Before Rajesh Bindal, J.

In the Matter of Scheme of Arrangement Between:

1. **QH TALBROS LIMITED**—*Demerged Company/Transferee Company/Petitioner/Company No.1*
2. **TALWAR STEERING & SUSPENSION LIMITED**—*Resulting Company/Petitioner Company No. 2*
3. **TALBROS INTERNATIONAL LIMITED**—*Transferor Company No.1/Petitioner Company No. 3*
4. **AAB ENTERPRISES PRIVATE LIMITED**—*Transferor Company No.2/Petitioner Company No. 4*
5. **BLAUSTERN INDIA SALES PRIVATE LIMITED**—*Transferor Company No.3/Petitioner Company No. 5*

C.P. No. 29 of 2015 (O&M) and
CP No. 191 of 2014

October 19, 2015

Indian Companies Act, 1956—S. 394—Amalgamation Scheme—Petitions for merger of various companies—Whether single petition maintainable?—For scheme to be considered, the exact figure, numbers, financial of the companies sought to be merged/demerged will not be available before the Court as well as for presentation before the members and creditors of the companies in the meetings—Petitions seeking approval of kind of Scheme presented before the Court, cannot be entertained—Petition dismissed.

Held that during the course of hearing the issue arose as to whether a single petition could be filed seeking merger/ demerger of different companies or the part business thereof. The arguments on that were heard.

(Para 3)

Further held that a perusal of the various judgments, referred to above, by learned counsel for the petitioners does not show that in any case single composite scheme providing for merger/ demerger of different companies, was placed before the Court for sanction by filing single petition.

(Para 34)

Further held that if the scheme of the kind, as has been placed

before the Court in the case in hand is to be considered, the exact figure, numbers, financial of the companies sought to be merged /demerged will not be available before the Court as well as for presentation before the members and creditors of the companies in the meetings. What will be the status of the company after implementation of the first part, which is independent to the second part in the scheme will not be known. In the meetings, it may not be possible for the members or the creditors to examine the Scheme. The issue is always examined on the basis of data furnished.

(Para 35)

Further held that merely because, as is sought to be claimed by learned counsel for the petitioners that, there may be some delay in the process of sanctioning the scheme will not be a good ground to approve a composite scheme involving different companies and different aspects having no relations inter-se. If a composite petition is to be filed, it should be arrangement between two or more companies not different arrangements involving different companies. No doubt, the Court will not examine the business principles or commercial wisdom of the members of the companies at the time of sanctioning of scheme, but still compliance of procedural requirement is within the domain and this would fall in that. It is the duty of the Company Court to ensure presentation of correct facts, numbers, figures before the members and the creditors of the company. The companies have different causes of actions and may have to approach the Court independently.

(Para 37)

Ashok Aggarwal and
Munisha Gandhi, Senior Advocates with
Pankaj Jain and Mukul Aggarwal, Advocates
for the petitioner-companies in CP No. 29 of 2015.

Ashok Aggarwal, Senior Advocate with
Deepak Suri, and Mukul Aggarwal, Advocates
for the petitioner-companies in CP Nos. 112 and 113 of 2015.

Munisha Gandhi, Senior Advocate with
Salina Chalana, Advocate
for the petitioner companies in CP No. 157 of 2015.

Deepak Aggarwal, Advocate with
D. K. Singh, Official Liquidator.

RAJESH BINDAL, J.

(1) This order will dispose of CP Nos. 29, 112, 113 and 157 of 2015, as common questions of law and facts are involved therein.

(2) These are second motion petitions filed for seeking approval of Scheme of Arrangement/ Amalgamation (Annexure P-1 in all the petitions).

(3) During the course of hearing the issue arose as to whether a single petition could be filed seeking merger/demerger of different companies or the part business thereof. The arguments on that were heard.

CP No. 29 of 2015

(4) The petition has been filed for approval of the Scheme vide which 'Auto Component Undertaking' of QH Talbros Limited is to be demerged into Talwar Steering & Suspension Limited. This is **one part** of the Scheme.

