

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

Company Petition (CAA) No.4/KB/2023

Connected With

Company Application (CAA) No.141/KB/2022

A petition under Companies Act, 2013 - Section 230(6) read with Section 232(3)

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.

....Demerged Company / Petitioner No 1

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.

.... Resulting Company / Petitioner No 2

And

In the matter of:

1. Saregama India Limited;
2. Digidrive Distributors Limited;

.... Petitioner Companies

Date of Hearing: 28 / 04/ 2023

Date of pronouncing the order: 22/06/ 2023

Coram:

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

Appearances (via Hybrid Mode):

1. S N Mookherjee, Advocate General for the State of West Bengal
2. Mr D N Sharma, Advocate
3. Ms Rusha Mitra, Advocate

ORDER

Per: Balraj Joshi, Member (Technical)

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of the proposed Scheme of Arrangement to be made between **Saregama India Limited**, being the Petitioner Company No.1 (hereinafter referred to as "**Demerged Company**") and **Digidrive Distributors Limited**, being the Petitioner Company No.2 (hereinafter referred to as "**Resulting Company**") and their respective shareholders and creditors for demerger of the Demerged Undertaking, being the **E-Commerce Distribution Business** (*as defined in the Scheme*) of the Demerged Company, to the Resulting Company in the manner and on the terms and conditions stated in the said Scheme of Arrangement (“**Scheme**”) (**Annexure A at pages 50 to 72**).
2. The Petition herein has now come up for final hearing. Learned Senior Counsel for the Petitioners submits as follows: -
 - a. The Demerged Company sells all its physical products including Carvaan, directly and through distributors, appointed exclusively for selling on digital media medium. Online marketplace has considerable potential, and skills acquired by the Demerged Company in the recent past can be utilized to manage end-to-end distribution activity, and with a potential to add many more products. This will also benefit the Demerged Company’s business, as the negotiation

strength generated by the distributors by selling a suite of products will help accelerate carvaan sales too.

- b. Therefore, the Demerged Company intends to create a specialized master distributor for retailing all its physical products including Carvaan on all digital marketplaces. Such distributor may also offer its sales & marketing services to other market participants. Accordingly, the Demerged Company intends to demerge its **E-Commerce Distribution Business** along with identified non-core assets, into the Resulting Company which, inter alia, will result in the following benefits:
- i. unlocking the value of each of the business for the shareholders of the Demerged Company, attracting investors and providing better flexibility in accessing capital;
 - ii. segregating different businesses having different risk profiles and returns, and providing investors with better flexibility to select investments which best suit their investment strategies and risk profile; and
 - iii. enabling focused growth strategy for each of the businesses for exploiting opportunities specific to each business.

The Scheme is in the best interests of the shareholders, employees and the creditors of each of the Petitioner Companies.

- c. The Board of Directors of the Petitioner Companies at their respective meetings held on 30 March 2022 by resolutions

passed unanimously, approved the said Scheme of Arrangement. Further, the Demerged Company has passed further resolution dated 2 August 2022 for addition of authorised signatory in relation to its resolution dated 30 March 2022. (**Annexure G at Pages 263 to 275**)

- d. 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 30 March 2022 of RBSA Valuation Advisors LLP, Registered Valuer (Registration No. IBBI/RV/-E/05/2019/110). 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 H at Pages 276 to 283 and Annexure I at 284 to 295**)
- e. 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 at Pages 296 to 300**)
- f. The shares of the Demerged Company are listed on BSE and 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 18 August 2022 have since confirmed that they have ‘no adverse observation’ on the Scheme pursuant to the said SEBI Circular. (**Annexure K at Pages 301 to 307**)

g. By an order made on 18 November 2022 in Company Application (CAA) No.141/KB/2022, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

i. Meetings dispensed :

Equity Shareholders

Meeting of Equity Shareholders of the Resulting Company for considering the Scheme are dispensed with in view of consent by all Equity Shareholders of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

ii. No requirement of Meetings.

Secured Creditors

Secured Creditors of both Petitioner Companies- NIL
Creditors verified by auditor’s certificate.

