

**In the matter of Scheme of Arrangement between:**

1. **Q.H.Talbros Limited.**  
...Demerged company/Transferee company/Appellant-petitioner Company No.1.
2. **Talwar Steering & Suspension Limited.**  
....Resulting Company/Appellant-petitioner Company No.2.
3. **Talbros International Limited.**  
....Transferor Company No.1/Appellant-petitioner Company No.3.
4. **AAB Enterprises Private Limited.**  
.....Transferor Company No.2/Appellant-Petitioner Company No.4.
5. **Blaustern India Sales Pvt. Ltd.**  
.....Transferor Company No.3/Appellant-Petitioner Company No.5.

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.  
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Ms. Munisha Gandhi, Senior Advocate with  
Ms. Salina Chalana, Advocate, for the appellants.

Mr. Deepak Aggarwal, Advocate,  
for the Official Liquidator.

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**S.J.VAZIFDAR, ACTING CHIEF JUSTICE**

This is an appeal against the order and judgment of the learned Single Judge dismissing the appellants' petition seeking approval of a scheme of arrangement under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act').

2. The appellants are (i) Q.H.Talbros Ltd. (ii) Talwar Steering & Suspension Limited. (iii) Talbros International Ltd. (iv) AAB Enterprises Pvt. Ltd. and (v) Blaustern India Sales Pvt. Ltd. The scheme of arrangement was arrived at between the appellants and their respective shareholders and creditors. It provides for the demerger of the 'Auto Component Division' of appellant No.1 into appellant No.2 and the amalgamation of appellant Nos. 3, 4 and 5 into appellant No.1. The learned Company Judge rejected the petition on the ground that a composite scheme of this nature is not maintainable.

3. The question in this appeal is whether a composite scheme such as this is maintainable under sections 391 and 394 of the Companies Act, 1956. It certainly is Composite schemes have been regularly sanctioned by many courts under sections 391 and 394 of the Act. Our attention has not been invited to any authority to the contrary.

4. The preamble to the scheme states that it is in the interest of the shareholders, creditors and employees of each of the companies as it would result in enhancement of the shareholder's value enable re-organization of the business leading to operational efficiencies and synergies and facilitate the management of companies to vigorously pursue growth and expansion opportunities. It is important to note the rationale for the scheme. It is stated to be as follows:-

“As a step to simplify the group structure and make it more transparent by eliminating cross holdings and to achieve a focused auto-companies manufacturing company which can attract strategic alliances/JV partners, the Board of Directors recommended a Scheme comprising the following:-

- a) Demerger of auto-component division of QHT into TSSL; and
- b) Amalgamation of TIL, AAB and Blaustern into Demerged QHT.

Demerger of auto component business would inter-alia result in the following benefits:-

- (a) The demerger will permit increased focus by QHT and TSSL on their respective businesses in order to better meet their respective customers' needs and priorities eliminating thereby any perceived conflict of interest among customers, develop their own network of alliances and talent models that are critical to their own success; and
- (b) TSSL with complete focus on auto component business, can attract strategic alliances/JV partners and thereby leading to growth in the business.

Amalgamation of TIL, AAB and Blaustern into Demerged QHT would inter alia result in the following benefits:-

- a) Amalgamation of AAB, TIL and Blaustern into Demerged QHT will reduce the administration hassle of running multiple investment vehicles and eliminate the cross holdings.
- b) Amalgamation will enable consolidation of business and lead to synergies in operation and create a stronger financial base;
- c) It would be advantageous to combine the activities and operations of Transferor Companies into a single Company for synergies, integration and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company.
- d) Amalgamation of the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both transferee and transferor companies; and
- e) Amalgamation will enable the Transferee Company to raise additional funds due to its increased net worth, post-merger.”

5. It is not necessary to refer to the various steps taken leading to the filing of this petition in detail. Suffice it to note that the appellants have complied with all the statutory requirements and that the scheme has been approved by the shareholders and the creditors unanimously.

By an order dated 05.12.2014, the Company Judge directed a meeting of the unsecured creditors of Appellant No.3 to be convened, dispensed with the meetings of the shareholders of the appellants, the unsecured creditors of appellant Nos. 3, 4 and 5 and of the secured creditors of appellant Nos. 1 and 3 and noted that there were no secured creditors of appellant Nos. 2, 4 and 5.