(5) The **second part** provides for merger of Talbros International Limited, AAB Enterprises Private Limited and Blaustern India Sales Private Limited into Demerged Company i.e. QH Talbros Limited.

(6) Meaning thereby in **first part** of the Scheme, QH Talbros Limited is the Transferor Company and Talwar Steering & Suspension Limited is the Transferee Company, whereas in the **second part** of the Scheme, Talbros International Limited, AAB Enterprises Private Limited and Blaustern India Sales Private Limited are the Transferor Companies, whereas QH Talbros Limited is the Transferee Company.

(7) As a consequence of the aforesaid demerger/merger in two parts, the consequent Transferee companies will be re-named i.e. Talwar Sterring & Suspension Limited, will be re-named as QH Talbros Limited, whereas Talbros International Limited, AAB Enterprises Private Limited and Blaustern India Sales Private Limited after Scheme of Arrangement becoming effective will be re-named as Talbros International Limited.

CP No. 29 of 2015

(8) The petition has been filed for approval of the Scheme vide which demerger of "FPO Business (Demerged Undertaking-I)" of Quatrro Business Support Services Private Limited (Petitioner Company I/ Demerged Company 1) into Quatrro Global Services

Private Limited (First Resulting Company/Demerged Company 2/ Petitioner Company II). This is **one part** of the Scheme.

(9) The **second part** provides for demerger of "QGS FPO Business (Demerged Undertaking-II)" of Quatrro Global Services Private Limited (First Resulting Company/Demerged Company 2/ Petitioner Company II) into Quatrro Business Support Solutions Private Limited (Second Resulting Company/Petitioner Company III).

(10) Meaning thereby in **first part** of the Scheme, Quatrro Business Support Services Private Limited is the Transferor Company and Quatrro Global Services Private Limited is the Transferee Company, whereas in the **second part** of the Scheme, Quatrro Global Services Private Limited is the Transferor company, whereas Quatrro Business Support Solutions Private Limited is the Transferee Company.

CP No. 113 of 2015

(11) The petition has been filed for approval of the Scheme vide which merger of Scope E-Knowledge Center Private Limited (Transferor Company/ Petitioner Company I) into Quatrro Global Services Private Limited (Transferee Company/First Resulting Company/Demerged Company 2/ Petitioner Company III). This is **one part** of the Scheme.

(12) The **second part** provides for demerger of "Intellectual and Patents Analytics Business (Demerged Undertaking-1)" of Quatrro Legal Solutions Private Limited (Demerged Company 1/Petitioner Company II), into Quatrro Global Services Private Limited (Transferee Company/First Resulting Company/Demerged Company 2/Petitioner Company III), and in the **third part** "QGS KPO Business (Demerged Undertaking-2) of Quatrro Global Services Private Limited (Transferee Company/ First Resulting Company/Demerged Company 2/Petitioner Company III) will merge into Scope E-Knowledge Solutions Private Limited (Second Resulting Company/Petitioner Company IV).

(13) Meaning thereby in **first part** of the Scheme, Scope E-Knowledge Center Private Limited is the Transferor Company and Quatrro Global Services Private Limited is the Transferee Company, whereas in the **second part** of the Scheme, Quatrro Legal Solutions Private Limited is the Transferor company and Quatrro Global Services Private Limited is the Transferee Company, and in the **third part** Quatrro Global Services Private Limited is the Transferor Company and Scope E-Knowledge Solutions Private Limited is the Transferee Company.

CP No. 157 of 2015

(14) The petition has been filed for approval of the Scheme vide which merger of Kajaria Exports Private Limited (Petitioner Company 1 / Amalgamating Company 1), Pearl Tile Marketing Private Limited (Petitioner Company 2/ Amalgamating Company 2) and Cheri Ceramics Private Limited (Petitioner Company 3/ Amalgamating Company 3) into Kajaria Securities Private Limited (Petitioner Company 4/ Amalgamated Company / Demerged Company). This is **one part** of the Scheme.

