

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. I, MUMBAI BENCH,

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CP (CAA) 969/MB-I/2020
Connected with
C.A. (C.A.A)3211/MB-I/ 2019

In the matter of

A Petition under sections 230-232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

And

In the matter of

1. Better World Technology Private Limited a company incorporated under the Companies Act, 1956 having its registered office at having its registered office at Directiplex, Acme I-Tech Park Next to Andheri Subway, Old Nagardas Rd, Andheri (E), Mumbai – 400069, Maharashtra, India
CIN: U4999MH2011PTC221931

... First Petitioner Company/Demerged Company

2. Sodexo SVC India Private Limited a company incorporated under the Companies Act, 1956 having its registered office at 503 & 504, 5th Floor, B Wing, Hiranandani Fulcrum Sahar Road, Andheri (E), Mumbai- 400099, Maharashtra, India CIN: U74140MH2008FTC182494

And their respective shareholders

... Second Petitioner Company/Resulting Company

Date of Order: 01.09.2020

Coram:

Hon'ble Janab Mohammad Ajmal, Member (Judicial)

Hon'ble Mr. V. Nallasenapathy, Member (Technical)

Appearances (through Videoconferencing):

For the Petitioner(s) : Mr. Hemant Sethi i/b Hemant Sethi & Co.,
Advocates

For the Regional Director: Ms. Rupa Sutar, Deputy Director Office of the
Regional Director, MCA (WR), Mumbai

Per: Janab Mohammad Ajmal, Member (Judicial)

ORDER

The Petitioner seeks sanction under sections 230 to 232 of the Companies Act, 2013 (the Act for short) of the Scheme of Arrangement of Better World Technology Private Limited with Sodexo SVC India Private Limited, the Resulting Company and their respective shareholders.

2. Heard the Learned Counsel for the Petitioner Companies and the representative of the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai via videoconferencing. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any of the averments made in the Petition.

3. It is submitted by the learned Counsel for the Petitioner Companies that the First Petitioner Company is engaged in the business of providing corporate employee benefits directly to customers and indirectly to customers through distributors; and the business of providing corporate gifting directly to customers in the Territory ('Solutions Business') and Cafeteria digitization solutions, expense management solutions, gifting solutions in association with channel partners such as banks, banking solutions, marketplace solutions (alliances with various vendors) to sell their products through Zeta App and software development and maintenance, customization solutions for the customers using the software ('Alpha Business'). The business of providing

corporate gifting to customers indirectly through distributors also forms a part of the Alpha Business. The Second Petitioner Company is engaged, *inter alia*, in the business of employee benefits and rewards solutions including corporate gifting solutions ('Sodexo Business').

4. The Counsel for the Petitioner Companies submit that the Board of Directors of the First Petitioner Company in their meeting held on 19th August 2019 and Second Petitioner Company in their meeting held on 26th August 2019 have approved the Scheme by their respective Board Resolutions. The Appointed Date fixed under the Scheme is close of business hours on 31st March 2019.
5. The rationale for the Scheme is that the management of First Petitioner Company and Second Petitioner Company have agreed to form a joint venture in India for the Sodexo Business and Solutions Business ('Joint Venture') as aforesaid and mentioned in the Scheme and it is proposed to achieve the Joint Venture by way of Demerger of the Solutions Business from First Petitioner Company into the Second Petitioner Company. Post the Demerger, the Board of Directors of both the Demerged Company and Resulting Company are of the opinion that the proposed arrangement between the Demerged Company and the Resulting Company will be for the benefit of both the Demerged Company and Resulting Company in the following manner:
 - *Combining similar business interests into a single entity resulting in enhanced shareholders' value accruing from consolidation of the business operations resulting in economies of scale, improving allocation of capital, and optimizing cash flows, thus contributing to the overall growth prospects of the combined entity;*
 - *Offer opportunities to vigorously pursue growth and expansion opportunities;*
 - *Efficient utilization of funds and create a stronger base for future growth of the Resulting Company. This would increase the long-term value for its stakeholders; and pursuant to the Demerger, the Resulting Company will have a larger asset base and increased*

capacities with scope for higher volumes of business, increasing overall improvement in the performance of the business and future expansion;

