

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - II

C.P. (C.A.A.) / 60/ 2021

IN

C.A. (CAA) No. 2926 of 2019

CA No. 13 of 2022 & CA No. 15 of 2022

IN

C.P. (CAA) 60 OF 2021

IN

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In the matter of the Companies Act, 2013

AND

*In the matter of Scheme of Arrangement
pursuant to Sections 230 to Section 232
read with Section 66 and Section 52 and
other applicable provisions of the Compa-
nies Act, 2013 and rules framed thereunder*

AND

*In the matter of Scheme of Arrangement of
Arshiya Limited ('The Demerged Com-
pany or The First Applicant Company')
And Arshiya Rail Infrastructure Limited
('Resulting Company' Or 'The Second Ap-
plicant Company') And Their Respective
Shareholders and Creditors.*

ARSHIYA LIMITED,

a Company Incorporated under the Companies

Any, 1956 having it's registered office,

at 205, 206 (Part), 2nd Floor, Ceejay House, Level - 2,

Shiv Sagar Estate, F-Block, Dr Annie Besant Road,



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Worli, Mumbai - 400018, Maharashtra India

CIN: L93000MH1981PLC024747

....Demerger Company/First Petitioner

Company

ARSHIYA RAIL INFRASTRUCTURE LIMITED,

a Company incorporated under

the Companies Act, 1956 having it's registered

office, at 205, 206 (Part), 2nd Floor, Ceejay House, Level – 2,

Shiv Sagar Estate, F-Block, Dr Annie Besant Road,

Worli, Mumbai - 400018, Maharashtra India

CIN: U93000MH2008PLC180907

....Resulting Company/Second Petitioner Com-

pany

*First Petitioner Company and Second Petitioner Company collectively referred as **Petitioner Companies.***

Order delivered on :- 21.01.2022

Coram:

Justice Pradeep Narhari Deshmukh

: Member (Judicial)

Shri Shyam Babu Gautam

: Member (Technical)



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Appearances (via videoconferencing):

For the Petitioner Companies: Mr. Hemant Sethi, Ms Vidisha Poonja i/b
Hemant Sethi & Co., Advocates

For Regional Director: Ms. Rupa Sutar, Deputy Director in the Office of
Regional Director, Ministry of Corporate Affairs

For Axis Bank Limited : Ms Savani Gupte i/by Samvad Partners

For IDFC First Hafaez Patanwalla , i /b Juris Corp

ORDER

Per :- Shyam Babu Gautam, Member (Technical)

CA (CAA) 13 of 2022 in CP (CAA) 60 of 2021

1. The Court is convened by videoconference today.
2. The present CA (CAA) No. 13 of 2022, has been filed by one of the Secured Creditor of the Demerged Company, attended and voted against the Scheme at its Secured Creditors meeting dated 20th March 2021. In its meeting the Scheme was approved by the requisite majority.
3. The Counsel appearing for the objector company i.e. Axis Bank Limited, submits that Axis Bank Limited is no more interested to pursue this matter



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and accordingly, the Counsel for the Objector has agreed and is withdrawing unconditionally the objection(s) with the terms and conditions that demerged company has agreed creating charge on the assets of demerged company. Further Axis Bank Limited has entered into an amicable settlement with the Demerged Company.

4. In view of the above **CA (CAA) No. 13 of 2022** is disposed of as not pressed.

CA 15 of 2022 in CP (CAA) 60 of 2021

5. The said Company Application has been filed by another Applicant, IDFC First Bank as a Secured Creditor of the Demerged Company objecting the scheme. The Applicant in the said CA has raised the objections as that the Applicant had made available to the purported Demerged Company 2 secured rupee term loan based facilities for an amount of Rs. 32,00,00,000/- and Rs. 35,00,00,000/- under the facility Agreement dated 19.03.2018. Further, out of 35,00,00,000/- only Rs. 5,00,00,000/- was disbursed. The said facilities were guaranteed by the Personal Guarantees and the repayment of such facilities was secured through mortgage by way of second charge on the immovable properties of Panvel.



