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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

CP(CAA) No. 77/NCLT/AHM/2018 in
CA(CAA) No. 26/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.10.2018

Name of the Company: Arvind Ltd.
Arvind Fashions Ltd.
Anveshan Heavy Engineering Ltd.
The Anup Engineering Ltd.

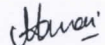
Section of the Companies Act: Section 230-232 of the Companies Act, 2013

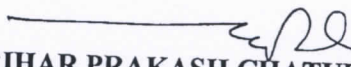
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	SWATI SOPARKAR	ADVOCATE	PETITIONERS	Swati Soparkar
2.				

ORDER

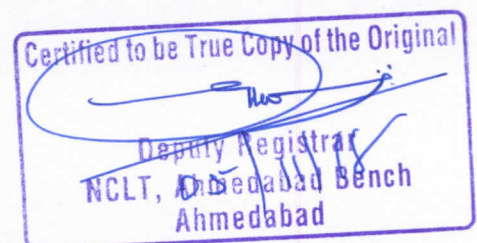
Advocate Ms. Swati Soparkar is present for the Petitioner.

The Order is pronounced in the open court, vide separate sheet.


MANORAMA KUMARI
(MEMBER JUDICIAL)


HARIHAR PRAKASH CHATURVEDI
(MEMBER JUDICIAL)

Dated this the 26th October, 2018.



BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

CP(CAA)No.77/NCLT/AHM/2018 with
CA(CAA)No.26/NCLT/AHM/2018

In the matter of:-

Arvind Limited

(CIN:L17119GJ1931PLC00093)
A Company incorporated under
the provisions of Indian
Companies Act, 1913, and
having its registered office at
Naroda Road, Ahmedabad-380
023, in the State of Gujarat.

... Petitioner Demerged Company

Arvind Fashions Limited

(CIN:U52399GJ2016PLC085595)
A Company incorporated under
the provisions of Companies Act,
2013 and having its registered
office at Main Building, Arvind
Limited Premises, Naroda Road,
Ahmedabad-380 025, in the
State of Gujarat.

... Petitioner Resulting Company-1

**Anveshan Heavy Engineering
Limited**

(CIN:U29306GJ2017PLC099085)
A Company incorporated under
the provisions of Companies Act,
2013 and having its registered
office at Main Building, Arvind
Limited Premises, Naroda Road,
Ahmedabad-380 025, in the
State of Gujarat.

... Petitioner Resulting Company-2
/ Petitioner Transferee Company

The Anup Engineering Limited

(CIN:U99999GJ1962PLC001170)
A Company incorporated under
the provisions of Companies Act,
1956 and having its registered
office at Behind 66 KV Electric
Sub-Station, Odhav Road,
Ahmedabad-382 415, in the
State of Gujarat.

...Petitioner Transferor Company

Order delivered on 26th October, 2018.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J)



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Appearance:

Mr. Saurabh Soparkar, Sr. Advocate with Ms. Swati Soparkar,
Advocate for the Petitioners
Mr. Nachiket D. Mehta, Advocate for Income Tax Department

ORDER

[Per: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)]

1. This is a joint company scheme petition filed by four companies under Section 230 and 232 of the Companies Act, 2013 seeking sanction of this Tribunal to a Composite Scheme of Arrangement involving De-merger, amalgamation and restructure of Capital amongst Arvind Limited, Arvind Fashions Limited, Anveshan Heavy Engineering Limited and The Anup Engineering Limited.
2. The said petitioner companies had filed the proceedings before this Tribunal in form of joint application being CA (CAA) No. 26 of 2018. Arvind Limited, the petitioner De-merged Company being a listed public limited company, the copies of the Audit Committee Report of the said company and Board Resolutions of all the petitioner companies dated 8th November 2017 were placed on record. The said company had submitted the proposed Scheme of Arrangement for requisite prior approval from the Securities and Exchange Board of India through the concerned Stock Exchanges viz., BSE Limited and National Stock Exchange of India Limited and the observation letters dated 28th February 2018 were also placed on record.
3. By an order made in the above matter on 16th March 2018, passed by this Tribunal, meetings of the Equity Shareholders of AHEL, the Petitioner Resulting Company-2 were dispensed with in view of the Written consents from all the shareholders being placed on record. It was further held that since there were no Secured and/or Unsecured creditors of the said company such meetings of creditors were not necessary. However, vide the said order separate meetings of Equity Shareholders, Secured creditors as well as Unsecured Creditors of AL, the Petitioner Demerged Company, AFL, the petitioner Resulting Company-1 and TAEL, the petitioner Transferor Company were directed to be convened for the purpose of considering and, if



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thought fit, approving with or without modification(s), the proposed Scheme of Arrangement at the respective meetings. Directions were issued for the service of notice as well as publication of the notice in the newspapers. All the three Petitioner Companies, complied with the said directions.