- *The Joint Venture by way of Demerger of Solutions Business of BWTPL into Sodexo India will enable greater realization of the potential of the Solutions Business of BWTPL and Sodexo Business in the Resulting Company and have beneficial results for the Companies, their respective shareholders and all the concerned stakeholders; and*
 - *The Joint Venture will also help both the Companies in capitalizing the strengths of each other, thereby creating a much better product and offering for customers as well as improve value from a shareholders' perspective.*
6. The Company Petition is filed in terms of sections 230 to 232 of the Act and in accordance with the Order passed on 18.02.2020 in C.A. (C.A.A) 3211/MB. I/ 2019 by this Tribunal.
7. The Petitioner Companies have complied with all the requirements as per directions of this Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Act and the Rules made there under as applicable. The undertakings given by the Petitioner Companies are accepted.
8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 5th August, 2020 *inter alia* stating herein that save and except as stated in para IV (a) to (g) of the Report, the Scheme is not prejudicial to the interest of shareholders and public. In response to the observations made by the Regional Director, the Petitioner Company has also given necessary undertakings and clarification. Further the observations made

by the Regional Director and the clarifications and undertakings given by the Petitioner Companies which is summarized in the table below:

Sr. No. Para (IV)	RD Report/Observation 5 th August, 2020	Response of the Petitioner Companies
a)	<i>In addition to compliance of AS-14 (IND AS-103) 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(IND AS-8) etc</i>	<i>In so far as observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned the Resulting Company undertakes that in addition compliance of AS-14, (IND AS -103) the Resulting Company will pass such Accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8), to the extent applicable.</i>
b)	<i>“Appointed Date” means close of business hours on 31st March 2019. “Effective Date” means the last of the dates on which the certified/ authenticated copy of order of the NCLT</i>	<i>In so far as observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned the Petitioner Companies through it’s Counsel confirm</i>

	<p><i>sanctioning this Scheme is filed with the Registrar of Companies by the Demerged Company and the Resulting Company.</i></p> <p><i>In this regard, it is submitted that Section 232 (6) of the companies act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. How-ever, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.</i></p> <p><i>Further, the petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	<p><i>and undertake that the Appointed Date has been fixed as close of business hours on 31 March, 2019 which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall be deemed to be effective from such Appointed Date. Thus, Petitioner Companies will be complying with requirements clarified vide circular No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>
<p>c)</p>	<p><i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved</i></p>	<p><i>In so far as observation of the Regional Director, Western Region, Mumbai stated in</i></p>

	<p><i>by the requisite majority of members and creditors as per Section 230(6) of the Act in meeting duly held in terms of Section 230(1) read with subsection (3) to (5) of section 230 of the Act and Minutes thereof are duly placed before the Tribunal.</i></p>	<p><i>paragraph IV (c) of his report is concerned, the Petitioner Companies submits that in pursuance to an Order dated 18.02.2020 passed by this Tribunal in CA(CAA) No. 3211/MB.I/2019, the requirement to convene meeting of the Equity Shareholders were dispensed with in view of the consent affidavits given by all the Equity Shareholders. There are no Secured Creditors in both Petitioner Companies therefore, the question of sending notices does not arise. The requirement to convene meeting of the Unsecured creditors in the First Petitioner Company were dispensed with in view of consent affidavits given by all its unsecured creditors. Further, the meeting of Unsecured Creditors in Second Petitioner Company were dispensed with in view</i></p>
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		<p><i>of consent affidavits given by 93.59% of the total value of the Unsecured creditors and also since the present Scheme is an arrangement between the Petitioner Companies and their respective shareholders as contemplated under the provisions of Section 230 (1)(b) of the Companies Act, 2013.</i></p>
d)	<p><i>Demerged Company have non-resident shareholder, therefore, the shares sought to be issued to the nonresident equity shareholders the Share Exchange Price and price per share arrived should be minimum of fair price determined as per FEMA guidelines. Hence, valuer should certify that the price per share is as per FEMA guidelines.</i></p>	<p><i>In so far as observation of the Regional Director, Western Region, Mumbai stated in paragraph IV (d) of his report is concerned, the Petitioner Companies submits that the registered valuer has already provided the Valuation Report in accordance with relevant applicable provisions thereof.</i></p>
e)	<p><i>The Petitioners under the provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned</i></p>	<p><i>In so far as observation of the Regional Director, Western Region, Mumbai stated in paragraph IV (e) of the</i></p>