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6. The Applicant states that the terms of the sanction letter made it mandatory for the purported Demerged Company to take NOC from the Applicant prior entering into any arrangement as such present Scheme of Demerger. Further, the purported Demerged Company failed to make payments of the outstanding amounts along with applicable interest. The Applicant on various occasions sent recall notices to the purported Demerged Company thereby recalling the entire amounts outstanding. The purported Demerged Company replied to the said notices and requested for no adverse action to be taken. Further for the said recovery, the Applicant approached and filed recovery case in Debt Recovery Tribunal.
7. The Applicant further states that the purported Demerged Company deliberately circulated the link for voting at the last minute in contravention to section 230(4) of the Companies Act, 2013. The purported Demerged Company deliberately circulated the link of voting on 17th March, 2021 and the Scheme was made available to the creditors on 19th March, 2021 i.e. on the day of voting itself. The purported Demerged Company did not give notice of the meeting convened on 14.01.2020 to the Applicant. The said meeting was later postponed to 20th March, 2021.
8. The Applicant also submits that the purported Demerged Company is also in default with various other lenders, and the proceedings under the



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Insolvency and Bankruptcy Code, (IBC) have been initiated. The Applicant states that the present Scheme is aiming to alter the assets without obtaining the mandatory NOC of the Applicant and as also there is no stay granted by the Ld. DRT the Scheme cannot be sanctioned. The said Scheme is an attempt by the purported Demerged Company to wriggle out of its liability to make the payments and to evade the process of law.

Reply of the Respondent Company (Demerged Company)

9. The Demerged Company states that the objections filed by the objector are not maintainable in the eyes of law and are denied in toto. The Respondent states that the total debt of the Petitioner Company as on 31.03.2021 as per the latest audited consolidated balance sheet is Rs. 2777.98 crores and whereas the debt of the Applicant is Rs. 53.42 crores which is below the threshold limit of 5% of the total outstanding debt as contemplated in section 230(4) of the Companies Act, 2013. Hence the objections filed are not maintainable.
10. Further, the Respondent states that the Petition was admitted on 17.11.2021. The Applicant was well aware of the scheme since 12.12.2019 and chose to file the present Application on 30.11.2021. Further the Applicant was duly served with the notice of the Secured Creditor's meeting however, they chose



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to not be present in the meeting and not cast vote. The only inference that could be drawn is that they have no objection to the sanction of the Scheme. The Respondent states that the Applicant IDFC First Bank will continue to be the secured creditor of the Demerged Company. There securities post sanctioning of the scheme will be intact. Secondly, the rights of the creditors are not affected since there will be no reduction in their claims, no dilution in securities provided to the Secured lenders and all the Secured creditors would continue to hold charge over respective assets post sanctioning of scheme. The net-worth of the demerged company pre-demerger is -232.74 crores and post-demerger is 906.82 crores. Further, the present Scheme is an arrangement as contemplated under section 230(1)(b) of the Companies Act, 2013 and not in accordance with the provisions of section 230(1)(a) of the Companies Act, 2013 as there is no compromise or arrangement with or diminution of liability of any of the Creditors.

11. Further the Respondent states that the provisions under Section 230 of the Companies Act is a complete code and in no way provides for any prior written approval from its secured creditors and as also the approval of the secured creditors was sought by convening a meeting as required by the statute wherein the said Scheme was approved by majority present.



