

भारतीय गैर न्यायिक



INDIA NON JUDICIAL

पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL

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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

C.A (CAA) No. 1157/ KB / 2020

In the matter of the Companies Act, 2013; Section – 230-232

AND

In the matter of: Philips India Limited .

Certified Copy of the Order dated 05.01.2021 Passed by this Bench



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CA(CAA) NO. 1157/KB/2020

In the matter of:

An application under Sections 230-232 of the Companies Act, 2013 read with Rule 15 Companies (Compromises, Arrangement and Amalgamations) Rules, 2016.

~And~

In the matter of:

Philips India Limited, a company, incorporated under the Companies Act, 1913, and existing under the Companies Act, 2013, having its registered office at 3rd Floor, Tower A, DLF IT Park, 08 Block AF Major Arterial Road, New Town (Rajarhat) Kolkata – 700156;

... Demerged Company

~And~

In the matter of :

Philips Domestic Appliances India Limited, a company, incorporated under the Companies Act, 2013, having its registered office at 3rd Floor, Tower A, DLF IT Park, 08 Block AF Major Arterial Road, New Town, Kolkata– 700156 ;

... Resulting Company

~And~

In the matter of :

Preeti Kitchen Appliances Private Limited, a company, incorporated under the Companies Act, 1956, having its registered office at Raheja Platinum, Sag Baug Road, Off, Andheri Kurla Road, Andheri East, Mumbai – 400059;

... Amalgamating Company



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Philips India Limited and ors,
CA(CAA) NO. 1157/KB/2020

~And~

In the matter of :

1. Philips India Limited]Demerged Company
2. Philips Domestic Appliances India Limited]Resulting Company

... Applicant Companies

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via video conferencing):

1. Mr Ratnanko Banerji, Sr. Advocate
2. Mr. Gyanendra Kumar, Advocate
3. Ms. Shikha Tandon, Advocate
4. Mr. Robin Grover, Advocate
5. Ms. Shree Sinha, Advocate
6. Mr. Shashwat Nayak, Advocate]for the Applicants

Date of hearing: 08.12.2020

Date of pronouncement of Order :05.01.2021

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. The Court convened by video conference today.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Philips India Limited and ors.
CA(CAA) NO. 1157/KB/2020

2. This application has been filed by the Applicant Companies namely; **Philips India Limited** [hereinafter referred to as the Demerged Company] and **Philips Domestic Appliances India Limited** [hereinafter referred to as the Resulting Company], under sections 230 to 232 of the Companies Act, 2013, in in connection with the proposed Scheme of Arrangement (hereinafter referred to as the Scheme) between the Applicant Companies and Preethi Kitchen Appliances Private Limited (hereinafter referred to as the Amalgamating Company). The appointed date fixed under the said Scheme is 01.07.2021. A copy of the Scheme of Amalgamation has been annexed with the Application as **Annexure "P-1"**.
3. It is stated in the application that the Amalgamating Company has its registered office in Mumbai. The Amalgamating Company has filed the Company Application before the Hon'ble National Company Law Tribunal, Mumbai Bench, seeking requisite directions with regards to the meeting(s) of its shareholders and creditors to seek their approval to the Scheme.
4. The rationale for the Scheme are, Scheme, *inter alia* as follows:
 - a. re-organization of the share capital and securities premium reserve account of the Amalgamating Company involving reduction in the face value of the fully paid up equity shares and reduction of the securities premium reserve account of the Amalgamating Company and return of the amounts so reduced to the shareholders of the Amalgamating Company on a proportionate basis. The remaining amount in the securities premium reserve account shall be partly adjusted against the balance in the profit and loss account of the Amalgamating Company to inter alia write off net accumulated losses of Preethi. (hereinafter referred to as the Capital Reduction);
 - b. the transfer by way of a demerger of the 'Demerged Undertaking' (as defined in the Scheme) of the Demerged Company to the Resulting Company on a going concern basis, reduction of share capital held by the Demerged Company in the Resulting Company and issue of equity shares by the Resulting Company to the shareholders of the Demerged Company (hereinafter referred to as the Demerger);



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Philips India Limited and ors
CA(CAA) NO. 1157/KB/2020

- c. amalgamation of the Amalgamating Company with the Resulting Company and dissolution of the Amalgamating Company without winding up and the cancellation of equity shares of Amalgamating Company held by the Resulting Company (hereinafter referred to as the Amalgamation);
- d. various other matters consequential or integrally connected therewith including the re-organisation of the share capital of the Resulting Company.
5. Learned Senior Counsel for the Applicant Companies submits as follows:
- a. The Demerged Company is engaged in various businesses including domestic appliances, diagnostic imaging, interventional x-ray, and ultrasound, and patient monitoring businesses; manufacturing, trading and dealing of consumer products such as grooming products, beauty products, oral health care and mother and child care products, informatics solutions in healthcare informatics, infrastructure and consulting solutions; software development, product engineering and service innovation in relation to various products and other functions.
- b. The Resulting Company is carrying on the business of manufacturers, producures, stockists, commission agents, importers and exporters of electrical products and other domestic appliances, their assemblies, kits, spares and accessories, in India and abroad.
- c. The authorized, issued and paid up share capital of the Applicant Companies as on 06.10.2020 are as under:-

