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**NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.**

**BEFORE NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD.**

COMPANY APPLICATION No. 46/ALD OF 2017
(Under sections 230, 231 & 232 of the Companies Act, 2013)

CORAM: SRI H.P. CHATURVEDI, MEMBER (Judicial)

Section 230 of the Companies Act, 2013 read with Rule 24 (2) of the Companies (Compromises, Arrangements Amalgamation) Rules, 2016 and Rule 11 of the National Company Law Tribunal, 2016.

IN THE MATTER OF

Sybly Industries Limited having its registered office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh-201206.

-----Demerged Company / Transferee Company / Applicant-1
AND

Space Incubatrix Technologies Limited having its registered office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh-201206.

----- (Resulting Company) / Applicant-2
AND

Vartex Fabrics Private Limited having its registered office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh-201206.

----- Transferor Company-1) / Applicant-3
AND

Dux Textiles Private Limited having its registered office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh-201206.

----- (Transferor Company-1) / Applicant-4

PRESENT: Sri Shahid Kazmi, Advocate for petitioner company and Sri M.K. Bagri, OL for Central Government.

ORDER

(Pronounced on 23.05.2017)

The instant first motion company application is filed before this bench by the applicant companies under section 230 of the Companies Act, 2013 read with Rule 24 (2) of the Companies (Compromises, Arrangements Amalgamation) Rules, 2016 and Rule 11 of the National Company Law Tribunal, 2016. The petitioner / applicant companies have sought for following prayer to be granted by this Tribunal in respect of dispensation with the meeting of their unsecured / secured creditors and for further order for dispensing with the physical meeting of shareholders of the demerge

company / transferee company for consideration and approval of the proposed composite scheme of arrangement with or without modification by this Tribunal. Instead thereof a process of postal ballot and e-voting be directed to be conducted for consideration and approval of the composite scheme of arrangement. The petitioners have further requested for issue of direction to appoint a scrutinizer (Sri R.S. Bhatia, Practicing Company Secretary) for conducting such process of **e-voting and of postal ballot** of shareholders in a fair and transparent manner and to make a report about the result of the same to this Tribunal and also to get published the such result in the newspaper. The relevant portion of the prayers sought for in the present company petition is incorporated in para 15 (prayer clause) are being reproduce hereinbelow:

"It is therefore, most respectfully submitted that this Hon'ble Tribunal may be pleased to:

(a). pass an order that a meeting of Unsecured Creditors of the Demerged Company / Transferee Company may be dispensed with for consideration and approval of the Composite Scheme of Arrangement for amalgamation with or without modification(s).

(b). pass an order that a meeting of Secured Creditors of the Demerged Company / Transferee Company may be dispensed with for consideration and approval of the Composite Scheme of Arrangement with or without modification(S) subject to their no objection letter to be filed with Second Motion Petition;

(c). pass an order that a view of prayer (a) and (b) above, no notice for dispensing the meeting of Secured Creditors and Unsecured Creditors of the Demerged Company be published in one English and one Hindi newspaper having circulation in the city of Ghaziabad i.e. where the Registered Offices of the petitioner company is situated.

(d). pass an order that physical meeting of the shareholders of the Demerged Company / Transferee may be dispensed with for consideration and approval of the Composite Scheme of Arrangement with or without modification(s);

(e). pass an order to obtain the approval of the shareholders of the Demerged Company / Transferee Company through the process of postal ballot and e-voting for the Composite Scheme of Arrangement;

(f). issuing necessary direction for appointment of a scrutinizer for conducting the process of postal ballot in fair and transparent manner for submission of the result of the postal ballot with this Hon'ble Tribunal.

Mr. R.S. Bhatia, Practicing Company Secretary, having 20 years' experience in practice, to act as a scrutinizer are proposed and, if found appropriate, be considered by this Hon'ble Tribunal. It is further submitted that the place for submission of physical postal ballot forms be kept at the registered office of the company.

(g). issuing necessary direction fixing a time period within which the chairperson reports the result of the postal ballot to this Hon'ble Tribunal.

(h). pass an order that in view of prayer (e) above, notice to obtain the approval of shareholders of the Transferee company through

postal ballot and e-voting be published in one English and one Hindi newspaper having circulation in the city Ghaziabad' i.e. where the registered office of the petitioner company is situated.