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12. Further the proceedings before the DRT are independent proceedings. Further, the Applicant itself remained absent from the meeting. The Respondent states that this Tribunal vide its Order dated 09.12.2019 directed that a meeting would be held on 14.01.2020 at 11.00 A.M. In compliance of the said order the Respondent sent an email link to individual secured creditors putting them on notice of the convening a meeting on 12.12.2019. By providing such link, a notice of meeting was made accessible to each of the secured Creditors. Further, in addition to the said notice, the Respondent issued an advertisement of notice in 2 newspapers one in English and the other in the vernacular language Marathi on 13.12.2019 which also provide with 30 days clear notice. The Applicant chose to remain absent in the above meeting. The Respondent have taken approvals from the Stock Exchanges.
13. The Respondent states that the Scheme was approved by the Board of Directors in its meeting dated 24.05.2018 which was prior to the filing of the Insolvency proceedings so the Applicants allegations as to make the IBC proceedings Infructuous is false.



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Observations of the Adjudicating Authority

14. We have heard the submissions from the Applicant and the Respondent. It is observed from the records that the Company Scheme Petition was filed in consonance with the order dated 09.12.2019 passed by this Tribunal in CA (CAA)/2926/MB/2019. The said Petition was admitted on 17.11.2021. The Applicant chose to file its objections by way of an Application on 30.11.2021 when the Scheme was ripe for final hearing. The Respondents also made an Public advertisement in two newspapers on 13.12.2019 which also gave a clear notice of the said scheme. So it is clearly evident that there is a delay on the part of the Applicant to approach this Tribunal and the Applicant was sleeping over his own rights.
15. Further, post sanctioning the Scheme, the negative Net worth Rs. -232.74 crores will become positive by Rs. 906.82 crores which shall be beneficial to the stakeholders and creditors. The Scheme does not envisage any hair cut with any of the Creditors of the Petitioner Company. The Secured Creditors would continue to hold charge over respective assets post sanctioning the scheme and there will be no dilution in securities provided to the secured lenders. The Applicant will continue to remain as the secured creditor of the Demerged Company.



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16. Further, the Scheme was approved by thumping majority and the Secured Creditors have taken a best commercial decision for the benefit and revival of the Demerged Company. The Scheme is envisaged for the benefit of the Company and as well as the interest of the secured creditors and other stake holders. The Scheme is subject to existing securities, charges, mortgage and other encumbrances. The assets of the purported Demerged Company establish that the interest of all creditors mortgages is not hampered, and the status and rights of the existing charge holders will be honored in accordance with the Scheme. Further, the proceedings in DRT does not operate as an absolute bar upon the Respondent. Further it is a settled proposition of law that the recovery proceedings shall not come in the way of sanctioning the scheme.
17. Therefore, this Bench is of the considered view that the Scheme is in the interest of justice and for the benefit of the secured creditors. The Scheme deserves to be approved as the majority secured creditors having the higher stakes than the present Applicant and have approved the Scheme with absolute and thumping majority and the said Scheme is not detrimental to the majority of secured creditors. Hence there is no reason for this bench to put hold on sanctioning of the present Scheme.



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18. In view of the above objections in CA (CAA) No. 15 of 2022 in CP (CAA) No. 60 of 2021 is rejected. Therefore CA (CAA) No. 15 of 2022 is not allowed and disposed of.

CP (CAA) No. 60 of 2021 in CA (CAA) No. 2926 of 2019

19. The sanction of this Tribunal is sought under Sections 230 to Section 232 read with Section 66 and Section 52 and other applicable provisions of the Companies Act, 2013 and rules framed thereunder and in the matter of Scheme of Arrangement of Arshiya Limited ('The Demerged Company') And Arshiya Rail Infrastructure Limited ('Resulting Company') and their respective shareholders.
20. The Learned Counsel for the Petitioner Companies submits that First Petitioner Company is in the business of designing, manufacturing, developing, improving, hiring, repairing, buying, selling and dealing in forgings and castings of ferrous and non-ferrous materials and in any weight for any industry whatsoever, including chilled and malleable castings, special alloy castings. Gunmetal castings, steel castings, gunmetal, copper, brass and aluminum castings and foundry work. providing integrated supply chain and demand chain management services which inter alia includes services of air and ocean freight forwarding, cargo consolidation, project logistics air, sea and surface transportation, shipping, chartering of vessels, warehousing,