(15) The **second part** provides for demerger of "Investment Business Undertaking of Kajaria Securities Private Limited (Petitioner Company 4/ Amalgamated Company / Demerged Company) into Kajaria Portfolio Private Limited (Petitioner Company 5/ Resulting Company).

(16) Meaning thereby in **first part** of the Scheme, Kajaria Exports Private Limited, Pearl Tile Marketing Private Limited and Cheri Ceramics Private Limited are the Transferor Companies and Kajaria Securities Private Limited is the Transferee Company, whereas in the **second part** of the Scheme, Kajaria Securities Private Limited is the Transferor company, and Kajaria Portfolio Private Limited is the Transferee Company.

Arguments

(17) Learned counsel for the petitioners submitted that the composite scheme has been prepared as all the issues have been examined in detail by the consultant. All the companies belong to one group. The Scheme has been approved by the shareholders/ creditors of the companies, hence, the petition at the second stage should not be dismissed only on the ground of maintainability that a composite petition was not maintainable.

(18) While referring to the provisions of Section 394 of the Companies Act, 1956 (for short, 'the 1956 Act'), it was submitted that the words used therein are not in singular rather in plural. Hence, it cannot be opined that a composite petition was not maintainable. The provision provides that a petition for sanctioning of a compromise or arrangement between a company and any such persons, can be filed. Referring to judgment of Hon'ble the Supreme Court in ***Miheer H. Mafatlal*** *versus* ***Mafatlal Industries Limited***[1] it was submitted that

[1] (1997) 1 SCC 579

jurisdiction of the Company Court limits to find out as to whether the Scheme has been sanctioned by the Members and Creditors and further as to whether the scheme as such is not against public policy and the same is in public interest. In case, separate applications are filed, it may delay the process. The Court is only to approve the Scheme as sanctioned by the Shareholders/ creditors as they are the best judge to see the commercial angle thereof. There can always be two facets in merger/demerger/arrangement between two or more companies. Certainly, if the Scheme offends any law, the Court can always examine that aspect. Even the issue that resultant effect of merger/ demerger may be avoidance of tax liability, has also been opined in favour of the companies as this is no ground for rejection of the scheme. In support of his arguments, reliance was placed upon judgments of Hon'ble the Supreme Court in ***Hindustan Lever and another*** *versus* ***State of Maharashtra and another***[2], Calcutta High Court in ***Hindusthan Commercial Bank Limited*** *versus* ***Hindusthan General Electrical Corporation Limited***[3], Bombay High Court in ***Larsen and Toubro Limited, In Re.***[4], ***PMP Auto Industries Limited In Re.***[5] ***In Re. Maneckchowk and Ahmedabad Manufacturing Company Limited*** 819, and CP Nos. 9 and 10 of 2006, ***Core Healthcare Limited*** *versus* ***Nirma Limited***, decided on 1.3.2007, and ***Vodafone Essar Gujarat Limited*** *versus* ***Department of Income Tax.***[6]

(19) In response to the contentions raised by learned counsel for the petitioners, learned counsel for Official Liquidator submitted that the provisions of the Act envisage that approval of a scheme of amalgamation between A-company may be with number of companies. The scheme of arrangement of A company may with number of other companies. It does not provide for sanctioning of a scheme where different companies are involved and different arrangements are sought to be approved. Similar are the provisions in the Companies Act, 2013. He further submitted that judgment of Hon'ble the Supreme Court in ***Miheer H. Mafatlal***'s case (supra) does not come to the rescue of the petitioners, as no such law has been laid down. General principles have been laid down therein providing for guidelines as what is to be examined by the Company Court for the purpose of

---

[2] (2004) 9 SCC 438
[3] 1960 AIR Calcutta 637
[4] 2004 (121) Company Cases 523, 1994 (80)
[5] 289, Gujrat High Court in 1970 (40)
[6] (2013) 176 Comp Cas 7 (Guj).

approval of a Scheme as sanctioned by the shareholders/ creditors. He further submitted that in none of the judgments cited by the petitioners, the Schemes were such as are sought to be approved by the petitioners. As in all cases only two or more companies were involved, which were part of one scheme and not different schemes.