Demerged Company		
1.	Authorised Capital (divided into 9,20,00,000 equity shares of Rs. 10/- each)	Rs. 92,00,00,000/-
	2,00,00,000 non-convertible cumulative preference shares of face value of Rs. 10/- each	Rs. 20,00,00,000/-



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Phillips India Limited and ors.
CA(CAA) NO. 1157/KB/2020

2.	Issued, subscribed and paid-up capital (divided into 5,75,17,242 equity shares of Rs. 10/- each fully paid)	Rs. 57,51,72,420/-
Resulting Company		
1.	Authorised Capital (divided into 50,000 equity shares of Rs. 10/- each)	Rs. 5,00,000/-
2.	Issued, subscribed and paid-up capital (divided into 50,000 equity shares of Rs. 10/- each fully paid)	Rs. 5,00,000/-

- d. It is stated in the application that the assets of the applicant companies are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of any of the Applicant Companies or the Amalgamating Company in any manner whatsoever.
- e. It is stated in the application that the present Scheme of Arrangement does not contain or provide for Corporate Debt Restructuring of the Applicant Companies. The Applicant Companies have not issued debentures which are outstanding as on date.
- f. There are no proceedings pending under Section 235 or 250A of the Companies Act, 1956 or the applicable provisions of the Companies Act, 2013 against any of the Applicant Companies. That to the knowledge of the Applicant Companies, no winding-up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) and/ or insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 have been filed/ instituted and are pending against the Applicant Companies
- g. The Scheme envisages capital reduction of the Amalgamating Company. However, the Amalgamating Company being a company registered in Mumbai, Maharashtra



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Philips India Limited and ors.
CA(CAA) NO. 1157/KB/2020

the jurisdiction on the same lies before the National Company Law, Mumbai Bench.

- h. The Applicant Companies and the Amalgamating Company are ultimately controlled by Koninklijke Philips N.V. and belong to the same group, the Scheme can avail exemption and as such, notice to and the approval of Competition Commission of India is not required for the present Scheme.
6. It is further stated that the Board of Directors of the Applicant Companies, at their Board meetings, held on 11.09.2020 and 28.09.2020, respectively, passed a resolution and have approved the draft Scheme of Amalgamation subject to approval of regulatory authorities. Copies of the Board Resolutions are annexed with the application and marked as **Annexure "P-10"** and **Annexure "P-11"** respectively.
7. The share exchange ratio of the Applicant Companies has been fixed on a fair and reasonable basis and on the basis of the Valuation Report dated 28.08.2020 and 03.09.2020 prepared by an independent Chartered Accountant and a registered firm, copies whereof are collectively annexed to the application and marked as **Annexure "P-13"**.
8. The accounting treatments proposed in the Scheme are in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. The Auditors certificate dated 25.09.2020 issued to the Demerged Company and the Auditors certificate dated 8.10.2020 issued to the Resulting Company, confirming that the accounting treatments proposed in the Scheme are in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 are annexed with the application and marked as **Annexure "P - 24" (Colly)**.
9. Demerged Company has more than 36,000 equity shareholders, including the folios transferred to the account of Investor Education and Protection Fund (IEPF) as on 17th September, 2020. There are no preference shareholders of the Demerged Company. The certificate of chartered accountant dated 01.10.2020 certifying the list of top 700 (seven hundred) equity shareholders, constituting 98% of the total share capital, along with the shareholding pattern as on 17.09.2020 is annexed with the application and marked as



- Annexure "P – 15"**. The Demerged Company has undertaken to produce the entire list of equity shareholders, as and when directed.
10. Resulting Company has seven equity shareholders as on 30.09.2020 and NIL preference shareholders. The Shareholders of the Resulting Company have considered the proposed Scheme of Arrangement and have given their consent in writing by way of an affidavit agreeing to the Scheme and also consented to waive the holding and convening of the meetings of the shareholders of the Resulting Company. Auditor's certificates along with the list and the consent affidavits of the Shareholders are annexed to the application and collectively marked as **Annexure "P-18"** and **Annexure "P-20"**.
11. It is stated in the application that the Demerged Company has 3 secured creditors and 4,380 unsecured creditors as on 31.08.2020 duly certified by the statutory auditors. Auditor's certificates are annexed to the application and marked as **Annexure "P-16"** and **Annexure "P-17"**.
12. The Resulting Company has NIL secured creditors and one unsecured creditor as on 15.09.2020. The unsecured creditor of the Resulting Company has considered the proposed Scheme of Arrangement and have given their consent in writing by way of an affidavit agreeing to the Scheme and also consented to waive the holding and convening of the meetings of the unsecured creditor of the Resulting Company. Auditor's certificates along with the list and the consent affidavit of the unsecured creditor are annexed to the application and collectively marked as **Annexure "P-21"**, **Annexure "P-22"** and **Annexure "P-23"**.
13. Heard Learned Senior Counsel for the applicants and have perused the application and the concerned documents annexed to the application including the said Scheme, the following orders are passed herein:
- a. A virtual meeting of the equity shareholders of the Demerged Company be convened *via* Video Conferencing or Other Audio Visual Mode, on 19th February 2021 at 11:00 AM, for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement by either voting in person, or by proxy;