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developing, operating and maintaining special economic zones (SEZs)/free trade and warehouse zones (FTWZs), inland container depots (ICDs), industrial parks, logistic parks, warehouses, infrastructure or infrastructure projects and Second Petitioner Company is in the business of setting up of Rail Infrastructure/Network within India and abroad including operations/movement of Container/Goods Trains using Indian Railway Network and also to acquire, procure, obtain on lease/license or otherwise Container Trains, Rakes, Wagons, Boggies and Create, Develop or Obtain on lease/license basis Railway Sidings, Rail Yards, Warehouses required for the business of the Company and to carry on the business predominantly in the Northern Region of India, of container freight stations which, inter-alia includes setting up of bonded warehousing infrastructure and services, facilities for customs examination, EDI, empty container yard for storage of shipping containers, repairs and refurbishment of containers, truck, cargo and material handling equipment's, transportation, non-bonded warehousing, IT & ITES infrastructure and services, warehousing, cold storage and other cargo related activities.

21. The Learned Counsel for the Petitioner Companies submits that following is the rationale of the Scheme;
- a. Arshiya, a flagship company of Arshiya Group, is engaged in the business of developing Free Trade Warehousing Zones ('FTWZ') and Domestic Warehousing Areas ('DWA') as mentioned below to improve logistics infrastructure in India.



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FTWZ Business - FTWZ at Panvel offers over 800,000 Sq. ft. of warehousing space with best in class infrastructure which is suitable for clients across industries. The facility is well connected to the National and State Highways and situated only 24 kms from the country's busiest container port and also close to the proposed International Airport in Navi Mumbai.

Domestic Business - Domestic Business comprises of Domestic Warehousing activities being carried out by Arshiya at land admeasuring 43.42 acres of land situated at Khurja (UP) and investments held in the Resulting Company pertaining to Private Freight Terminal ('PFT'), Rail Transportation Services ('RAIL') businesses being carried in the Resulting Company and Inland Container Depot ('ICD'), DWA business being carried in AIDHL.

- b. Brief description of the above mentioned business :

PFT: ARIL currently under a PFT license operates Indian Railways traffic business for various customers catering to bulk goods movement and bagged cargo at sidings specifically earmarked for the same.

RAIL: ARIL holds category-I license to run container trains pan-India and is one of the largest Private Container Train Operator (PCTO's) with a rail fleet of 18 rakes and 3,200 owned containers equipped to handle a wide-range of



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cargo, with a pan India presence. ARIL's service is completely equipped to provide efficient movement of cargo between terminals, hubs and warehouses.

ARIL's infrastructure consists of rail siding, rail terminal equipped with three loop / blast rail lines and three non-ballast rail lines with a capacity to handle up to 20 rakes per day.

ICD: The Khurja ICD is co-located with a state-of-the-art Rail Terminal and FTWZ. ICD-Khurja is the only private ICD in the country to have exclusive connectivity with 6-lane private rail siding offering regular and prompt rail connectivity through owned rakes to all the major gateway ports that service the northern region of India. ICD Khurja is located strategically with multiple road approaches from the major 4/6 lane highways providing a congestion-free movement of cargo and containers.

The Group intends to reorganize its corporate structure and integrate / consolidate its operations by housing the following businesses into two different entities / separate verticals:

1. FTWZ business in Arshiya
2. Domestic business (includes DWA, ICD, Rail and PFT business) in ARIL



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22. Both the Petitioner Companies have approved the Scheme by passing their respective Board Resolutions dated 24 May 2018 and have approached the Tribunal for sanction of the Scheme.
23. Learned Counsel for the Petitioner Companies submits that the Petition has been filed in consonance with the order dated 9 December, 2019 passed by this Tribunal in CA(CAA)/2926/MB/2019.
24. The Regional Director has filed its report dated 22 June 2021 ("*Report*") praying that this Tribunal may pass such orders as it thinks fit, save and except as stated in paragraphs IV (a) to (o). In para IV of the Report, Regional Director has stated:
- a) *In compliance of AS-14 (IND AS-103), the Petitioner Companies 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.*
- b) *As per Definition of the Scheme,*
"Appointed Date" means 01 April 2019.