The meeting as directed was held and the Chairman submitted his report dated 18.02.2015. The Chairman reported that the unsecured creditors of Appellant No.1 present in the meeting unanimously approved the scheme. The report was taken on record and the first motion petition was disposed of accordingly by an order dated 20.03.2015.

The scheme has, therefore, been unanimously approved by all the parties concerned, namely, the shareholders and the secured and unsecured creditors.

(B) The appellants, therefore, moved a second motion petition being Company Petition No. 29 of 2015 in which the Company Court by an order dated 03.03.2015 issued notices to the Regional Director and the Official Liquidator and directed publication of the notices of hearing in the newspapers and in the official gazette of the State of Haryana. It was also uploaded on the websites. The Regional Director and the Official Liquidator filed their affidavits/reports in which they did not raise any objection to the scheme and in fact supported it. They raised the objection to the maintainability of the scheme at hearing which the learned Judge upheld.

6. The learned Company Judge rejected the petition essentially on the ground that the composite scheme of merger and demerger was not maintainable. The learned Judge rejected the scheme on the following basis:-

The Companies Act, 1956 permits a scheme of arrangement of a company with a number of other companies. It, however, does not provide for sanctioning a scheme where different companies are involved in different arrangements as in the present case. Section 394 of the Act does not permit a part of the business of one company to be merged with another company and the merger of other companies with that company. Both the schemes, namely, for merger and demerger are independent and have no connection whatsoever with each other. The balance sheets, figures and the finances of the companies would be different. The shareholders may approve or disapprove anything but it is ultimately for the Company Court to see whether such a process can be approved or not. The exact figures, numbers and financials of the companies sought to be merged/demerged will not be available before the Court as well as for presentation before the members and the creditors of the companies in the meetings. It will not be possible for the members or the creditors to know the status of the company after implementing the first part i.e. demerger of the 'Auto Component Division' of appellant No.1 and that this first part is independent of the second part, namely, the merger of appellant Nos.3,4 and 5 with appellant No.1. If a composite scheme involving different companies with different objects is presented, it would not be possible for the Court to examine whether the object sought to be achieved by the first part in the scheme has, in fact, been achieved or not. After implementation of the first part of the scheme, the shareholding pattern, the business and the profits of the transferor and the transferee company will undergo change. Those figures and particulars are

required to be presented before the members and the shareholders of the resultant company and the other companies which are sought to be merged and demerged with the resultant company i.e. appellant No.1 demerged. If a composite petition is to be filed, it should be an arrangement between two or more companies and not different arrangements involving different companies.

7. We are with respect unable to agree with the learned Judge.

8. Sections 391, 392 and 394 of the Companies Act, 1956 in so far as they are relevant read as under:-

**“Section 391:** Power to compromise or make arrangements with creditors and members.

(1) Where a compromise or arrangement is proposed-

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them; the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company, which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three- fourths in value of the creditors, or class of creditors, or members, or class of members as the case may be, present and voting either in person or, where proxies are allowed<sup>1</sup> under the rules made under section 643], by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or, in the case of a company which is being wound up, on the liquidator and contributories of the company:<sup>2</sup> Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub- section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor' s report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.]

**Section 392.** Power of High Court to enforce compromises and arrangements.

(1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it--

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 , (7 of 1913 ) sanctioning a compromise or an arrangement.

**Section 394:** Provisions for facilitating reconstruction and amalgamation of companies.

(1) Where an application is made to the Court under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court-

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company"); the Court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters:-

(i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;

(ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(iv) the dissolution, without winding up, of any transferor company;

(v) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

(vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out: <sup>1</sup>Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Court unless the Court has received a report from the Company Law Board, or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest: Provided further that no order for the dissolution of any transferor company under clause (iv). shall be made by the Court unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.]

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within <sup>2</sup> thirty] days after the making of an order under this section every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration. If default is made in complying with this sub- section, the com- pany, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(4) In this section-

(a) " property" includes property, rights and powers of every description and " liabilities" includes duties of every description; and

(b) " transferee company" does not include any company other than a company within the meaning of this Act; but " transferor company" includes any body corporate, whether a company within the meaning of this Act or not. Notice to be given to Central Government for applications under sections 391 and 394."