(i). pass an order that a meeting of Equity Shareholders and unsecured creditors of the resulting company may be dispensed with for consideration and approval of the composite scheme of Arrangement with or without modification(s).

(j). pass an order that in view of the prayer (g) above, no notice for dispensing the meeting of shareholders and unsecured creditors of the resulting company be published in one English and one Hindi newspaper having circulation in the city Ghaziabad; i.e. where the registered office of the petitioner company is situated.

(k). pass an order that a meeting of equity shareholders of the Transferor Company-1 may be dispensed with for consideration and approval of the composite scheme of Arrangement with or without modification(s).

(l). pass an order that in view of prayer (k) above, no notice for dispensing the meeting of shareholders of the Transferor Company 1 be published in one English and one Hindi newspaper having circulation in the city where the registered office of the company is situated;

(m). pass an order that a meeting of equity shareholders of the Transferor Company-2 may be dispensed with for consideration and approval of the composite scheme of Arrangement with or without modification(s);

(n). pass an order that in view of prayer (m) above, no notice for dispensing the meeting of shareholders of the Transferor Company-2 be published in one English and one Hindi newspaper having circulation in the city where the registered office of the company is situated;

(o). issuing direction for permitting the filing of the applications, petition, other documents as may be required for the purpose of sanctioning the proposed composite scheme of Arrangement between the applicant companies.

(p). pass such other and further orders as this Hon'ble Tribunal may deem fit in the facts circumstances of the case.

(q). The above said notice be allowed to be got published in 'Business Standard, an English news daily and 'Business Standard' a Hindi news daily."

We have duly considered the above stated prayer being sought for by the applicant companies in the present scheme petition and perused the records / document annexed therewith. The salient feature and necessary facts about the applicant companies may be summarized as under:

Demerged Company / Tranferee Company

Applicant Company No. 1. Sybyl Industries Limited having its registered office at Pawan Puri, Muradnagar, Ghaziabad, U.P. - 201206.

(1-A) Shareholders: 8,136 Meeting by Postal Or E-Voting is required.

(1-B). SECURED CREDITORS 02.....

(1-B(i)) Bank Of Baroda, Rs. 11,01,12,716. Consent is awaited.

(1-B (ii)). 2.Kotak Mahindra Bank Ltd. Rs.2,56529/-

Consent is awaited.

(1-C) UN SECURED CREDITORS: 78 Six of them aggregating to 94.24% in value have given their consent
Meeting may be dispensed with

Applicant Company No. 2. Space Incubatics Technologies Limited having its registered office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh-201206.

----(Resulting Company)

A-Board of Directors (Resolution) Considered the Composite Scheme of Merger on 04.07.2016

B-The resulting Company has been Incorporated on 29th June 2016 after APPOINTED DATE, as wholly owned subsidiary of the Demerged Company (Specifically for transfer and vesting of the non-core assets, related liabilities and reserves of Demerged Company. There is no change in the Capital Structure of the company as on the date of filing of the Application.

C-No. of equity shareholders 7 All have given their consent
Meeting be dispensed with

(in the resulting Company. Besides the demerged / Transferee Co. which is the holding Co., Holding 14.3% of the paid up equity capital. All other shareholders are holding shares as the Nominees of the Demerged / Transferee Co. Thus virtually The Demerged/Transferee Co. holds 100% equity of the Resulting Co., thereby making a wholly Owned Subsidiary. All the shareholders have given their consent in writing to the proposed Composite Scheme of Merger.) Authorised Capital, 7 equity shares of Rs. 10/- each Total...70.00 Issued Subscribed and Paid Up Capital 7 equity shares of Rs. 10/- each Total...70.00

D-Secured creditors -- Nil meeting be dispensed with

E-Unsecured creditors -- Nil Annexure---18.19
 meeting be dispensed with

Since the Resulting co. was incorporated on 29.06.16 Supplementary Financial Statement as on 31.12.2016 as required under Sec. 232 (2) of the Companies Act 2013 is appended as ANNEXURE-17

Applicant Company No. 3. Vartex Fabrics Private Limited having its registered office at Pawan Puri, Muradnagar, Ghaziabad, Uttar Pradesh- 201206

.....(Transferor company - 1)

(Incorporated on 23 August 1995 the registered office of the Company is now shifted by the order of the Regional Director, Northern Region, Dated 16.02.2016)

The Board of Directors considered the Composite Scheme on 20.06.16

A. No. of Directors 2 (Two)

B. No. of Equity Shareholders -4 all have consented
 meeting be dispensed with

C. No. of Secured creditors NIL
 meeting be dispensed with

D. No. of Unsecured creditorsNIL
 meeting be dispensed with

W

There is no change in the Capital Structure of the Company as on date of filing of this Application.