4. Pursuant to the directions of the Hon'ble Tribunal, notices of the meetings were sent individually to all the Equity Shareholders, Secured Creditors and Unsecured Creditors of the three Companies between 3rd to 5th April 2018; together with a copy of the Scheme of Arrangement and the Explanatory Statement as well as all other required disclosures. The notice convening the meetings were also advertised in Ahmedabad editions of English daily 'Indian Express' and Gujarati daily 'Gujarat Samachar' on 9th April 2018. The affidavits dated 16th April 2018 were filed by the Chairman of the said meetings confirming the compliance of the directions. The aforesaid meetings were duly convened and held on the 11th and 12th May 2018 and the Chairman appointed for the respective meetings reported the result of the said meetings to this Tribunal vide respective affidavits dated 26th May, 31st May and 1st June 2018 were filed with this Tribunal. Perusal of the same confirms the unanimous approval of the proposed Scheme by the Secured and Unsecured Creditors of all the companies. In case of the Equity Shareholders of the De-merged Company, the proposed Scheme was approved by requisite majority of 97.61% in number and 99.99% in value of the Shareholders, casting their votes either through Postal Ballot, remote e voting as well as casting valid votes at the meeting. In case of other two companies, the Scheme was approved unanimously by the Equity Shareholders.
5. Vide the aforesaid order dated 16th March 2018, the petitioner companies were also directed to serve Notice of the Scheme to the Regulatory Authorities-viz. (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat (iii) the Income Tax Authorities (iv) Reserve Bank of India in case of all the Petitioner Companies. Notice was



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directed to be served upon the concerned stock exchanges viz. BSE Limited, National Stock Exchange Limited as well as the Securities and Exchange Board of India for the Petitioner De-merged Company which is a listed public limited company. Further, notice was required to be served upon the Office of the Official Liquidator in case of Petitioner Transferor Company. The notices were duly served upon the authorities alongwith Notice, Explanatory Statement and other requisite documents and disclosures on or before 4th April 2018. The affidavits dated 16th April 2018 confirming the compliance of the said directions for service of Notice on all the above Regulatory Authorities alongwith the acknowledgments for the same were filed with this Tribunal. In response to the said notice, the representation dated 26th April 2018 was received from the Regional Director, Western Region as well as from the Official Liquidator for the Transferor Company. Representation dated 4th July 2018 was filed by the Income Tax Authority only for the Transferee Company. No other representation was received from any other regulatory authority. Additional affidavit dated 10th July 2018 has been filed by the petitioners in response to the said representations.

6. The present petition was filed on 15th June 2018 and the same was admitted on 25st June 2018. The date of hearing was fixed as 30th July 2018. Directions were issued to publish Notice of Hearing of Petition in the newspapers viz. English daily, Indian Express and Gujarati daily, Gujarat Samachar at least before 10 days of the date of hearing of the petition. Further directions were also issued to serve notice of hearing of the petition to the statutory authorities viz.
 - (i) Central Govt. through Regional Director- North Western Region,
 - (ii) Registrar of Companies, (iii) respective Income Tax Authorities and (iv) Official Liquidator for the Transferor Companies, at least before 10 days of the date of hearing of the petition.
7. Pursuant to the said directions, notices were duly served by the petitioner companies on the statutory authorities on 3rd July 2018 and publications were duly made in the newspapers on 5th July

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2018. An affidavit of service and publication dated 10th July 2018 confirming the same has been placed on record.

