

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

29. C.A. 88/2022
C.P.(CAA)/140/MB/2021

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **28.04.2022**

NAME OF THE PARTIES: POONAM ROOFING PRODUCTS PRIVATE
LIMITED.

SECTION 230-232 OF COMPANIES ACT, 2013

ORDER

Mr. Nitin Gutka, Chartered Accountant appearing for the Petitioner and Ms. Rupa Sutar, representative of Regional Director are present through virtual hearing.

C.A. 88/2022

The above Company Application is filed for urgent hearing of C.P.(CAA)/140/MB/2021. Accordingly, the above C.A. 88/2022 is allowed and disposed of.

C.P.(CAA)/140/MB/2021

Heard the counsel appearing for the Petitioner and the above C.P.(CAA)/140/MB/2021 is allowed. Detail order would follow:

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

C.P. (CAA) 140/MB/2021

Connected with

C.A. (CAA) 1169/MB/2020

In the matter

of

The Companies Act, 2013 (18 of 2013);

and

In the matter

of

Sections 230 to 232 of the

Companies Act, 2013;

and

In the matter

of

The Scheme of Arrangement

Between

Poonam Roofing Products Private

Limited

(“Demerged Company”)

and

Sahyadri Industries Limited

(“Resulting Company”)

And

their respective shareholders.

Poonam Roofing Products Private Limited [CIN: U26953MH1983PTC031370]	.. Petitioner Company 1/ Demerged Company
Sahyadri Industries Limited [CIN: L26956PN1994PLC078941]	..Petitioner Company 2/ Resulting Company

(Hereinafter collectively referred to as 'the Petitioner Companies')

Order delivered on: 28.04.2022

Coram:

Shri H. V. Subba Rao, Hon'ble Member (Judicial)

Shri Chandra Bhan Singh, Hon'ble Member (Technical)

Appearances (via videoconferencing):

For the Applicants : Mr. Nitin Gutka i/b M/s
ZADN & Associates,
Practicing Chartered
Accountants

For the Regional Director : Ms. Rupa Sutar, Assistant
Regional
Director, (Western Region)
Ministry of Corporate Affairs.

ORDER

1. The Court is convened and hearing is conducted through video

conference today.

2. We have heard the Representative for the Petitioner Companies and the officer of the Regional Director, Western Region, Mumbai (“**Regional Director**”). No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme.
3. The sanction of the Tribunal is sought under Sections 230-232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 (the Act) and the Rules framed thereunder for the Scheme of Arrangement between Poonam Roofing Products Private Limited (“**Petitioner Company 1 / Demerged Company**”) and Sahyadri Industries Limited (“**Petitioner Company 2 / Resulting Company**”) and their respective shareholders.
4. The Scheme inter-alia provides for:
 - (i) Demerger of ‘Industrial Business Undertaking’ of Poonam Roofing Products Private Limited into Sahyadri Industries Limited.
5. The Authorised, Issued, Subscribed and paid-up Share Capital of the Petitioner Company 1 as on 31st March 2020 is as under:

Particulars	Amount in Rs.
Authorised Share Capital:	

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75,000 Equity Shares of Rs. 100/- each	75,00,000
Total	75,00,000
Issued, Subscribed and Paid –Up:	
24,000 Equity Shares of Rs. 100/- each	24,00,000
Total	24,00,000

6. The Authorised, Issued, Subscribed and paid-up Share Capital of the
Petitioner Company 2 as on 31st March 2020 is as under:

Particulars	Amount in Rs.
Authorised Share Capital:	
1,20,00,000 Equity Shares of Rs. 10/- each	12,00,00,000
Total	12,00,00,000
Issued, Subscribed and Paid –Up:	
95,61,500 Equity Shares of Rs. 10/- each	9,56,15,000
Total	9,56,15,000

7. **Issuance of equity shares in Consideration for the demerger:**

The Resulting Company shall issue 577 equity shares of face value of Rs. 10/- each for every 10 equity shares of face value of Rs. 100/- each held by the shareholders of the Demerged Company.

8. The Representative for the Petitioner Companies submits that Board of Directors of Poonam Roofing Products Private Limited and Sahyadri Industries Limited approved the Scheme in their respective Board

Meeting held on 5th February, 2020. The Appointed Date fixed under the Scheme is 1st April, 2020.