Unsecured Creditors

Unsecured Creditors of Resulting Company- NIL
Creditors verified by auditor's certificate

iii. Meetings to be held :

Meeting of Equity Shareholders of the Demerged Company for considering the Scheme was directed to be convened on 21 December 2022 at 11:00 A.M. through video conferencing or other audio-visual means. (**Annexure N at Pages 366 to 375**)

h. Pursuant to the said order dated 18 November 2022, notice of the said meeting and the Explanatory Statement under Section 230(3) of the Companies Act, 2013 along with all accompanying documents were duly drawn up and served individually on all the Equity Shareholders of the Demerged Company including the Scheme of Arrangement and other meeting related documents. The notice of meeting was also advertised as directed by the said order once in "Financial Express" in English and in "Aajkaal" in Bengali in their respective issues dated 20 November 2022 and also uploaded on the website of the Demerged Company and that of the Stock Exchanges. Affidavit of Compliance was filed by the Demerged Company on 13 December 2022 evidencing service of notice of meeting to Equity Shareholders and publication in the newspaper in terms of the order dated 18 November 2022 (**Annexure O at Pages 376 to 503**).

i. Meeting of the Equity Shareholders of the Demerged Company was duly held on Wednesday, 21 December 2022 at 11:00 A.M. virtually through Video Conferencing ("VC") / Other Audio Visual Means ("OAVM") in compliance with the directions of this Tribunal. In terms of the order dated 18

November 2022 of this Tribunal, the Equity Shareholders of the Demerged Company were also given the option of voting on the Scheme by remote e-voting during the voting period provided prior to the date of the meeting.

- j. The meeting of the Equity Shareholders of the Demerged Company approved the said scheme by requisite majority. The result of the meeting of the shareholders of the Demerged Company was declared by the Chairperson on 21 December 2022 and also posted on the website of the Demerged Company and notice board at the registered office of the Demerged Company besides being uploaded on the website of National Securities Depository Limited and intimated to the stock exchanges (**Annexure P at Pages 504 to 515**).
 - k. In terms of the said order dated 18 November 2022, the chairperson appointed for the said meeting of the shareholders of the Demerged Company has filed his report along with his affidavit verifying the same in the Tribunal on 02 January 2023. (**Annexure Q at Pages 516 to 537**)
3. The Learned Senior Counsel for the Petitioners submit that in compliance with Section 230(5) of the Companies Act, 2013 and the order dated 23 March 2023 made in the Company Petition CP (CAA) No.4/KB/2022, notice along with the Scheme, explanatory statement under provisions of the Companies Act, 2013 and all documents accompanying the same have already been sent to the Statutory Authorities on 27 March 2023, as directed by the said order. The Petitioners have also published advertisements of the date of hearing of the petition in the “**Financial Express**” and “**Aajkal**” in their respective issues dated 13 April 2023.

4. The Petitioner Companies, in terms of the order dated 23 March 2023, have filed the affidavit of compliance dated 21 April 2023 evincing service on all relevant statutory and sectoral/regulatory authorities.
5. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
6. The Deputy Commissioner of Income Tax Circle (1), Kolkata has issued a notice dated 28 November 2022 in connection with the instant company petition pursuant to notice being sent to the said statutory authorities under Section 230(5) of the Companies Act, 2013. The Petitioner Company No.1 has responded to such notice dated 28 November 2022 of the Deputy Commissioner of Income Tax Circle (1), Kolkata by way of a reply affidavit dated 8 February 2023 filed on 9 February 2023. The Petitioner Companies have relied on the order of the Hon'ble National Company Law Appellate Tribunal ("NCLAT") in the matter of Ad2Pro Global Creative Solutions Private Limited¹, wherein the Hon'ble NCLAT has held that the legitimate interests of the concerned tax authorities shall be lawfully protected and their right to recover the tax dues, as the case may be, shall remain intact. The Hon'ble NCLAT allowed the appeal holding that the payment of the income tax liability is not a condition precedent to the sanction or implementation of the Scheme. The Petitioner Companies have further submitted that the Scheme of Arrangement is between the Petitioner Companies and their respective shareholders and creditors, and that it is only the Demerged Undertaking of the Demerged Company (as defined in the Scheme) which is to be demerged and transferred from the Demerged Company to the Resulting Company. The Remaining Business (as defined in the Scheme) of the Demerged Company, will continue to