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Philips India Limited and ors.
CA(CAA) NO. 1157/KB/2020

- b. A virtual meeting of the secured creditors of the Demerged Company be convened *via* Video Conferencing or Other Audio Visual Mode, on 19th February 2021 at 3:00 PM, for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement by either voting in person, or through authorized representative;
- c. A virtual meeting of the unsecured creditors of the Demerged Company be convened *via* Video Conferencing or Other Audio Visual Mode, on 19th February 2021 at 4:00 PM, for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement by either voting in person, or through authorized representative;
- d. In view of the consents given in affidavit form by all the **equity shareholders** of the Resulting Company, the requirement of convening and holding of meetings of the equity shareholders of the Applicant Company No. 2 cum Resulting Company, is **dispensed with**;
- e. In view of the fact that the Resulting Company has **NIL secured creditors**, the requirement of holding meeting of secured creditors of the Resulting Company does not arise;
- f. In view of the consent affidavit given by the **unsecured creditor** of the Resulting Company, meetings of the unsecured creditor of the Resulting Company is hereby **dispensed with**;
- g. That the quorum for the aforesaid meetings of the equity shareholders, secured creditors and unsecured creditors shall be as prescribed under section 103 of the Companies Act, 2013. In the event no quorum is present within 30 minutes from commencement of meeting then in such event the equity shareholders/ creditors present shall constitute the quorum.
- h. That at least 30 clear days before the said meeting of the equity shareholders, secured creditors and unsecured creditors of the Demerged Company to be held as aforesaid, a notice convening the said meetings at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement are



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Philips India Limited and ors.
CA(CAA) NO. 1157/KB/2020

required to be sent under section 230 of the Companies Act, 2013 either through registered post or speed post or through courier or through email, which shall be served upon all the equity shareholders, secured creditors and unsecured creditors of the Demerged Company.

- i. At least 30 clear days before the meetings of the equity shareholders, secured creditors and unsecured creditors of the applicant companies, a notice convening the said meetings, at the place, date and time aforesaid and stating that copies of the scheme of arrangement and the statement required to be furnished pursuant to section 230 of the companies act, 2013 is being sent with notice, shall be published once each in Kolkata edition of 'Business Standard' in English and 'AAJKAL' in Bengali.
- j. **Mr. D.N Sharma, Advocate** [Mobile No. 9830266167] is hereby appointed by this Tribunal as the Chairperson for the meeting of the shareholders, creditors of the Demerged Company. That the Chairperson shall be paid a consolidated remuneration of Rs. 1,00,000/- [Rupees One Lakh only].
- k. **Mr. Rishav Banerjee, Advocate** [Mobile No. 9051330097] is hereby appointed by this Tribunal as the Alternate Chairperson for the meeting of the shareholders, creditors of the Demerged Company. That the Alternate Chairperson shall be paid a consolidated remuneration of Rs. 75,000/- [Rupees Seventy Five Thousand only].
- l. **Ms. Madhuri Pandey, Pr. C.S.** [Mobile No. 9674518556] is hereby appointed by this Tribunal as the Scrutiniser for the meeting of the shareholders, creditors of the Demerged Company. That the Chairperson shall be paid a consolidated remuneration of Rs. 50,000/- [Rupees Fifty Thousand only].
- m. That the Chairperson appointed by this Tribunal shall submit his report to the Tribunal within four weeks from the conclusion of the meeting.
- n. A notice under Section 230(5) of the Companies Act, 2013 with necessary variations in view of the aforesaid dispensations, along with a copy of the Scheme be served on the Central Government, through the Regional Director (Eastern Region) - Ministry of Corporate Affairs, Kolkata, the Registrar of Companies, West Bengal



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Philips India Limited and ors.
CA(CAA) NO. 1157/KB/2020

and Chief Commissioner Of Income Tax and the concerned Income Tax Authority having jurisdiction over the Applicant Companies concerned, clearly indicating the PAN numbers of the respective Applicant Companies by sending the same by registered post or by speed post or by courier or by email or through hand delivery, forthwith, as per rule 8 of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 for filing their representation, if any, within 30 days from the date of receipt of this Order. 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 Authorised Representative of the 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.

14. The Application being C.A. (CAA) No. 1157/KB/2020 is disposed of accordingly.
15. The Registry is directed to send e-mail copy of the order forthwith to all the parties inclusive of the Counsel.
16. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

cdl
[Harish Chander Suri]
Member [Technical]

cdl
[Rajasekhar V.K.]
Member [Judicial]

Signed on this, the 5th day of January, 2021.

GGRB [LRA]

CERTIFIED TO BE TRUE COPY



Page 10 of 10

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EDD (DR) AR / Court Officer
National Company Law Tribunal
Kolkata Bench