8. We heard Mrs. Swati Soparkar, Ld. Advocate appearing for the petitioner companies. The submissions vide the Additional Affidavit dated 10th July 2018 in response to the representations of regulatory authorities are as follows:

- (i) It has been submitted on behalf of the petitioner companies that Para 2 (a), (b), (c) and (d) of the representation of the Regional Director deals with the factual aspects viz. Service of Notice for the proposed Scheme, nature of the proposed Scheme, the proposed Exchange Ratio as recommended by independent Chartered Accountants, interse holding of shares and Rationale for the Scheme and no response is necessary to these aspects.
- (ii) Para 2(e) of representation refers to the proposed consolidation of the Authorized Share Capital of the Transferor Company with that of the Transferee Company as envisaged under clause 28 of the Scheme. It is observed by the Regional Director that under Section 232 (3) (i) of the Companies Act, 2013, the Transferee Company shall get the set off only for the amount of fees paid by the Transferor Company. In view of the same, the Transferee Company will be required to pay the difference of amount of fees payable on the enhanced Authorized Capital as on date and the actual amount of fees paid by the Transferor Company at the relevant point of time. In this regard, it has been submitted that the Transferee Company hereby undertakes to pay such difference, if any applicable, for the amount of fees payable as on date on the proposed enhancement of Authorized Capital of Rs. 15,00,00,000/-.
- (iii) The Regional Director vide Para 2(f) refers to the compliance with the applicable SEBI circulars by the De-merged Company, viz. Arvind Limited being a listed company. It has been submitted that the said De-merged Company has complied with all



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applicable requirements of the said circulars. The Petitioner Resulting Companies have further undertaken to comply with the post scheme requirements of the said circulars as mentioned in the sanction letters of BSE and NSE.

- (iv) Para 2 (g) of the representation refers to the investments made by foreign shareholders in case of Arvind Limited and Arvind Fashions Limited, which being part of the record of the company are not disputed. However, it has been clarified that the said companies have complied with the applicable provisions of FEMA and RBI guidelines and upon the scheme being effective requisite compliances shall be further made while issuing the shares pursuant to the scheme to such foreign shareholders.
- (v) Vide para 2 (h), it has been observed by Regional Director that consolidation of the Authorized Capital is permissible under the provisions of law only for the proposed Scheme of Amalgamation and mergers and not for the Scheme of Arrangement involving De-merger as envisaged vide para 11 and 19 of the Scheme where part of the Authorized Capital of the De-merged company is proposed to be consolidated with the Authorized Capital of respective Resulting Companies. It has been submitted that on de-merger of an undertaking, the capital requirement of the remaining undertaking are reduced and on the same principles of consolidation of authorized capital of the amalgamating company, part of the capital can be consolidated with that of the Resulting Company. It has been submitted that there are numerous instances where such transfer of part of the Authorized Capital has been permitted in case of De-merger by several decisions of the High Court as well as NCLT.
- (vi) Para 2 (i) of the representation refers to non disclosure of the assets and liabilities which are proposed to be demerged and transferred to the Resulting Companies. In this regard, it has been pointed out that the Divisional Columnar Balance Sheet of the De-merged Company as on 30th September 2017 has already



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been placed on record as Annex. B-3 to the present petition, which is indicative of the assets and liabilities proposed to be de-merged and transferred. The actual transfer of assets shall take place upon Scheme being sanctioned by Hon'ble NCLT and hence the detailed list of immovable assets as on the date of the order sanctioning the Scheme shall be submitted alongwith the certified copy of the order to the concerned authorities.

- (vii) Vide Para (j) the Regional Director has observed that the petitioner be directed to specify the name of the Account-viz. Amalgamation Reserve Account / Capital Reserve Account for the proposed Accounting Treatment vide Clause 10, 18 and 26 of the Scheme. It has been submitted on behalf of the Petitioner companies that as specified in the scheme, the treatment shall be in compliance with the applicable Accounting Standards, either AS 14 or IND AS 103, as the case may be. It has been further submitted that Part II and Part III of the Scheme vide respective Clause 10 and 18 provide for Accounting Treatment for De-merger and there is no specific Accounting Standard prescribed for De-merger. Since the De-merged Company is a listed company, Clause 10 as well as Clause 18 of the Scheme has provided that in case of De-merged Company, the applicable standard is IND AS-103 and since the said standard is subject to several amendments from time to time, it is not possible to specify the name of the account to which it will be adjusted at this stage. It is however clarified that the accounting treatment as stipulated in Part II and Part III of the Scheme are in accordance with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 and has been confirmed by the Statutory auditors of the respective companies.