10. The learned Judge with respect approached the matter on an erroneous basis. These were not independent schemes. The appellants have not proposed two independent schemes, one for de-merger of the 'Auto

Component Division' of appellant No.1 and the merger thereof with appellant No.2 and the others for the amalgamation of appellant Nos. 3, 4 and 5 with appellant No.1. The mergers and de-mergers were part of one composite scheme. The demerger and each merger constitute components of a single, indivisible composite scheme. The creditors and the shareholders did not compartmentalize each of the mergers and the demerger and consider them separately. They considered them together and approved them as one composite, indivisible scheme. It is no body's case that the creditors or the shareholders thought otherwise. It is not as if they would have approved any one or more of the components independently. That was not the intention.

11. There is nothing illegal or unusual about a composite scheme. In fact, in most cases, the creditors and/or the shareholders agree only to the various elements in the scheme taken together and not independently.

They may have come to a decision that the business interest of the transferee company would be best served by its concentrating only on one line of activity. This, they may think, would enable the company to concentrate its resources, manpower, financial and otherwise to the best advantage. They may even come to the conclusion that it is not commercially viable to continue with the other line of business. Often deploying available resources towards one or even a few desirable activities is considered desirable for creating long term benefits and proves beneficial for the financial health of the company. The same may also benefit the company on account of operational efficiencies. On the other hand in some cases, the share holders and the creditors may well be of the opinion that it would be in the interest of the company to have a multiple line of activities to safeguard itself against any adverse consequences in respect of one of them. These, however, are business decisions which must be left to the

stakeholders of each of the companies. It is not for the Court to sit in judgment over their commercial decision.

12. Let us take a simple example of a case where company 'A' manufactures watches and textiles and company 'B' is engaged only in the business of manufacturing watches. The shareholders of company 'B' may agree to the merger of company 'B' with company 'A' only in the event of the company 'A' hiving off/demerging its textile manufacturing business. This would be a business decision taking into consideration the economies of scale and the viability or otherwise of continuing with two commercial/industrial activities. If they are of the opinion that the business prospects of company 'A' are better by restricting its line of business to manufacturing watches alone, this would involve a case of merger and demerger as is the case before us. The shareholders and the creditors of company 'B' may not agree to the merger unless and until company 'A' agrees to hive of its textile business. If the shareholders and the creditors of company 'A' accept the proposal, there would come into existence not two independent schemes one of merger and the other of demerger but a composite, indivisible scheme comprising of a merger and a demerger.

13. One of the reasons for the composite scheme before us is that it would facilitate strategic alliance/joint venture partners. A strategic alliance/joint venture was obviously perceived by the creditors and the shareholders of the transferor company to be desirable being in the business interest of the transferee company / appellant No.1. They also apparently considered it necessary in the interest of the transferee company that the 'Auto Component Division' be demerged. Having opted for the composite scheme, it is obvious they considered it necessary that both the components operate simultaneously as a single arrangement. The agreement with the

shareholders of the transferor company to the merger being conditional upon the demerger of a part of the business of the transferee company, it can never be said that two independent schemes come into existence. The conditions imposed itself predicate a single composite scheme.

14. A merger and a de-merger are not the only components of a composite scheme of arrangement. The term arrangement in Section 391 is of wide amplitude. It is not defined in the Act. Corporate affairs are often complex involving the interplay of innumerable factors including those relating to policy matters, management and financial aspects and legal issues. The schemes often require a consideration of various enactments and the adherence to various legal provisions not only under the Companies Act but also under other enactments. Financial aspects are not limited in their nature or in scope. Each component is studied and the resultant arrangement is arrived at after taking all of them into consideration. There are consequential acts to be performed as an integral part of the scheme. Many of them, therefore, involve other arrangements such as reduction in share capital and the amendment of the Memorandum of Association and the Articles of Association of the company. These very components can constitute one composite scheme/arrangement under section 391 of the Act. The legislature, therefore, advisedly did not restrict the scope of the term arrangement by defining it. A view to the contrary would place an unwarranted fetter upon the activities of a company and restrict the choice of its members, creditors, debenture holders and other stakeholders.