9. Pursuant to the Securities Exchange Board of India (“SEBI”) circular CFD/DIL3/CIR/2017/21 dated March 10, 2017, as amended from time to time (“SEBI Circular”) read with Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”), Petitioner Company 2 had applied to BSE for their “Observation Letter” / “No Objection Letter” to file the Scheme for sanction of the Tribunal. BSE by its letter dated 20th November, 2020, have given their “Observation Letter” letters to Petitioner Company 2, to file the Scheme with the Tribunal.
10. The Representative for the Petitioner Companies submits that the Petitioner Company 1 is presently engaged in the business of finishing and other job work of fibre cement sheets, accessories and other support services, real estate activities and other permissible businesses. The Petitioner Company 2 is engaged in Production of cement sheets and accessories, generation of wind power electricity, trading of steel doors.
11. The rationale of the Scheme is summarised as follows:
 - a) Demerged Company is engaged in finishing and other job-work of Fibre Cement Sheets, accessories and other support services for the Resulting Company. Hence, consolidation of Industrial Business

Undertaking with Resulting Company is a strategic fit and will help streamline the business of Resulting Company in the growing markets.

- b) Consolidation of the Industrial Business Undertaking with the Resulting Company shall thereby result in making available increased resources including skilled and experienced workforce and assets including surplus land available for expansion of the activities of Resulting Company and as a result, sustain growth in long term.
- c) "Swastik" brand which is licensed to the Resulting Company is owned by the Demerged Company. Vesting of the brand in the Resulting Company will result in adding value, boosting the reputation, saving of significant cash flow in future and enhancing flexibility in developing the Brand as well as product portfolio.
- d) Enhance competitive strength, achieve cost reduction, efficiencies and productivity gains by pooling resources of Resulting Company and Industrial Business Undertaking.

12. The Representative for the Petitioner Companies submits that the Company Scheme Petitions have been filed in consonance with sections 230-232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with Scheme of Arrangement dated 17th February, 2021 and read with corrigendum order dated 3rd May, 2021

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passed in C.A. (CAA) 1169/MB/2020 by this Tribunal.

13. The Representative for the Petitioner Companies submits that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance before the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioners is accepted.

14. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 16th December, 2021 inter-alia stating therein the observations on the Scheme as stated in paragraph IV (a) to (k) of the Report. In response to the observations made by the Regional Director, the Petitioner Companies have given necessary undertakings and clarification. Details are summarized in the table below:

Sr. No. Para (IV)	Regional Director Report / Observation dated 16th December, 2021	Response of the Petitioner Companies in its Affidavit in Rejoinder dated 22nd December, 2021	Supplementary Report of the Regional Director dated 3rd January, 2022
(a)	<i>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</i>	As regards the observation made in paragraph IV (a) of the said Report, the Petitioner Companies undertake that, the petitioner companies shall pass such accounting entries as may be necessary in connection with the Scheme	The Company in its affidavit in Rejoinder dated 24 th December, 2021 has submitted replies on all the observations made by the Regional Director in

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	AS-8) etc.	of Arrangement to comply with accounting standards AS-14 (IND AS-103) and any other applicable accounting standards including AS-5(IND AS-8) to the extent applicable.	its Report / Representation dated 16 th December, 2021, in para IV, which appears to be satisfactory, except for para IV (k).
(b)	<i>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 of 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).</i>	As regards the observation made in paragraph IV (b) of the said Report, the Petitioner Companies submit that, the Petitioner Companies have submitted the notices under section 230(5) of the Companies Act, 2013 to (i) the Central Government through the office of Regional Director, Western Region, Mumbai on 17th June, 2021 (ii) Registrar of Companies, Pune on 11th June, 2021 (iii) Concerned Income Tax authority on 18th June, 2021 and (iv) Concerned Goods and Service Tax (GST) on 18th June, 2021. The Petitioner Companies through their Representative submits that no representations or objections have been received from any of the Regulatory Authorities. Further, the approval of the Scheme by this Tribunal may not deter any such authorities to deal with any of the issues arising after giving effect to the scheme and the Petitioner Companies submit that any issues arising out of the Scheme will be met and	

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		answered in accordance with the law.
(c)	<i>The Hon'ble NCLT may kindly direct the petitioners to file an undertaking to the extent that the Scheme enclosed to Company Application and the scheme enclosed to the Company Petition, are one and same and there is no discrepancy or deviation.</i>	As regards the observation made in paragraph IV(c) of the said Report, the Petitioner Companies submit that, the Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and same, and there is no discrepancy or deviation. The Petitioner Companies state that a statement to this effect has also been made in paragraph 43 of the Company Scheme Petition.
(d)	<i>As per Definition of the Scheme. "Appointed Date" shall mean 1st April 2020 or such other date as may be fixed by the National Company Law Tribunal. "Operative Date" means the date on which certified copies of the NCLT order sanctioning this Scheme is filed with the Registrar of Companies, Pune. "Record Date" in relation to the Scheme means the date to be fixed by the Board of Directors of Demerged Company in consultation with Board of Directors of the Resulting Company or a Committee of / person duly authorized by the Board of Directors, for the purpose of</i>	As regards the observation made in paragraph IV (d) of the said Report, the Representative submits that the Appointed Date i.e. 1 st April, 2020 for demerger of the Demerged Undertaking of the Demerged Company into the Resulting Company has been clearly indicated in the Scheme in accordance with provision of Section 232(6) of the Companies Act, 2013 and the scheme shall become effective from the appointed date. The Representative further submits that the Petitioner Companies have already complied with the requirements and clarification of circular no. F. No. 7/12/2019/CL-I dated