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“Effective Date” means the last of the dates, if applicable, on which the certified or authenticated copy of the order(s) sanctioning the Scheme passed by the National Company Law Tribunal (“NCLT”) of Judicature at Mumbai, is filed with the Registrar of Companies, Mumbai. This date is only drawn to capture references to all transactions undertaken between the Appointed Date and date of filing of the NCLT order with Registrar of Companies (“ROC”). Thus, the same is not to be construed as the effective date for the purpose of Section 232(6) of the Act.

“Record Date” means the date to be fixed jointly by the Board of Directors of De-merged and Resulting Company for the purposes of determining the shareholders of Arshiya to whom shares would be issued in accordance with Clause 7 of this Scheme. 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.

- c) *The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.*



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- d) *The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent 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.*
- e) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or arrangement. 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).*
- f) *The Petitioner Companies be directed to place on record of this Tribunal the list of assets to be demerged with complete details and its respective valuation.*
- g) *As per Part II Clause 4(4.1 to 4.6) of the Scheme (Utilization of Securities Premium of Demerged Company and Resulting Company), It is proposed to write off the aggregate of the balance in Profit and Loss Account as on Appointed Date and the*



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excess of assets over liabilities as provided under clause 8.1.3 ('Arshiya Aggregate Book Losses), against the securities premium account of Arshiya.

h) As per Part IV Clause 8(8.2(8.2.1 to 8.2.6) of the Scheme (Accounting Treatment) (Accounting Treatment in the Books of the Resulting Company), The surplus / deficit arising on recording of the assets and liabilities as per clause 8.2.1 and 8.2.2 over the shares cancelled and consideration recorded as per clause 8.2.3 above shall be transferred to Capital Reserve / Goodwill in the balance sheet of the Resulting Company; In this regard, it is submitted that the surplus so credited to "Capital Reserve arising out of Amalgamation" shall not be available for distribution of dividend and other similar purposes.

i) As per Part VI Clause 9(9.1 to 9.3) of the Scheme (Reclassification of Authorized Share Capital); Upon the Scheme being effective, the Authorized Share Capital of the Resulting Company existing on the Effective Date, without any further application, act, instrument or deed, shall be reclassified from equity shares of face value of Rs. 10/- each into corresponding number of equity shares of face value of Rs. 2/- each.

Consequent upon the reclassification of Authorized Share Capital under Clause 9.1 above and upon the Scheme being effective, Clause V of the Memorandum of Association of the Company (relating to the Authorized Share Capital) shall, without any



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further act, instrument or deed, be and stand altered, modified and amended pursuant to Sections 13, 14, 61 and 230-232 and other applicable provisions of the Act.

It is hereby clarified that for the purposes of clause 9.2 above, the consent of the shareholders to the Scheme shall be deemed to be sufficient for the purposes of effecting the above reclassification in Authorized Share Capital of the Resulting Company, and no further resolution would be required to be separately passed. Upon the Scheme being effective, the Company shall file necessary form for the reclassification of the Authorized Share Capital with the Registrar of Companies, Mumbai. Further, there would be no requirement for any further payment of stamp duty and / or fee (including registration fee) by the Company for the reclassification to the Authorized Share Capital.