15. Ms. Gandhi's reliance on a judgment of a learned Single Judge of Bombay High Court *in re; Larsen and Toubro Ltd. 2004(121) Company Cases Bombay 523* is well founded. The learned Judge held that the word 'arrangement' in Section 390(b) of the Act is an inclusive definition and

contemplates all arrangements and not only reorganization of the share capital. This it was held is clear from the word 'includes'. The learned Judge followed the judgment of the Calcutta High Court in *Hindustan Commercial Bank Ltd. v. Hindustan General Electrical Corporation* 1960 (30) Company Cases 367 where it was held that the word 'arrangement' in section 391 is of wide import. We are in respectful agreement with this view.

16. *In re: P.M.P. Auto Industries Ltd.* 1994 (80) Company Cases, 289 (Bombay), one of the objections was to the sanction of an integrated and composite scheme of amalgamation. The scheme involved the amalgamation of PMP Auto Industries Ltd. in S.S.Miranda Ltd. and immediately thereafter S.S.Miranda Ltd. in Morarjee Goculdas Spinning and Weaving Co. Ltd. The objection was that the memorandum of association of the transferee company i.e. Morarjee Goculdas Spinning and Weaving Co. Ltd. did not permit it to carry on the business activities as carried out by the two transferor companies, namely, PMP Auto Industries Ltd. and S.S.Miranda Ltd. However, the scheme itself apart from providing for the amalgamation provided for the amendment of the Memorandum of Association of the transferee company authorizing it to carry out such business as well. The authorities contended that such a composite scheme was not permissible especially as the jurisdiction to decide the application for amendment in the memorandum of association was with the Company Law Board under Sections 17 and 19 of the Companies Act and that the scheme insofar it sought an order permitting an amendment of the Memorandum of Association usurped the power of the Company Law Board. The learned Judge accepted the contention on behalf of the companies that sections 391 to 394 of the Act constitutes a complete code, the object of which was to eliminate frequent applications being made to the Court effectively in order

to implement a scheme of amalgamation which the Court sanctions in the exercise of its powers under Section 394 of the Act. The learned Judge held as under:-

“In ***Maneckchowk and Ahmedabad Mfg. Co. Ltd., In re [1970] 40 Comp Cas 819***, a case which arose before the Gujarat High Court, a scheme of amalgamation was put forward before the court for sanction under section 394 of the Act. The proposed scheme itself envisaged reorganization of share capital, including the reduction of the share capital. An objection was raised that inasmuch as a distinct and different procedure has to be adopted for reduction and increase of share capital under the Companies Act, it was not permissible for the court to sanction a scheme involving reduction and increase of share capital while exercising its powers under section 394 of the Act. The Gujarat High Court rejected this contention by holding that section 391 of the Companies Act was a complete code which provided for a scheme of reconstruction and amalgamation of companies which could conceivably include a reorganisation of the share capital of the company by consolidation of shares of different classes or by division of shares or by both these methods. The Gujarat High Court referred to rule 85 of the Companies (Court) Rules, 1959, which specifically provides that where a proposed compromise arose involving the share capital of the company, the procedure prescribed by the Act and the Rules relating to the reduction of capital and the requirements of the Act and the Rules and Regulations thereto shall have to be complied with before the compromise or arrangement, so far as it relates to the reduction of capital, is sanctioned. From this rule, the Gujarat High Court deduced (at page 854) :

"If section 391 were not to be treated as a complete code and if it is intended that various things that can be done by way of a scheme of compromise and arrangement, if they were to fall under different provisions of the Companies Act which prescribe

certain procedure for doing the same and that procedure has to be gone through, it was not necessary to provide specifically that if the scheme of compromise and arrangement includes reduction of capital special procedure in respect of reduction of capital must be gone through before it could be sanctioned as part of the scheme of compromise and arrangement. There seems to be good reason for making such a provision in rule 85 ..."