Similarly, Part IV of the Scheme deals with amalgamation and Clause 26 of the Scheme confirms that the Purchase Method of Accounting as prescribed under AS - 14 would be complied with. The treatment proposed is in accordance with the Accounting Standards prescribed under Section 133 of the Companies Act,



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2013. The Statutory auditors of the Transferee Company has already confirmed the same.

It is also further observed by the Regional Director that the petitioner companies should give undertaking that such capital reserve created shall not be available for distribution of dividend. In this regard, it has been submitted that the petitioner companies shall be bound by the applicable provisions of law and no specific undertaking is necessary.

- (viii) Vide Para 2 (k), the Regional Director has observed that since the Petitioner De-merged Company as well as Petitioner Resulting Company-1 have raised funds through Security Premium Account, the petitioners must confirm the payment of Income Tax and other legal dues for the said Security Premium collected by the said petitioner companies. In this regard, it has been submitted that the provisions of Section 56(2)(viib) of the Income Tax Act, 1961 are not applicable to a company in which public is substantially interested. In the circumstances, no tax is payable by Arvind Limited or by Arvind Fashions Limited till the time Arvind Fashions Limited was a wholly owned subsidiary of Arvind Limited. The shares issued by Arvind Fashions Limited, even after ceasing to be a wholly owned subsidiary of Arvind Limited, are issued at fair value. Therefore, the question of paying any tax does not arise in the facts of the present case. It has been further submitted that Arvind Limited and Arvind Fashions Limited shall pay applicable income tax, if any, and if so assessed by the Income Tax Department or by any appellate authorities in accordance with law.
- (ix) Vide Para 2 (l), the Regional Director has referred to Clause 43 of the Scheme, which envisages that the name of Anveshan Heavy Engineering Limited, the Resulting Company-2 and the Transferee Company is proposed to be changed to 'The Anup Engineering Limited'. It has been observed by the Regional



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Director that no justification is provided for the proposed change. It has further observed for the payment of requisite fees as well as Stamp Duty for the Transfer of assets. In this regard, it has been submitted by the petitioners that in the present case, change of name is proposed as an integral part of the composite Scheme and hence it is not necessary to provide for any justification. It is purely a commercial decision of the management of the company to continue with the name of an existing known company for the Transferee Company also in post amalgamation situation. Similarly, under the accepted principle of Single Window Clearance, the petitioner is not required to follow separate procedure for the same and the order sanctioning the composite scheme shall be treated as the order for change of name. The company undertakes to pay requisite fees for the Fresh Certificate confirming the change of name. So far as the Stamp Duty on transfer of assets is concerned, it is respectfully submitted that Change of Name of the company does not attract any stamp duty for the transfer of assets. For the transfer of undertaking from the existing Anup Engineering to Anveshan, the Transferee Company, upon sanction of the Scheme, the Transferee Company shall pay the applicable stamp duty.

- (x) Vide para 2 (m), the Regional Director has observed that the petitioner companies be directed to undertake the compliance of Section 2 (19 AA) of the Income Tax Act, so far as De-merger is concerned. It has been submitted that the Scheme has already provided for the compliance of the relevant sections of the Income Tax Act for both proposals of De-merger. In view of the same, it is not necessary to further direct the petitioner companies for such compliance.
- (xi) It is further pointed out that Registrar of Companies has confirmed that there are no complaints against any of the petitioner companies. The Regional Director has further confirmed that he has no other observation/submission and that the proposed



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Scheme of Amalgamation is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

