, did not raise any further objection against accepting the Scheme of Arrangement of the Petitioner Companies.
9. We have heard the Ld. Sr. Counsel for the Petitioner Companies and perused the record.
10. Supreme Court in *Miheer H. Mafatal V/s Mafatal Industries Ltd JT 1996 (8) 205* while considering the scope of the jurisdiction of the Company Court in respect of matters of sanction of the Scheme

of Amalgamation as per the provisions of Section 391 read with Section 393 of the Companies Act, 1956, observed as under:

“It is commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Courts jurisdiction to that extent is peripheral and supervisory and not appellate.”

In view of the above Supreme Court Judgment, this Tribunal is not supposed to examine the commercial wisdom of the shareholders and creditors.

11. On the basis of the above facts and submissions made by the learned counsel and by considering the entire facts and circumstances of the aforesaid company petition and on perusal of the Scheme and the proceedings, reports of the Regional Director and reply/undertakings of the Petitioner Companies thereon and

the documents produced on record, the Scheme of Arrangement appears to be fair and reasonable and is not contrary to public policy and not in violation of any provisions of law, it appears that the requirements of the provisions of Sections 230 and 232 are satisfied by the Petitioner Companies. We are of the considered view that the proposed Scheme of Demerger is bona fide and in the interest of the shareholders and creditors.

12. In the result, the Company Petition is allowed with the following directions:-
 - i. 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 the law, against the concerned persons, directors and officials of the Petitioners.
 - ii. While approving the Scheme as above, it is further clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
 - iii. The Scheme of Arrangement (Copy of the Scheme enclosed at Page No.385 to 419 of the Petition) is hereby sanctioned

and it is declared that the same shall be binding on the Petitioner Companies and their respective Shareholders and Creditors, Employees and all concerned under the Scheme.

- iv. The Scheme shall become effective from the Appointed Date i.e., 01.04.2022 and shall be made operational from the date of filing of the orders with the Registrar of Companies.
- v. 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 Investment Undertaking along with all the assets and liabilities of the Demerged Undertaking shall stand transferred to and vest in the Resulting Company, without any further act or deed. The Resulting Company 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 Company.
- vi. All the liabilities of the Investment Undertaking of the Demerged Company be transferred, without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Sections 230 and 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company.

- vii. All contracts, agreements, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Investment Undertaking of the Demerged Company, shall stand transferred to and vested in the Resulting Company and be in full force and effect in favour of the Resulting Company and may be enforced by or against it as fully and effectually against the Resulting Company.
- viii. All taxes paid or payable by the Investment Undertaking 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.
- ix. All proceedings now pending by or against the Investment Undertaking of the Demerged Company, if any, shall be continued by or against the Resulting Company.
- x. All employees in the service of the Investment Undertaking of the Demerged Company shall be deemed to have become the employees and the staff of the Resulting Company 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.

- xi. The Petitioner Companies are directed to preserve their books of accounts and papers and records and not to dispose of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
- xii. 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 certified copy of this order along with the Scheme immediately.
- xiii. The Petitioner Companies are further directed to file a copy of this order along with the copy of the Scheme with the Registrar of Companies, Andhra Pradesh 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.
- xiv. 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 Arrangement 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 Arrangement 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.

- xv. The Petitioner Companies are directed to issue newspaper publication with respect to approval of Scheme of Arrangement, in the same newspaper in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.
- xvi. The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Arrangement under the provisions of the Act.
- xvii. The Petitioner Companies are also directed to strictly comply with all the Undertakings given by them including those with regard to payment of due taxes and other statutory dues as mentioned in foregoing paragraphs of this order.
- xviii. The Petitioner Companies are directed to strictly adhere to the above directions and applicable provisions of the Companies Act.

xix. Any person aggrieved shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

13. Accordingly, the Scheme stands sanctioned and the Company Petition bearing CP (CAA)/5/230/AMR/2023 connected with CA(CAA)/2/230/AMR/2023 is allowed and stands disposed of, in terms of the above order.

Sd/- Dt.10.01.2024
SANJAY PURI
MEMBER (TECHNICAL)

Sd/- Dt.10.01.2024
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Swamy Naidu (PS)