Though these observations were made by the Gujarat High Court in connection with reduction of capital and the special procedure to prescribe therefor, in my view these observations are equally applicable in so far as the special procedure prescribed for alteration of memorandum of association of a company is concerned. In fact, the reason why section 391 of the Act is to be treated as a complete code is postulated by the Gujarat High Court thus (at page 855) :

"If section 391 was subject to other provisions of the Act, every time the scheme of compromise and arrangement is put forth for the sanction of the Court, if it includes things for which specific provisions are made and that will have to be gone through before the scheme is sanctioned, it would result in unnecessary duplication of procedure and would be cumbersome. On the contrary, it appears that if the creditors and members of the company arrive at a certain compromise which the court considers fair, it can be sanctioned under section 391 despite the fact that for some of those things included in the compromise another procedure is prescribed in the Companies Act and which has not been carried out. It, therefore, appears that section 391 is a complete code which provides for sanctioning of the scheme of compromise and arrangement. Therefore, it appears that the provisions contained in section 391 is a complete code." (emphasis supplied)

15. The decision of the Gujarat High Court in ***Maneckchowh's case, [1970] 40 Comp Cas 819*** was followed by this court in ***Vasant Investment Corporation Ltd. v. Official Liquidator, Colaba Land and Mill Co. Ltd. [1981] 51 Comp Cas 20***. In this case the company was authorised by its memorandum to do business in buying and selling of land and also to run a textile mill. The company went into liquidation and after the contributors, were paid it was found that there was a surplus. Some of the shareholders proposed a scheme by which the company could, utilising the surplus funds, carry on the business of manufacturing chemicals. The official liquidator objected to the same on the ground that sanctioning the scheme would be meaning that the company would be permitted to do something ultra vires the objects clause of the memorandum of association. This contention was negated by this court (per Mrs. Manohar J.) by pointing out that the scheme itself contemplated that the memorandum of association would be altered, if found necessary, by taking steps for amendment thereof. After referring with approval to the judgment of the Gujarat High Court in ***Maneckchowk's case, [1970] 40 Comp Cas 819*** the learned judge went on to observe (at page 34 of 51 Comp Cas) :

"Basically, the court is given wide powers under section 391 of the Companies Act to frame a scheme for the revival of the company. Section 391 of the Companies Act is a complete code under which the court can sanction a scheme containing all the alterations required in the structure of the company for the purpose of carrying out the scheme, except reduction of share capital which requires a special procedure to be followed by virtue of rule 85 of the Companies (Court) Rules. In the absence of rule 85, procedure for alterations in the memorandum and articles of association of a company prescribed under other provisions of the Companies Act is not required to be followed before sanctioning a scheme involving such alterations. The whole purpose of section 391 is to reconstitute

the company without the company being required to make a number of applications under the Companies Act for various alterations which may be required in its memorandum and articles of association for functioning as a reconstituted company under the scheme." (emphasis\* supplied)

Thus the position in law appears to be clear. Section 391 invests the court with powers to approve or sanction a scheme of amalgamation/arrangement which is for the benefit of the company. In doing so, if there are any other things which, for effectuation, require a special procedure to be followed-except reduction of capital then the court has powers to sanction them while sanctioning the scheme itself. It would not be necessary for the company to resort to other provisions of the Companies Act or to follow other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme which is sanctioned by the court. Not only is section 391 a complete code as held by the courts, but, in my view, it is intended to be in the nature of a "single window clearance" system to ensure that the parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated applications to the court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall fairness and feasibility has been judged by the court under section 394 of the Act."

17. We are in respectful agreement with the judgment in so far as it is held that the composite scheme involving more than one arrangement is maintainable.

18. The judgment may be sought to be distinguished on the ground that the orders for the amendment of the Memorandum of Association are incidental to and in furtherance of the scheme of amalgamation and that the judgment, therefore, cannot apply to cases involving two arrangements such as in the case before us of a merger and a demerger. The attempt to

distinguish the judgment on this ground must fail. The judgment in fact must apply with greater force to the case before us for the demerger and the mergers are part of one indivisible scheme and are not merely incidental to but are also connected with each other. None of them subsists without the other. On the other hand in 'PMP Auto Industries Ltd.' it was legally possible to follow two courses namely a scheme under sections 391 and 394 of the Act for amalgamation and a separate proceeding for the amendment of the Memorandum of Association by following the procedure under Sections 17 to 19 of the Act.

19. We are unable to agree with the observations of the learned Judge that the Act does not permit sanctioning a scheme where different companies are involved in different arrangements and that section 394 of the Act does not permit a part of the business of the one company to be merged with another company and the merger of the other companies with that company. As we explained earlier the mergers and the demerger in the case before us are not independent schemes. They are part of a composite scheme of arrangement which falls within the ambit of Sections 391 and 394 of the Act.