9. In response to the Notice of the petition served upon the Office of the Official Liquidator for the Transferor company, the Official Liquidator filed with the Hon'ble Tribunal its representation for the Transferor Company dated 26th April 2018. It has been observed that the Transferor company has conducted its business in accordance with Objects Clause and the same has not been conducted in any manner prejudicial to the interest of its members or public interest, hence the petitioner transferor company may be dissolved without following the process of winding up. Further, the Official Liquidator has sought directions to be issued to preserve the books of accounts, papers and records of the Transferor Company and not to dispose of the same without prior permission of the Central Govt. as per the provisions of Section 239 of the Companies Act, 2013. No adverse observations are made in the said report.
10. The Income Tax authority has filed the representation dated 10th July 2018 only for Anveshan Heavy Engineering Limited, the Petitioner Transferee Company and has confirmed that there are no outstanding tax demands. On the date fixed for Final Hearing viz. 30th July 2018, time was sought by the counsel appearing for Income Tax Dept. for filing representation for Anup Engineering Limited. A further affidavit dated 24th August 2018 has been filed on behalf of the petitioner placing on record the letter dated 2nd August 2018 received by the petitioner confirming that the Income Tax Dept. has no objection to the proposed Scheme with reference to the Transferor Company. The same has also been confirmed by the affidavit filed on 28th August 2018 on behalf of the Income Tax Dept. No representation has been filed by the concerned Income Tax Authorities till date for the other two companies. It has been submitted that on the basis of the records of the Petitioner Companies as on 31st March 2018, there is no undisputed outstanding demand for income tax for the De-merged Company. There are several disputed outstanding demands for the said



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company from Assessment Year 2009-10 to 2014-15. The appeals filed in this regard are pending before Income Tax Appellate Tribunal and/or Commissioner of Income Tax (Appeals). It is hereby confirmed that as and when the said demands are crystalised, the concerned Petitioner Companies will be liable for making payments for the same. It is further confirmed, that the said Transferee Company shall be liable for any demand already created or become payable due to any of the proceedings related to Income Tax department in future for outstanding demand prior to amalgamation in respect of the Transferor Company. The Petitioner Companies have undertaken to abide by all the applicable provisions of the Income Tax Act.

11. In compliance with the proviso to sub-section (7) of Section 230, the petitioner companies have placed on record the certificates of statutory auditors dated 14th November 2017 and 22nd November 2017, confirming that the accounting treatment envisaged under the said scheme of Arrangement in the books of the respective companies is in compliance with the applicable Accounting Standards notified by Central Govt. in section 133 of the Companies Act, 2013.
12. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that all the requirements of section 230 and 232 of the Companies Act, 2013 are satisfied. The observations made by the Regional Director stand satisfied by the submissions made by the petitioner companies. The proposed Scheme of Arrangement appears to be genuine and bona fide and in the interest of the shareholders and creditors as well as in the public interest and the same deserves to be sanctioned.
13. Attention of this Tribunal has been drawn to the Interlocutory Application filed on 30th July 2018 seeking direction to rectify the typographical errors in some of the clauses of the scheme. Perusal of the same indicates that these errors have no impact on the nature of



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the scheme and does not affect rights and interest of any person. However, the rectification is required for the sake of consistency and effective implementation of the Scheme. Considering the same, the same is hereby granted and the petitioner is directed to carry out the said rectifications today itself.

14. As a result, the petition being C P (CAA) No. 77 of 2018 is hereby allowed. The Scheme which is at Annexure- 'J' to the petition alongwith the small rectifications is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, their shareholders and all concerned under the scheme. It is also declared that the Transferor Company viz. Anup Engineering Limited shall stand dissolved without winding up.
15. The cost to be paid to the Official Liquidator is quantified at Rs. 10,000/-each in respect of the Transferor Company only. The said fees to the Official Liquidator shall be paid by the Transferee Company.
16. The amount towards legal fees/expenses incurred by the office of the Regional Director in respect of the petitioner companies is quantified at Rs.25,000/- which shall be paid by the Transferee Company to the Regional Director, Ahmedabad
17. Filing and issuance of drawn up order is hereby dispensed with. All concerned authorities to act on a copy of this order along with the scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the authenticated copy of this order alongwith Scheme immediately.
18. The petitioner companies are further directed to lodge a copy of this order, the schedule of immovable assets of the Transferor company and the De-merged Undertakings of the De-merged Company as on the date of this order and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of




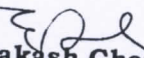
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Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.

19. The Petitioner companies are directed to file a copy of this order alongwith a copy of the scheme with the concerned Registrar of Companies, electronically, along with INC-28 in addition to physical copy as per relevant provisions of the Act.
20. CP (CAA) No. 77 of 2018 is disposed off accordingly.


Manorama Kumari
Member (Judicial)


Harihar Prakash Chaturvedi
Member (Judicial)

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Date of pronouncement of Order: 26-10-18
Date on which application for Certified Copy was made: 2-11-18
Date on which Certified Copy was ready: 5-11-18
Date on which Certified Copy delivered: 5-11-18