The main object set out in Memorandum Clause includes all activities to deal with in Yarn, fabrics, Textiles, ETC. Annexure 20 Sub clause 9 Of Clause 3 (b) Allows the arrangement. (Annexure-20)

Authorised Capital of 4,60,000/- equity shares of Rs. 10/- each i.e...Rs. 46,00,000.00/-

Authorised Subscribed and Paid up capital...4,55,690 Equity Shares of Rs. 10/- each i.e Rs. 45,56,900.00

Annual Report (31.03.2016) .ANNEXURE-25 supplementary Report.ANNEXURE-26 (31.12.2016)

.....
Applicant Company No. 4. Dux Textiles Private Limited having its registered office at Pawan Puri, Muradnagar, Ghaziabad,U.P-201206.
 transferor company (2) applicant company- 4) list of directors-2

(Initially incorporated on 22 Sept. 1995 with Registrar of Companies Delhi and Haryana. Presently by order of Regional Director, Northern Region Dated 16th Feb. 2016.....PAGE---23 PARA-38

AUTHORISED ISSUED SUBSCRIBED AND PAID UP CAPITAL OF THE TRANSFEROR COMPANY-2 AS ON THE APPOINTED DATE. 1ST APRIL 2016 IS AS FOLLOWS :

Authorised Capital: 3,00,000/ equity shares of Rs. 10/- each i.e Amounting to Rs. 30,00,000.00

Issued subscribed and paid up capital 2,92, 270 Equity shares of Rs. 10/- each.29,22,700.00

There is no change in the Capital Structure of the Company as on and upto date of filing of this application.

The main object of the Memorandum of Association is to carry on the business of Mfg. Bleaching, Printing, Processing, Embroidering, Cleaning, Dealing in Fabric, denim linen, and other goods. Besides other activities

The Board of Directors have considered the Composite Scheme on 20.06.16

No. of Equity Shareholders ...3 List of no objection is Annexure-30,31

..... Meeting be dispensed with
 No. of secured creditor Nil----- unsecured creditors Nil
meeting be dispensed with

The applicant company (demerged transferee company) through the affidavit of its Managing Director Sri Mittal has narrated about object and reason for proposed composite scheme of the arrangement. For the sake of convenience, the same are reproduced hereinbelow:

*.....2. That the application under Section 230 of the Companies Act, 2013 ('Act') read with Rule 3 of the Companies (Compromises, Arrangement Amalgamation) Rules, 2016 ('Rules') in respect of the proposed composite scheme of arrangement for:

(i). Demerger of all the investments, loans and advances given to wholly owned subsidiary and other entities, which do not pertain to the core activities i.e. manufacturing of 'Polyester Yarn' business to Sybly Industries Limited (hereinafter referred to as "Demerged Company or Transferee Company"), along with their connected liabilities and reserves and transfer and vesting the same with Space Incubatics Technologies Limited ('Resulting Company') on going concern basis;

(ii). Writing off entire accumulated losses of the demerged company, firstly through entire Securities Premium Account thereafter through General Reserves and the balance through the Share forfeiture Account in accordance with Section 52 and other applicable provisions of the Companies Act, 2013 and to carry forward the remaining accumulated losses after the said adjustment.

(iii). Reduction of share capital of the demerged company upon the Composite Scheme coming into effect, and approval of the Composite Scheme pursuant to Sections 230-232 of the Companies Act, 2013 (Corresponding provisions of sections 391-394 of the erstwhile Companies Act, 1956) shall also be deemed to be the approval under Section 66 of the Companies Act, 2013 (corresponding provision of Sections 100 to 105 of the erstwhile Companies Act, 1956) for reduction and cancellation of share of the demerge company).