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	<p><i>issuance and allotment of equity shares of the resulting Company as consideration to the shareholders of the Demerged Company, pursuant to this scheme in terms of clause 9 below.</i></p> <p><i>Further, the Petitioners may be asked to comply with the requirements and clarified vide Circular No. F. No. 7/11/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	<p>21.08.2019 issued by the Ministry of Corporate Affairs by clearly specifying the appointed date(s) in the scheme and hence the question of undertaking for compliance to the requirements of the said circular does not arise.</p>	
(e)	<p><i>As per Clause 10 of the Scheme,</i></p> <p><i>In the books of Poonam Roofing Products Private Limited:</i></p> <p><i>The difference between the excess of the book value of the assets over the book value of liabilities pertaining to the Demerged Undertaking pursuant the Scheme of Arrangement shall be first adjusted against the Capital Reserve and balance, if any shall be adjusted against Profit & Loss Account of Poonam Roofing Products Private Limited.</i></p> <p><i>In the Books of Sahyadri Industries Limited</i></p> <p><i>The difference i.e. the excess (or deficit) of the value of the assets over the transferred liabilities pertaining to the Demerged Undertaking, after taking into account the nominal value/face value of the shares</i></p>	<p>As regards the observation made in paragraph IV (e) of the said Report, the Petitioner Companies undertakes that, the surplus shall be credited to Capital Reserves Account arising out of the demerger and deficit if any shall be debited to Goodwill Account. The Petitioner Companies further undertakes that such reserves shall not be available for distribution of dividend.</p>	

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	<p><i>issued by the Resulting Company, shall be transferred to the Capital Reserve account in the books of the Resulting Company.</i></p> <p><i>Petitioner companies have to undertake that the surplus shall be credited to Capital Reserve Account arising out of demerger and deficits shall be debited to Goodwill Account.</i></p> <p><i>Further Petitioner Companies have to undertake that reserves shall not be available for distribution of dividend.</i></p>		
(f)	<p><i>ROC, Pune Report dated 29.09.2021 has interalia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against petitioner Companies.</i></p> <p><i>Further mentionable that:-</i></p> <p><i>1. As per record available in this office, Transferee Company is neither vanishing nor shell company.</i></p> <p><i>Hon'ble Tribunal may consider the observations pointed out by ROC, Pune in their report and decide the matter on merits.</i></p>	<p>As regards the observation made in paragraph IV (f) of the said Report, the Petitioner Companies submits that the observation is generic and accords no further explanation.</p>	
(h)	<p><i>As per list of shareholders submitted by the petitioner Companies, it has noticed that both the Petitioner Companies have Foreign shareholding, hence Petitioner Companies shall undertake to submit acknowledgement of notice submitted to RBI and also</i></p>	<p>As regards the observation made in paragraph IV (h) of the said Report, the Petitioner Companies submit that, the Demerged Company does not have any foreign shareholders hence no new shares will be issued to foreign shareholders. Resulting Company</p>	

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	<i>comply with the FEMA guidelines.</i>	undertakes to comply with the applicable guidelines of Foreign Exchange Management Act, 1999/ Reserve Bank of India, as applicable and to the extent required.
(i)	<i>Hon'ble NCLT may kindly direct the Resulting Company to comply with observations pointed out by BSE vide their letter dated 20.11.2020.</i>	As regards the observation made in paragraph IV(i) of the said Report, the Resulting Company undertakes to comply with the observation pointed out by BSE Limited vide letter dated 20.11.2020.
(j)	<i>As a result of the scheme the holding of the promoters is likely to be increased in Resulting Company which is listed. The petitioner Company to place on record whether the meeting of exclusively of public shareholders (other than promoters who shall not participate in that meeting) was considered and whether it has approved the scheme.</i>	As regards the observation made in paragraph IV (j) of the said Report, the Petitioner Companies submits that the meetings were convened in accordance with the listing/ SEBI guidelines, wherein no separate meeting of only public shareholders is envisaged. As per paragraph 10 of SEBI Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/249 dated 22 nd December 2020 as amended till date, the Scheme of Arrangement shall be acted upon only if vote cast by public shareholders in favour of the proposal are more than the number of votes cast by public shareholders against it. In this case as per the Chairpersons Report, filed with Hon'ble Tribunal on 27th July 2021, mentioned that 2,60,659 votes were casted in favour and 269 votes