	<p><i>authorities which are likely to be affected by Amalgamation, further, the approval of the scheme by this 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 is binding on the petitioner Company(s).</i></p>	<p><i>Report is concerned, the Petitioner Companies through its Counsel state that the Petitioners have in accordance with the provisions of Section 230 (5) of the Companies Act, 2013 served notices to Central Government through Regional Director (Western Region), Concerned Income Tax Authorities and the Registrar of Companies. The Petitioners through their Counsel further undertakes that the approval of the Scheme by the Tribunal shall not deter the concerned authorities to deal with any issues arising after giving effect to the Scheme and the decisions of such authorities is binding on the Petitioner Company.</i></p>
<p>f)</p>	<p><i>It is observed that the Petitioner Companies have not submitted the Chairman's Report, admitted copy of the Petition, and Minutes of the</i></p>	<p><i>In so far as observation of the Regional Director, Western Region, Mumbai in paragraph IV(f) are concerned, the Petitioner</i></p>

	<i>Order for admission of the Petition. In this regard, the Petitioner has to submit the same for the record of Regional Director.</i>	<i>Companies have already submitted a copy of the Petition along with a copy of the Order admitting the Petition with Regional Director on 13 August 2020 for the record of the Regional Director. Chairman's report was not applicable since meetings were dispensed with.</i>
g)	<i>Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central Government to file further report any required</i>	<i>In so far as observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (g) of his report is concerned the Petitioners clarify that that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.</i>

9. The Observations made by the Regional Director have been explained and the clarifications and undertakings given by the Petitioner Companies have been explained in Para 8 above. The Undertaking filed by the Petitioner Companies in response to the said report, is accepted by this Tribunal.

10. From the materials available on record, the Scheme appears to be fair and reasonable and does not violate any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, CP (CAA) 969/MB-I/2020 is made absolute in terms of prayer made in the Petition. Hence Ordered.

ORDER

The Petition be and the same is allowed subject to the following.

- i. The Scheme, with the Appointed Date fixed as the close of business hours of 31st March 2019 placed at Page Nos. 186 to 206 of the CA (CAA) No. 3211/MB. I/2019 is hereby sanctioned. It shall be binding on the Petitioners involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/ Trade Creditors and Employees.
- ii. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme forthwith. The Petitioners are directed to file a copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-Form INC-28, within 30 days from the date of receipt of the Order from the Registry.
- iii. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, payable within 60 days from the date of receipt of the Order.

- iv. The Petitioner Companies shall comply with the undertakings given by them.
- v. All concerned shall act on a copy of this Order along with Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.
- vi. The Petitioner Company is directed to issue newspaper publications with respect to approval of the Scheme, in the same newspapers in which previous publications were issued.
- vii. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- viii. Any person interested in above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

Sd/-
V. Nallasenapathy
Member Technical

Sd/-
Janab Mohammed Ajmal
Member Judicial

COURT No. – I, MUMBAI BENCH

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**CP (CAA) 969/MB/2020
in
CA (CAA) 3211/MB/2019**

Better World Technology Private Limited

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Dated 01st September 2020

ORDER

The work of the Tribunal has been closed due to Covid-19 pandemic as per letter dated 22.03.2020 and subsequent follow up orders of the Principal Bench, National Company Law Tribunal. The Principal Bench vide Order dated 31.07.2020, constituted this Bench for hearing of the urgent matters through Video Conference (VC).

The matter is taken up on VC. Heard the Counsel for the Petitioner and Ms. Rupa Sutar, Dy. Director from the office of the Regional Director (WR), Mumbai. Heard. Petition allowed.

**Sd/-
V. NALLASENAPATHY
Member (Technical)**

**Sd/-
MOHAMMED AJMAL
Member (Judicial)**