¹ [2019] 217 Comp Cases 443 NCLAT

be part of the Demerged Company and the Demerged Company will continue to exist and operate activities relating to its Remaining Business. The Petitioners have submitted that purported demand, if any, of the income tax authority will not be affected in any way by reason of the Scheme of Arrangement. Further, the Petitioner Companies have submitted that they have been advised to take necessary steps to defend and contest demands raised by the income tax authorities in accordance with law and have accordingly preferred statutory appeals against such demand made by the income tax authorities. Such proceedings are pending adjudication.

7. The Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”) has filed his representations before this Tribunal *vide* his reply affidavit dated 24 April 2023 (“**RD Affidavit**”). The observations of the RD have been dealt with by the Petitioners by their Rejoinder affidavit dated 26 April 2023 (“**Rejoinder**”). The observations made in the RD affidavit and the corresponding responses of the Petitioners are summarized as under:-

A. **Paragraph 2(a) of the RD Affidavit**

That it is submitted that on examination of report of the Registrar of Companies, West Bengal, it appears that no complaints and/or representation has been received against the proposed Scheme of Amalgamation. Further, the Demerged Company, Saregama india Limited is updated in filing its financial statements and Annual Returns for the financial year 31/03/2022. The Resulting Company, Digidrive Distributors Limited was incorporated on 15/03/2022 and it is a wholly owned subsidiary of the said Demerged Company, Saregama India Limited.

Response as per Paragraph 3 of Rejoinder

The contents of paragraphs 1 and 2(a) of the said Affidavit are matters of record.

B. Paragraph 2(b) of the RD Affidavit

That it is submitted that the Demerged Company namely Saregama India Limited is listed on BSE Limited and NSE Limited. The BSE vide its letter DCS/AMAL/MJ/IP/2453/2022-23 dated 18.08.2022 and the National Stock Exchange of India Limited (NSE) vide its letter no. Ref NSE/LIST/30810_II dated 18.08.2022 issued their 'Observation Letter' for draft Scheme of Arrangement between Saregama India Limited (Demerged Company) and Digidrive Distributors Limited (Resulting Company) and also conveyed their 'No Adverse Observation'/'No Objection' in terms of the provisions of the SEBI (LODR) Regulations to enable the Company to file the draft Scheme with the NCLT. However, as per said letters, the validity of these 'Observation Letter' shall be six months from the date of the respective letters. (Copies of the said letters of both BSE and NSE collectively marked as Annexure-I is enclosed herewith for perusal and ready reference).

Response as per Paragraph 4 of Rejoinder

With reference to paragraph 2(b) of the said Affidavit, it is stated that as indicated in paragraph 7.6 of the instant company petition, the BSE Limited (BSE) and the National Stock Exchange of India Limited (NSE) vide their respective letters dated 18 August 2022 have since confirmed that they have 'no adverse observation' on the Scheme pursuant to the

said SEBI Master Circular. The observation letters have been annexed as Annexure “K” [(Pages 301 to 303 (no-adverse observation letter of NSE) and Pages 304 to 307 (no-adverse observation letter of BSE)] to the instant company petition. As would be evident from the said letters, the validity of such observation letters issued by BSE and NSE was six months from 18 August 2022, being the date of issuance of the said observation letters within which the Scheme was required to be submitted to this Tribunal. It is stated that the Scheme was duly submitted to this Tribunal on 21 September 2022 as annexure “A” to the Company Application (CAA) No.141/KB/2022. The same is within the prescribed time period as indicated by the said Stock Exchanges in their respective observation letters.

C. **Paragraph 2(c) of the RD Affidavit**

The Petitioners should be directed to provide list/details of Assets, if any, to be demerged/transferred from the Demerged/Transferor Company to the Resulting /Transferee Company upon sanctioning of the proposed Scheme.

Response as per Paragraph 5 of Rejoinder

With reference to paragraph 2(c) of the said Affidavit, the Petitioners confirm that the Petitioner Companies will provide the list/details of Assets of the Demerged Undertaking, to be transferred from the Demerged Company to the Resulting Company upon sanctioning of the proposed Scheme as would be directed by the Tribunal.