In this regard it is submitted that the fee payable by the Resulting Company shall be in accordance with the provisions of Section 13, Section 14, Section 61, and Section 232(3)(i) of the Companies Act, 2013 further if any stamp duty is payable the same should be paid in accordance with applicable laws of the State;

- j) As per Part V Clause 10(10.1 & 10.2) of the Scheme (Tax Aspects); It is intended that this Scheme will be in compliance with the conditions relating to "Demerger" as specified under Section 2(19AA) and Section 72A(4) of the Income-tax Act, 1961 such*



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that: The transfer of the Domestic Business Undertaking will be on a going concern basis with effect from the Appointed Date.

Subject to clause 10.1 above, if any terms or provisions of the Scheme is/are inconsistent with the provisions of Section 2(19AA) and Section 72A(4) of the Income-tax Act, 1961, the provisions of Section 2(19AA) and Section 72A(4) of the Income-tax Act, 1961 _ shall prevail and the Scheme shall stand modified to the extent necessary to comply with Section 2(19AA) and Section 72A(4) of the Income-tax Act, 1961 as on the Appointed Date; such modification shall not affect other parts of the Scheme. Upon the Effective Date, the Demerged Company and the Resulting Company are expressly permitted to file / revise their income-tax, service tax, GST, value added tax, withholding tax and other statutory returns, notwithstanding that the period for filing / revising such returns may have lapsed. Each of the Demerged Company and the Resulting Company are expressly permitted to amend tax deduction at source and other statutory certificates and shall have the right to claim refunds, advance tax credits, set offs and adjustments relating to their respective incomes / transactions from the Appointed Date.

The Petitioner Company be directed to place on record as to how the Scheme is in compliance of the Section 2(19AA) and Section 72A(4) of the Income Tax Act, 1961.

The Hon'ble Tribunal may consider the same and decide matter on merit.



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Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.

As per Clause 17 of the Scheme,

In case of any difference in accounting policy between the Transferor Company and Transferee Company, the impact of the same till amalgamation will be quantified and adjusted in the reserves of Transferee Company to ensure that the financial statements of Transferee Company reflect the financial position on the basis of consistent accounting policy.

Petitioner Companies have to undertake that the surplus shall be credited to Capital Reserve Account arising out of amalgamation and deficits shall be debited to Goodwill Account.

Further Petitioner Companies have to undertake that reserves shall not be available for distribution of dividend.



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k) *Since the Arshiya Limited Demerged Company limited by shares, is listed on the Bombay Stock Exchange and the National Stock Exchange, the Petitioner Company be directed to place on record a whether necessary approval from SEBI and the concerned Stock Exchange have been obtained and whether the meeting of the Shareholders/class of shareholders have been convened as per the listing/SEBI guidelines.*

l) *As per Preamble of the Scheme (Pending Scheme), Petitioner companies have mentioned that as part of the aforesaid overall Group reorganization, the management had also filed a separate scheme of amalgamation of two of Arshiya's wholly owned subsidiaries, ie. Arshiya Industrial & Distribution Hub Limited (AIDHL) and Arshiya Transport and Handling Limited (ATHL) into ARIL ('merger scheme') with National Company Law Tribunal and is awaiting its approval. The appointed date for the said merger scheme is October 1, 2015. Accordingly, this scheme of arrangement is conditional upon the aforesaid merger scheme becoming effective first. In case the said merger scheme is withdrawn or ARIL ceases to be a wholly owned subsidiary as on the Record Date (defined hereunder), this Scheme will also be withdrawn. In this connection it is to state that the above Statement in the Scheme is not correct. As, it has been noticed that the above said scheme has already been approved by this — Hon'ble Tribunal in Company Scheme Petition*



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(C.A.A.)/2178/MB/2019 vide order dated 06" December, 2019 and the appointed date of the said scheme of amalgamation was 1%t October, 2015.

In this regard the Petitioner Companies be directed to submit that as to why the above said order has not been brought to the notice of this tribunal at the time of filing of petition in the current matter. Further the present scheme may be amended to make correct Statement and the Hon'ble Tribunal may pass the appropriate orders in this regards.

