

**In the National Company Law Tribunal
Kolkata Bench (Court-I), Kolkata**

C.A. (CAA) No.141/KB/2022

An application made under Sections 230(1) and 232(1) of the Companies Act, 2013.

In the Matter of :

Saregama India Limited, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification Number – L22213WB1946PLC014346 and its registered office at 33, Jessore Road, Dum Dum, Kolkata 700 028 in the State of West Bengal.

....Applicant Company No. 1 / Demerged Company

And

Digidrive Distributors Limited, a Company incorporated within the meaning of the Companies Act, 2013 having Corporate Identification Number – U51909WB2022PLC252287 and its registered office at 33, Jessore Road, Dum Dum Kolkata 700 028 in the State of West Bengal.

....Applicant Company No. 2 / Resulting Company

And

In the matter of:

1. Saregama India Limited
2. Digidrive Distributors Limited

. Applicant Companies

Dates of Hearing: 03.11.2022

Date of pronouncing the Order : 18.11.2022

Coram:

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| Shri Rohit Kapoor | : | Member (Judicial) |
| Shri Balraj Joshi | : | Member (Technical) |

Advocate on Record for the Petitioner:

1. Mr. S. N. Mookherjee, Senior Advocate and Advocate General for the State of West Bengal.
2. Mr. Joy Saha, Senior Advocate

3. Mr. D. N. Sharma, Advocate
4. Ms. Rusha Mitra, Advocate
5. Mr. Yash Singhi, Advocate

ORDER

Per Balraj Joshi, Member (Technical):

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“Act”) for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Arrangement between **Saregama India Limited**, being the Applicant Company No.1 above named (hereinafter referred to as "**Demerged Company**") and **Digidrive Distributors Limited**, being the Applicant Company No.2 abovenamed (hereinafter referred to as "**Resulting Company**") and their shareholders and creditors (“**Scheme**”) whereby and whereunder the Demerged Undertaking (E-Commerce Distribution Business) of the Demerged Company, as defined in the Scheme, together with all property, rights and powers and all debts, liabilities, duties and obligations of the Demerged Company relating to the Demerged Undertaking is proposed to be transferred to and vested in the Resulting Company from the **Appointed Date, viz 1st April, 2022** in the manner and on the terms and conditions fully stated in the said Scheme.
2. Learned Senior Advocate appearing for the Applicant Companies submits as follows:-
 - (a) The Resulting Company is a wholly owned (100%) subsidiary of the Demerged Company.
 - (b) The Board of Directors of the Applicant Companies at their meetings held on 30th March, 2022 and 02nd August, 2022 by resolutions passed unanimously, approved the said Scheme (Annexure – G of the application at Pages 249 to 261).
 - (c) The share entitlement ratio in consideration for the demerger has been fixed on a fair and reasonable basis and on the basis of the Report dated 30th March 2022 of Messrs. RBSA Valuation Advisors LLP, Registered Valuer (Registration No. IBBI/RV/-E/05/2019/110) (Annexure – H of the application at Pages 262 to 268). Further, VC Corporate Advisors Private Limited, an independent SEBI registered Merchant Banker (Registration No. INM0000011096), have also confirmed that

the share entitlement ratio is fair and proper by their fairness opinion dated 30 March 2022 thereon (Annexure – I of the application at Pages 269 to 280).

- (d) The Auditors of the Demerged Company and the Resulting Company have confirmed that the accounting treatment in the said Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 (Annexure – J of the application at Pages 284 to 289).
- (e) The equity shares of the Demerged Company are listed on BSE Limited (BSE) and the National Stock Exchange of India Limited (NSE). The Demerged Company had filed the Scheme with BSE and NSE in terms of the SEBI Circular (SEBI Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665 dated November 23, 2021, and any amendments thereof, modifications issued pursuant to Regulations 11, 37 and 94 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015) for their approvals. Apart from the same, the Demerged Company has also submitted the Report of its Audit Committee on the Scheme and various other documents to the Stock Exchanges and also displayed the same on their website in terms of the SEBI Circular and addressed all queries on the said documents. The Complaints Report required to be filed in terms of the said SEBI Circular was also duly filed by the said Demerged Company. BSE and NSE by their respective letters dated 18th August, 2022 have since confirmed that they have ‘no adverse observation’ on the Scheme pursuant to the said SEBI Circular (Annexure – K of the application at Pages 290 to 296).
- (f) The Demerged Company / Applicant Company No. 1 has the following classes of shareholders and creditors:

| Applicant No. | Number of Share Holders | Number of Secured Creditors | Number Unsecured Creditors |
|----------------------|--------------------------------|------------------------------------|-----------------------------------|
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| Applicant Company No. 1 / Demerged Company | 62,837 (Annexure- L at page No. 297 of the application) | NIL (Annexure- P at page No. 938 of the application) | 10,570 (Annexure- P at page No. 938 – 992 of the application) |
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- (g) The Resulting Company / Applicant Company No. 2 has the following classes of shareholders and creditors:

| Applicant No. | Number of Share Holders | Number of Secured Creditors | Number Unsecured Creditors |
|--|---|---|---|
| Applicant Company No. 2 / Resulting Company | 7 (Annexure- O at page No. 904 of the application) | NIL (Annexure- Q at page No. 993 of the application) | NIL (Annexure- Q at page No. 993 of the application) |

- (h) The said Equity Shareholders of the Resulting Company have already agreed in writing to the proposed Scheme by way of affidavits. List of Equity Shareholders of Resulting Company along with consent affidavits issued by the said Equity Shareholders in this regard are annexed to the application (Annexure O of the application at Pages 904 to 937).
- (i) The Applicant Companies have filed a supplementary affidavit enclosing the net worth certificate issued by the chartered accountant dated 29 October 2022 certifying pre Scheme and post Scheme net worth position of the Applicant Companies (Annexure – A-I of the Supplementary affidavit at Page 6). Referring to paragraph 7.14 of the application and the pre Scheme and post Scheme net worth position of the Applicant Companies, the Learned Senior Advocate states that the Applicant Companies have NIL Secured Creditors, and the net worth of the Companies are positive. Upon the Scheme coming into effect, the Demerged Company and the Resulting Company would continue to have positive net-worth

and would be in a position to meet their liabilities, as and when they accrue and in the ordinary course of business.

3. In the facts and circumstances and in view, inter alia, of the order dated 10th December, 2020 of *Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) No. 19 of 2021 (In Re: Ambuja Cements Limited – paragraphs 14 and 26)* and the pre Scheme and post Scheme net worth position of the Applicant Companies, orders and directions are sought accordingly for (a) dispensing with meetings of the Equity Shareholders of the Resulting Company and Unsecured Creditors of the Demerged Company (b) direction for holding and convening meeting of the Equity Shareholders of the Demerged Company and (c) service of notices on the Statutory Authorities pursuant to Section 230(5) of the Companies Act, 2013.
4. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant Companies, we allow the instant application and make the following orders:-
 - a. Meetings of the Equity Shareholders of the Resulting Company and Unsecured Creditors of the Demerged Company are dispensed with under Section 230(1) read with Section 232(1) of the Act.
 - b. A meeting of the Equity Shareholders of the Demerged Company be convened and held on **21st December, 2022 at 11:00 A.M.** through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme. In addition to the above, the Demerged Company shall provide facility of remote e-voting to each of its Equity Shareholders to cast their vote.
 - c. That at least 30 (thirty) clear days before the meeting to be held as aforesaid, an advertisement convening the same indicating the day, date and time of the said meeting and stating that copies of the said Scheme along with the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 disclosing necessary details can be obtained free of charge by emailing the Demerged Company at Co.sec@saregama.com be inserted once each in the **“Financial Express”** in English and **"Aajkal"** in Bengali as per the

requirements of Section 230 of the Companies Act, 2013 in Form No.CAA2 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions herein.

- d. That at least 30 (thirty) clear days before the date of the meeting of Equity Shareholders to be held as aforesaid, notice convening the said meeting through video conferencing or other audio-visual means, including a copy of the said Scheme, a copy of the statement required to be sent pursuant to the provisions of Section 230(3) of the Companies Act, 2013 disclosing necessary details shall be sent to each of the said Equity Shareholders of the Demerged Company, through e-mail to their registered or last known e-mail address or addresses as per the records of the Demerged Company / Depositories and in accordance with various circulars issued by Securities and Exchange Board of India (SEBI) / stock exchange and the Ministry of Corporate Affairs, to the extent applicable. The said notices along with accompanying documents shall also be placed on the website of the Demerged Company.
- e. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies, West Bengal; and Income Tax Department having jurisdiction over the Applicant Companies, SEBI, BSE, NSE, and other sectoral regulators or authorities, if any, by sending the same by hand delivery through special messenger, by speed post and by email forthwith after the notices are sent to the shareholders in terms of Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Advocates of the said Applicant Companies. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Demergers)

Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

5. Mr. Abhishek Guha, Advocate (Mob. No. 9830956258) is appointed as the Chairperson of the said meeting of the Equity Shareholders of the Demerged Company to be held as aforesaid in terms of this order. The Chairperson shall be paid a consolidated sum of Rs.75,000 /- for conducting the aforesaid meeting as Chairperson.
6. Ms. Aisha Amin, Advocate (Mob. No. 8981204500) is appointed as the Scrutiniser of the said meeting of the Equity Shareholders of the Demerged Company to be held as aforementioned in terms of this order. The Scrutiniser shall be paid a consolidated sum of Rs.60,000/- for acting as Scrutiniser.
7. The Chairperson appointed for the aforesaid meeting of the Demerged Company to issue notices of the meeting of the Equity Shareholders referred to above. The Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable for meeting of shareholders through video conferencing or other audio-visual means mode, in relation to the conduct of the meeting including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including, an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
8. Since the meeting is being held through video conferencing or other audio-visual means mode, physical attendance of members has been dispensed with. Accordingly, the facility for appointment of proxies by the members will not be available for the meeting and hence the requirement to send the proxy form and attendance slip along with the notice of the meeting is dispensed with. However, the Equity Shareholders of the Demerged Company who are body corporates are entitled to appoint authorised representatives to attend the meeting through video conferencing or other audio-visual means and participate there at and cast their votes through e-voting. However, such body corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at such meeting on its behalf is deposited at the registered office of the Demerged Company not later than 48 (forty eight) hours before the time for holding such meeting.

9. The quorum for the aforesaid meeting of the Equity Shareholders of the Demerged Company shall be as prescribed under Section 103 of the Companies Act, 2013.
10. The value and number of the equity shares of each member shall be in accordance with the books/register of the Demerged Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
11. The Applicant Companies to file an affidavit proving service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the meeting to be held.
12. The Equity Shareholders of the Demerged Company shall be given the option of voting on the resolution for approval of the Scheme by casting their votes personally or through authorised representative (in case of body corporate) at the meeting held through video conferencing or other audio-visual means mode on 21st December 2022 or by remote e-voting during the period from 17th December, 2022 (9:00 A.M.) to 20th December, 2022 (5:00 P.M.). The facility for remote e-voting shall be disabled at 5:00 P.M on 20th December, 2022.
13. The business of the meeting shall be transacted accordingly. The resolution for approval of the Scheme shall, if passed by a majority in number representing three-fourths in value of the Equity Shareholders casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of the said meeting of such shareholders of the Demerged Company under Section 230(1) read with Section 232(1) of the Companies Act, 2013.
14. Subject to the directions and matters dealt with herein, the procedure for remote e-voting and conduct of voting at the venue of the meeting in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 (“the said Rules”) and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.
15. The cut-off date in terms of the said Rules for determining the eligibility of shareholders to vote shall be 14th December, 2022 (“Cut-Off Date”). The votes cast by the shareholders shall be reckoned and scrutinized for all modes with reference to such relevant date.

16. The Equity Shareholders of the Demerged Company may opt to exercise their votes only in one mode, i.e, by (a) remote e-voting or (b) voting held at the meeting through video conferencing or other audio-visual means mode as arranged by the Demerged Company. In case, they cast their votes by remote e-voting, they will not be entitled to vote again at the meeting held through video conferencing or other audio-visual means mode. If they do so, the votes so cast by them at the meeting held through video conferencing or other audio-visual means mode shall be treated as invalid.
17. It is clarified that the Equity Shareholders of the Demerged Company choosing to cast their votes by remote e-voting shall nevertheless be entitled to attend and participate in the discussions in their meeting held through video conferencing or other audio-visual means mode but shall not be entitled to vote again at such meeting.
18. The votes cast at the meeting shall be scrutinised by the Scrutiniser. The Scrutiniser shall prepare and submit the report on the meeting along with all papers relating to the voting to the Chairperson of the meeting. The Chairperson shall declare the results of the meeting after submission of the report of the Scrutiniser to him. The votes cast in all the modes shall be consolidated.
19. That the Chairperson do report to this Tribunal the results of the said meeting within four weeks from the date of the conclusion of the said meeting. The report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.
20. The Applicant(s) to file an affidavit proving service of notices of meeting(s) and publication of advertisement and compliance of all directions contained herein at least a week before the meeting(s) to be held.
21. The Company Application being **C.A. (CAA) No.141/KB/2022 is disposed of** accordingly.
22. Urgent certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Signed on this, the 18th day of November, 2022.