D. **Paragraph 2(d) of the RD Affidavit**

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013, if applicable, through appropriate affirmation.

Response as per Paragraph 6 of Rejoinder

With reference to paragraph 2(d) of the said Affidavit, the Petitioners undertake and affirm that the Petitioner Companies will comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.

E. **Paragraph 2(e) of the RD Affidavit**

That the Resulting/Transferee Company should be directed to pay applicable stamp duty on the Demerged/Transfer of the immovable properties from the Demerged/Transferor Company to it.

Response as per Paragraph 7 of Rejoinder

With reference to paragraph 2(e) of the said Affidavit, the Petitioners undertake and affirm that the Petitioner Companies will pay the applicable stamp duty on the transfer of the immovable properties, if any, relating to the Demerged Undertaking from the Demerged Company to the Resulting Company.

F. **Paragraph 2(f) of the RD Affidavit**

The 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.

Response as per Paragraph 8 of Rejoinder

With reference to paragraph 2(f) of the said Affidavit, the Petitioners affirm 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.

G. Paragraph 2(g) of the RD Affidavit

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 25/11/2022 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Response as per Paragraphs 9 and 10 of Rejoinder

The contents of paragraph 2(g) of the said Affidavit are matters of record. The Petitioners submit that no rights of the Income tax authorities are being affected by the present Scheme of Arrangement as proposed by the Petitioner Companies. The rights of the tax authorities to recover the outstanding dues shall remain intact. Nothing shall preclude the tax authorities from recovering its legitimate and recoverable outstanding tax dues from the Petitioner Companies or prevent the aforesaid authorities from making any decision, as per law and any such decision of such authorities if taken, will be dealt with by the Petitioner Companies as per applicable law. It is stated that the Petitioner Companies will continue to be profitable and able to meet its liabilities post effectiveness of the Scheme. Relying on the order of the Hon'ble Supreme Court of India

in the matter of Joint Commissioner of Income-Tax vs Reliance Jio Infocomm Limited and Others [2022] 234 Comp Cases 612 (SC) and in the matter of Department of Income Tax vs Vodafone Essar Gujarat Limited and Another [2015] 16 Supreme Court Cases 629, wherein the Hon'ble Apex Court has held that the legitimate interests of the concerned tax authorities shall be lawfully protected and their right to recover the tax dues, as the case may be, shall remain intact and that any sanction of Scheme of arrangement under Sections 230 and 232 of the Companies Act, 2013 should not adversely affect the rights of the Income tax authorities for any past, present or future proceedings, the Petitioner Companies affirm and undertake to comply with the directions of the Income Tax Authorities concerned in accordance with applicable law

The Petitioners further state and submit that the Petitioner Companies are solvent companies. The Demerged Company being the Petitioner Company No.1, has a positive net-worth and the transfer of the Demerged Undertaking of the Demerged Company under the Scheme, by the Demerged Company, will not affect or adversely impact the rights of the concerned Income Tax Authorities in view of the strength of the financial position of the Demerged Company. The strength of the financial position of the Demerged Company has been set out in its financial statements which is annexed to the instant company petition. A net worth certificate issued by the chartered accountant dated 26 April 2023 certifying pre scheme and post scheme net worth positions of the Petitioner Companies as on 31 December

2022, have been annexed thereto collectively and marked “P-2”. Further, as on 31 December 2022, the Demerged Company has liquid assets of Rs.87,833.94 Lakhs lying in Current Account with Banks, Fixed Deposit with Bank and in Units of Mutual funds. Further, the Resulting Company is a newly incorporated Company where the current liabilities are NIL. 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.