- m) The Petitioner Companies to place on record and to provide details regarding meeting of Shareholders other than Promoters, has been convened or not and results thereof.*
- n) As regards the complaints indicated at para 23 above, under the head - Status of Complaint as per MCA-e Service-Screen Shot, it is submitted that the petitioners be directed to mention all the facts in this regard about complaint and explain about the allegations made therein, before approval of the scheme.*

Further, in view of the observation raised by the ROC Mumbai, Hon'ble NCLT may pass appropriate orders/orders as deem fit.



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25. In response to the above observations of the Regional Director, the Petitioner Companies have filed an Affidavit in Rejoinder dated 13 July 2021 and have clarified as follows:
- a. In so far as the observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies, undertakes that in addition to compliance of Ind AS 103, it 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., as may be applicable.
 - b. In so far as the observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies, submit that as per Clause 1.2 of the Scheme, " Appointed Date" means appointed date for demerger and vesting of the Demerged Undertaking of the Demerged Company into the Resulting Company i.e. opening business hours of April 1, 2019.

The Petitioner Companies undertakes to comply with the requirements clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs to the extent applicable.



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- c. In so far as the observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal for noting and record purpose.

Further, the Petitioner Companies humbly submits that the scheme has been duly approved by the majority of the members and creditors of the company in the meetings held on 13th January 2020 and 14th January 2020 for Unsecured Creditors & 20th March, 2021 for Secured Creditors respectively as directed by the Tribunal.

- d. In so far as the observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that there are no discrepancy / any change / changes are made in the Scheme. The Petitioner Companies hereby undertake that there is no change in the scheme attached to the Company application and Company Petition filed with this Tribunal and other statutory authorities.
- e. In so far as the observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies undertake that the notices have been served



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to all the concerned authorities which are likely to be affected by the demerger *i.e.* The regional Director, Western Region, The Registrar of Companies and The concerned Income Tax Department.

- f. In so far as the observations made in paragraph IV (f) of the Report of Regional Director is concerned the Demerged company states the pursuant to the demerger the entire Demerged Undertaking is transferred as a whole, and all assets and liabilities are transferred at their respective carrying values as appearing in the books of the Demerged Company as specified in Para 14 of the Scheme. The entire list of Assets and Liabilities along with it's values proposed to be transferred and recorded in Resulting Company, are as under:

Particulars	Rupees in Lakh
ASSETS	
Non-Current Assets	93,587.98
(a) Property, Plant and Equipment	7,499.35
(b) Financial Assets	
(i) Investments	86,024.93
Current assets	7.30



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(a) Financial Assets	
(i) Trade Receivables	7.21
(b) Other current assets	0.09
Total Assets	93,595.28
EQUITY AND LIABILITIES	
Equity	93,595.28
(a) Equity Share capital	-
(b) Other Equity	93,595.28
Liabilities	
Current Liabilities	-
(a) Other Current Liabilities	-
Total Equity and Liabilities	93,595.28

- g. In so far as the observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Petitioner Companies confirm to comply with clauses 8.1.3 and 8.2.4 of the scheme of demerger along with the provisions of Section 66 read with Section 52 and other relevant provisions of the Companies Act, 2013. The reduction is



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being done as integral part of the Scheme as per explanation to Section 230 of the Companies act 2013 no separate procedure is required to be followed for reduction.