(iv). Amalgamation of Vortex Fabrics Private Limited ('Transferor company 1') and Dux Textiles Private Limited ('Transferor Company 2') (collectively referred as 'Transferor Companies') with Sybly Industries Limited (Demerged Company / Transferee Company).

3. The Board of Directors of the Transferee Company, Transferor Company No. 1 and Transferor Company No. 2 considered the Composite Scheme of Arrangement at their respective Board Meeting held on 20.06.2016. The Board of Directors of Resulting Company considered the Composite Scheme of Arrangement at its meeting held on 04.07.2016.

4. That the applicant company no. 1 there is one class of shareholders i.e. equity only and two classes of creditors i.e. secured creditors and unsecured creditors. Creditors are divided into two classes on the basis of the commonality of the interest. All the creditors whose right / interest is secured by way of security are treated as separate class from the creditors whose right or interest are not secured by way of security and such creditors are treated secured creditors and unsecured creditors respectively.

5. That in rest of three applicant companies namely Resulting Company, Transferor Company No. 1 & Transferor Company No. 2, there is only one class of shareholders i.e. equity only one class of Creditor i.e. unsecured creditors. All the creditors whose right / interest are not secured via collateral security and such creditors are treated as unsecured creditors.'

In view of the above a direction of this Court is being sought for dispensation with the meeting of secured / unsecured creditors of demerged company / transferee company provided such that written consent of all secured creditors to be obtained and be furnished by the applicant company on or before filing of the second motion petition. It is also informed that among the unsecured creditors (78 numbers) the majority thereof having credit value of 94.24% loan / debts have agreed to and given their written consent in favour of the proposed scheme hence their meetings need to be dispensed with. In support of such contention the

petitioner companies have filed the list of the unsecured creditors along with the present company application.

It is also reported that all the shareholders of resulting company have given their written consent for proposed composite scheme of arrangement and have issued no objection, hence, their meeting needs to be dispensed with. It is also requested that the physical meetings of equity shareholders and unsecured creditors of the resulting company to be dispensed with for the purpose of consideration and approval of the present composite scheme of arrangement.

The petitioner company further makes prayer for issue of an appropriate direction by this Tribunal to dispense with the convening of physical meeting of the shareholders of demerged company / transferee company and their approval be obtained through a process of postal ballot and e-voting. Hence, a scrutinizer to be appointed to conduct such process in a fair and transparent manner and to report the result thereof and further be submitted before this Tribunal. Thus the petitioner company recommends the name of Sri R.S. Bhatia Practicing Company Secretary, it is also requested that a notice with regard to the conduct the process of postal ballot / e-voting of shareholders seeking for approval of the proposed composite scheme of arrangement (of the demerged transferee company) be got published in newspaper Business Standard an English News daily.

We considered the facts of the case and reasons mentioned in the company petition. To allow the present company application (being first Motion Petition), we examined the contents of the present petition and perused documents annexed therewith.

Having heard the argument of Sri Shahid Kazmi, for applicant Companies and Shri M.K Bagri learned Official Liquidator representing Central Government, we are of the view that the present company application being (First Motion Company Application) deserved to be allowed hence



the same is allowed in terms of the prayer clause made in paras 15 except clause 15 (d).

Therefore, the prayer made in para 15 sub clause 15 (a to q except 15-d), wherein dispensation with the physical meeting of shareholders of demerged company has been sought for. However, as per the prayer clause 'e' it is ordered and directed that the approval of the shareholders of demerged company / transferee company be obtained through a process of postal ballot and e-voting and for such purpose Sri R.S. Bhatiya, a Practicing Company Secretary is hereby appointed.

The applicant company is at liberty to file company petition (Second Stage Motion Petition) before this Tribunal after making compliance of the direction / order issued by this Tribunal in terms of the prayer clause of the company application.

A copy of this order be also sent by the applicants to the office of the Central Government through the office of the Regional Director (Northern Region) / Official Liquidator, Allahabad and the ROC. The present Company Application No. 46 of 2017 be clubbed with, when the company petition (Second Stage Motion Petition) is filed.

With the above stated observation, the present company application (being the First Stage Motion Petition) is disposed of accordingly.

Notwithstanding of above a further date is fixed for reporting compliance on 20.07.2017.

Order Date : 23.05.2017
Sharad Srivastava

_____ Sd _____

(H.P. CHATURVEDI, MEMBER (Judicial))

23/05/2017