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		were casted against Scheme by the public shareholders. Chairperson Report was also filed with your office on 23rd November 2021 as “Annexure 41” to our submissions to your good office.	
(k)	<i>The exchange ratio is calculated based on the average sum of Rs. 132.70/- per share of Resulting Company whereas the 52 weeks high is Rs. 885/- and 52 weeks low is RS. 270/- per share on the BSE and present quotation is around Rs.536.30/- on 15.12.2021. The petitioner Company to place on record as to why the exchange ratio may not be revised so that public shareholders are not prejudiced.</i>	As regards the observation made in paragraph IV (k) of the said Report, the Petitioner Companies submits that the share entitlement ratio is based on independent valuation and fairness report prepared in relation to both the Petitioner Companies which are in compliance with applicable legal provisions including interalia the SEBI Circulars, the Companies Act, 2013 and valuation method required to be followed. Share entitlement ratio prepared and certified by the Registered Valuer has been approved by the Merchant Banker by issuing Fairness Opinion Report which was filed with your good office on 23rd November 2021 as Annexure-“10”, Audit Committee of the Resulting Company, Board of Directors of both petitioner companies, Stock Exchange, SEBI and Shareholders of both petitioner Companies by overwhelming majority approved the swap ratio report. Registered Valuer has considered the appropriate financial data and share price	

		prevailing at the time of preparation of valuation report in compliance with applicable legal provisions and valuation method required to be followed. As you are aware that valuation is dynamic, and changes almost daily based on various micro and macro factors. Hence it has no impact on swap ratio as on Appointed Date.	
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15. The Representative for Petitioner Companies states that the Affidavit in Rejoinder dated 22nd December, 2021 has been submitted to the Regional Director providing adequate and appropriate explanation given in the table above for each of the observations in the report of the Regional Director dated 16th December, 2021. The Regional Director has filed its Supplementary Report dated 3rd January, 2022 with this Tribunal and has stated that *“the Company in its Affidavit in Rejoinder dated 24.12.2021 has submitted replies on all the observations made by the Regional Director in its Report / Representation dated 16.12.2021, in para IV (a) to (k), which appears to be satisfactory, except for para IV (k), the Petitioner Companies submits that the share entitlement ratio is based on independent valuation and fairness report prepared in relation to both the Petitioner Companies which are in compliance with applicable legal provisions including inter alia the SEBI Circulars, the Companies Act,*

2013 and valuation method and ICAI Valuation Standards (“IVS”) required to be followed. Share entitlement ratio prepared and certified by the Registered Valuer has been approved by the Merchant Banker by issuing Fairness Opinion Report. Audit Committee of the Resulting Company, Board of Directors of both petitioner companies, Stock Exchange, SEBI and Shareholders of both petitioner Companies by overwhelming majority approved the share entitlement ratio report. Registered Valuer has considered the appropriate financial data and share price prevailing at the time of preparation of valuation report in compliance with applicable legal provisions and valuation method required to be followed which is not required to be updated based on the event occurring after the date of valuation. The shareholders who are ultimate’s beneficiaries have in there commercial wisdom approved the Scheme alongwith the share entitlement ratio. Moreover the vote casted by public shareholders holding 2,60,659 equity shares (99.9% of total vote cast) is more than the vote casted against the Scheme by shareholders holding 269 equity shares (0.1% of total vote cast) and hence no changes in share entitlement ratio report is required . The clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal.

16.From the material on record, the Scheme appears to be fair and

reasonable and does not violate of any provisions of law and is not contrary to public policy.

17. Since all the requisite statutory compliances have been fulfilled, C.P. (CAA) 140/MB/2021 are made absolute in terms of clause (a) to (c) of the said Company Scheme Petition.

18. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.

19. The Petitioner Companies shall lodge a copy of this order and the Scheme duly authenticated by the Joint/ Deputy Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, payable on the same within 60 days from the date of receipt of the Order.

20. The Petitioner Companies shall, within 15 days of receipt of this Order, issue newspaper publications with respect to approval of the Scheme, in the same newspapers in which previous publications were issued.

21. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.

22. All concerned authorities to act on a copy of this Order along with the Scheme duly authenticated by the Joint/ Deputy Registrar of this

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Tribunal.

23. Any person interested in above matter shall be at liberty to apply to the

Tribunal for any direction that may be necessary.

24. Order accordingly, files be consigned to records.

SD/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

SD/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)