- h. In so far as the observations made in paragraph IV (h) of the Report of Regional Director is concerned, the Transferee Company submit that surplus so created shall be treated as Capital Reserve arising out of Scheme and it shall not be used for distribution of dividend and other similar purposes. Further, the deficit if any shall be treated as Goodwill.
- i. In so far as the observations made in paragraph IV (i) of the Report of Regional Director is concerned, the Resulting Company states that the Scheme does not propose to merge the Authorized Capital of the Transferor Company with the Transferee Company therefore provisions of section 13,14 & 61 are not attracted. Further, necessary compliances would be done as may be applicable.
- j. In so far as the observations made in paragraph IV (j) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply with the provisions of Section 2 (19AA) "demerger", and pursuant to a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013, the demerged company will transfer its one or more undertakings into resulting company in such a manner that, all the liabilities and



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Assets will be transferred at value which is appearing in the books of account immediately before the demerger and Section 72A (4) notwithstanding anything contained in any other provisions of this Act, in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company will revise all the Income Tax Returns as required under the Income Tax Act and including unabsorbed depreciation which are allowed to be carry forward as per Income Tax Act will be carried forward and necessary compliances would be done as per applicable norms.

- k. In so far as the observations made in paragraph IV (k) of the Report of Regional Director is concerned, the petitioner companies confirms that necessary approval(s) from SEBI and the concerned Stock Exchange(s) have been obtained and the meeting of the Shareholders/class of shareholders have been convened as per the listing/SEBI guidelines.
- l. In so far as the observations made in paragraph IV (l) of the Report of Regional Director is concerned, the petitioner companies confirms that the scheme of amalgamation of two of Arshiya's wholly owned subsidiaries i.e. Arshiya Industrial & Distribution Hub Limited ('AIDHL'), and Arshiya Transport and Handling Limited ('ATHL') into Arshiya Rail Infrastructure Limited ('ARIL') merger scheme with National Company Law Tribunal ('NCLT') has been duly approved vide order dated 6th December, 2019.



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- m. In so far as the observations made in paragraph IV (m) of the Report of Regional Director is concerned, the petitioner companies hereby confirm that meeting of Shareholders other than Promoters has been convened and results thereof have been submitted to the concerned authorities along with the copy to the Hon'ble Tribunal.
- n. In so far as the observations made in paragraph IV (n) of the Report of Regional Director is concerned, the Petitioner companies undertake and confirm that the approval of the scheme will not dilute any complaint and all complaints pending with ROC/MCA will be decided on its own merit and in accordance with law. Further reference is made to the judgement passed by the Hon'ble Bombay High Court in *Fem Care Pharma Limited* wherein it was held that sanctioning of Scheme will not in any event dilute the penal action to be taken by the MCA/RoC against the Petitioner Companies and no prejudice shall be caused to any penal proceedings pending against the Petitioner Companies.
26. The Regional Director has filed his Supplementary Report dated 13 July 2021 and has stated that basis the observations made by the Regional Director and the reply submitted by the Petitioner Companies, the Hon'ble Tribunal may decide the matter on its merit.



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27. The observations made by the Regional Director have been explained in Para 24 above. The clarifications and undertakings given by the Petitioner Companies have been explained in Para 25 above. The clarifications and undertaking given by the Petitioner Companies are hereby accepted by the Tribunal. The authorized representative appeared for the Regional Director (Western Region) has also conveyed **No objection** towards the sanctioning of the Scheme.
28. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
29. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 60 of 2021 in Company Scheme Application No. 2926 of 2019 are made absolute in terms of it's prayer clauses.
30. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28, within 30 days from the date of receipt of the Order duly certified by the Deputy Registrar or Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.
31. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar or the Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any,



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on the same within a period of 60 working days from the date of receipt of the Order.

32. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Registrar or the Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.
33. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
34. Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.
35. The Scheme is hereby sanctioned with the Appointed Date of 1 April, 2019.
36. Ordered accordingly.

Sd/-

Sd/-

SHYAM BABU GAUTAM

JUSTICE PRADEEP DESHMUKH

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

Certified True Copy _____
Date of Application 31.01.2022
Number of Pages 32
Fee Paid Rs. 100
Applicant called for collection copy on 01.02.2022
Copy prepared on 01.02.2022
Copy Issued on 01.02.2022


Deputy Registrar
National Company Law Tribunal, Mumbai Bench