20. As observed by the learned Judge, the balance sheets, figures and finances of the companies would indeed be different. That, however, is entirely irrelevant to the point under consideration. The stakeholders of the company involved in the scheme would examine the same and based thereon take an informed decision whether or not to approve the scheme as proposed or as may be modified. That is entirely within their domain. We are unable to agree that the process adopted cannot be approved for this reason or otherwise.

21. The finding that the exact figures, numbers and finances of the companies sought to be merged and demerged will not be available before the Court as well as for presentation before the members and the creditors of the companies in the meetings is incorrect. They are and in any event can be made available. None of the creditors or the shareholders has alleged that this information was not available.

22. The learned Judge observed that it would not be possible for the members or the creditors to know the status of the company after implementing the first part i.e. demerger of the ‘Auto Component Division’ of appellant No.1. This finding, however, is based on an incorrect premise that the demerger of the ‘Auto Component Division’ of appellant No.1 is independent of the mergers of appellant Nos. 3, 4 and 5 with appellant No.1 and that the merger of the ‘Auto Component Division’ of appellant No.1 with appellant No.2. Once it is realized that the entire arrangement was one composite scheme, it is obvious that the question of the stakeholders knowing the status of the company after implementing only one of the components of this composite scheme namely demerger of ‘Auto Component Division’ cannot and does not arise.

23. It is on account of this error that the learned Judge also observed that after implementation of the first part of the scheme, the shareholding pattern, the business and the profits etc. of the transferor and transferee companies will undergo change and that those figures and particulars are required to be presented before the members and the shareholders of the resultant companies and the other companies who are sought to be merged and demerged with the resultant company i.e. appellant No.1 as demerged. In the case of a composite scheme such as the one before us, the question of implementing the various components thereof separately

does not and indeed cannot arise. There is no question, therefore, of the particulars being required to be presented before the stakeholders and the Court upon implementation of each of the components. The consequence of each of the components is viewed by the stakeholders not independently but together with the other components while deciding whether or not to approve the scheme.

24. For the same reason we are also unable to agree with the observation that if a composite scheme involving different companies with different objects is presented, it would not be possible for the Court to examine whether the object sought to be achieved by the first part has in fact been achieved or not. In the case of a composite scheme, it is the working of the scheme as a whole that is relevant and not the working of each of its components independently and one after the other.

25. Nor can there be any objection in principle to a company proposing more than one independent scheme of arrangement under Sections 391 and 394 of the Companies Act simultaneously. Separate proceedings would no doubt have to be adopted seeking sanction of each of them. That, however makes no difference to the maintainability of each of the proceedings. The stakeholders may object on the ground that they did not have notice of the scheme that they were not connected with and that notice of the other schemes was necessary to enable them to take an informed decision regarding the scheme that they were to consider. The Court may uphold the objection if it finds that it was necessary to give the stakeholders concerned with one scheme notice of the other schemes in order to enable them to take an informed decision whether or not to agree to the scheme that they are concerned with being sanctioned. Such questions, however, relate to the merits of the matter and not to the maintainability of the proceedings.

26. In the circumstances, the impugned order and judgment is set aside. The appeal is allowed as prayed with the following directions:-

- i) Company Appeal No. 52 of 2015 filed by the Demerged Companies and the Resulting Company respectively is allowed and the scheme is sanctioned as proposed.
- ii) Petitioners-appellants 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 in addition to physical copy as per the relevant provisions of the Companies Act, 1956.
- iii) Each of the appellants to pay costs of ₹ 10000/- each to the Regional Director, Northern Region, Noida. Each of the appellant Nos. 3, 4 and 5 to pay costs of ₹ 10,000/- to the Official Liquidator. Costs to be by 31<sup>st</sup> January, 2016.
- iv) The sanction of the scheme and copies of this order be published in the Financial Express (English) and Jansatta (Hindi) newspapers and in the Official Gazette, Government of Haryana.
- v) Filing and issuance of the drawn up order is dispensed with.
- vi) All concerned authorities to act on a copy of this order along with Scheme and form of Minutes duly

authenticated by the Reader of this Court.

(S.J.VAZIFDAR)  
ACTING CHIEF JUSTICE

10.12. 2015

'ravinder'

(TEJINDER SINGH DHINDSA)  
JUDGE

To be referred to the Reporter or not	√ Yes	No
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