8. Senior Counsel for the Petitioners submits that the instant Scheme of Arrangement is to the benefit and advantage of the said companies, their shareholders, employees and all concerned. The Scheme is just, fair and reasonable and is not contrary to any provisions of law and does not violate any public policy. The Scheme has also been approved by the shareholders of the Petitioner Companies.
9. Heard submissions made by the Learned Senior Advocate appearing for the Petitioners and the Joint Director R.D.(In charge), MCA, Kolkata.
10. In light of the aforementioned decisions taken by the Hon’ble Supreme Court in *Vodafone Essar Gujarat Limited* (Supra) and Hon’ble NCLAT in the matter of *Ad2Pro Global Creative Solutions Private Limited* (Supra), this Tribunal is satisfied that the legitimate interests of the concerned tax authorities shall not be adversely affected by the sanction of the scheme. The Petitioner Companies have undertaken to comply with the directions of the Income tax Authorities concerned in accordance with applicable law. As such, the sanction of the scheme shall not stand in the way of any action to which the Petitioner Companies may be liable in

accordance with law in relation to any violation of either regulatory or compliance requirements in relation to the directions of the Income tax Authorities concerned in accordance with applicable law. To that extent we leave it to the authorities concerned to see if there has been any violation of provisions of law by the Petitioner Companies and to take action as may be deemed appropriate under the law against the Petitioner Companies.

11. We are satisfied with explanations given by the Petitioners. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

- i. The Scheme of Arrangement mentioned in paragraph 1 of this petition, being Annexure "A" hereto, is sanctioned by this Tribunal with the Appointed date as 1st day of April, 2022 (“Appointed Date”) and shall be binding on Saregama India Limited and Digidrive Distributors Limited their respective shareholders, creditors and all concerned;

Transfer of Assets

- ii. All the property, rights and powers of Saregama India Limited relating to the Demerged Undertaking, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Resulting Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013 be transferred to and vest in Digidrive Distributors Limited for all the estate and interest of Saregama India Limited therein but subject, nevertheless, to the charges affecting the same, as provided in the Scheme;

Transfer of Liabilities

iii. all the debts, liabilities, duties and obligations of Saregama India Limited relating to the Demerged Undertaking be transferred from the said Appointed Date, without further act or deed, to Digidrive Distributors Limited and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of Digidrive Distributors Limited;

Transfer of Employees

iv. all the employees of Saregama India Limited relating to the Demerged Undertaking shall be engaged by Digidrive Distributors Limited as provided in the Scheme;

Transfer of Legal Proceedings

v. All proceedings and/or suits and/or appeals pending by or against Saregama India Limited in respect of the Demerged Undertaking be continued by or against Digidrive Distributors Limited as provided in the Scheme;

Allotment of Shares by Transferee Company

vi. Digidrive Distributors Limited shall issue and allot to the shareholders of Saregama India Limited, the shares in Digidrive Distributors Limited in accordance with clause 7.1 of the Scheme;

Filing Schedule of Assets & Liabilities

vii. Leave is granted to the Petitioners to file the Schedule of Assets & Liabilities including showing the present freehold and leasehold properties of the Demerged Undertaking of Saregama India Limited to be transferred to Digidrive Distributors Limited in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations)

Rules, 2016 within three weeks from the date of the order to be made therein.

- viii. Saregama India Limited and Digidrive Distributors Limited each do within thirty days of the date of the receipt of this order, cause a certified copy to be delivered to the Registrar of Companies for registration;
- ix. The above scheme is sanctioned to all just exceptions and any person or the parties interested in the matters emanating out of the scheme, shall be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;
12. Company Petition (CAA) No.4/KB/2023 connected with Company Application (CAA) No.141/KB/2022 is disposed of accordingly.
13. In case of any default including any Provisions of Income Tax Act in this respect of the Petitioner Companies, the Income Tax Department, the ROC, West Bengal, and all other Statutory Departments shall be at liberty to initiate appropriate proceedings against the Petitioners.
14. Necessary records pertaining to the Demerged business shall be transferred to and preserved by the Resulting Company as required by law, including the record of any proceedings either continuing or contemplated against the demerged business arm under the aegis of the Demerged company.
15. If there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of any action being taken, albeit, in

accordance with law, against the concerned persons, directors and officials of the Petitioners;

16. While approving the scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law;
17. The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the registry and the registry will upon verification, append such printout, to the certified copy of the order.
18. The Company Petition C.P (CAA) No. 04/ KB / 2022 connected with Company Application C.A(CAA) NO 141/ KB / 2022 is *disposed of* accordingly.
19. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Signed this on the 22nd day of June 2023