(20) In terms of provisions of Section 394 of the Act, there could be amalgamation of any number of companies in one company but not that part of business of one company 'A' is to be merged in company 'B' and other companies are sought to be merged with Company-A. Both the schemes independently have no connection whatsoever as these are independent schemes. Balance-sheets, figures and financial of all the companies would be different. The shareholders sitting in the Board rooms may approve or disapprove anything but it is ultimately for the Company Court to see as to whether the process followed can be approved or not.

(21) Heard learned counsel for the parties and perused the paper-book.

(22) Section 391 of the Act provides that where a compromise or arrangement is proposed between 'A Company' and its creditors or any class of them, or between 'A company' and its members or any class of them, the Company Court may on the application of the company or any of the creditor or member of the company, etc. order that a meeting of the creditors or members to be conducted in the manner as the Court directs.

(23) Section 392 of the Act provides that the Company Court while sanctioning of compromise or arrangement is empowered to supervise carrying out of the compromise or arrangement. At the time of passing the order or any time thereafter, the Court can give such directions as it may consider necessary for proper working of the compromise or arrangement. If the arrangement or compromise does not work satisfactorily with or without modifications and the Company court is satisfied, it can even order winding up of the Company either suo-moto or on an application filed by any person.

(24) Section 394 of the Act provides for different aspects to be considered while sanctioning the Scheme.

(25) Hon'ble the Supreme Court in ***Miheer H. Mafatlal*'s** case (supra), opined on the scope and ambit of jurisdiction of the Company Court in the cases of merger/demerger. The relevant para is extracted below:-

"The broad contours of the jurisdiction of the Company Court in granting sanction to the Scheme are as follows:-

1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1) (a) have been held.

2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 sub-section (2).

3. That the meetings concerned of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as whole so as to legitimately blind even the dissenting members of that class.

4. That all necessary material indicated by Section 393(1)(a) is placed before the voters at the meetings as contemplated by Section 391 sub-Section (1).

5. That all the requisite material contemplated by the proviso of sub-Section (2) of Section 391 of the Act is placed before the Court by the applicant concerned seeking sanction for such a scheme and the Court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not unconscionable, nor contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the

minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.....

The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a scheme of compromise and arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction."

(26) While laying down the aforesaid guidelines, it has been mentioned that the same are merely illustratively and not exhaustive.

(27) On facts, the Scheme placed for sanctioning before the Company Court, in that case was that Mafatlal Fine Spinning and Manufacturing Company Limited was to amalgamated with Mafatlal Industries Limited. The relevant para thereof is extracted below:-

"8. The transferor -Company MFL is proposed to be amalgamated with the respondent-Company MIL under the following circumstances and for the following reasons:"

(28) In ***Hindusthan Commercial Bank Limited*'s** case (supra) the Scheme presented before the Company Court for sanction was pertaining to one company providing for re-arrangement of its share-

capital. Relevant para of the Scheme of arrangement between several classes of shareholders, as noticed in the judgment is extracted below:-

> "3. In these circumstances, in January, 1957 the Board of Directors of the company proposed a scheme of arrangement between the several classes of Shareholders and as part of the scheme a reduction of the capital of the company. The proposal for the scheme of arrangement was accompanied by an explanatory circular. The scheme as originally proposed, provided for (a) cancellation of share capital in accordance with the arrangement detailed in the circular (b) for reduction of the share capital by cancellation of the paid up capital to the extent of Rs. 70/- for every preference share of Rs. 100/- each to the extent of Rs. 8/- for every ordinary share of Rs. 10/- each and to the extent of Rs. 4/- each for every deferred share of Rs. 5/- each (c) for consolidation of the shares and for issue of fully paid up ordinary shares of Rs. 10/- each in lieu of preference, ordinary and deferred shares and for allotment of 3 fully paid up ordinary shares of Rs. 10/- each in lieu of one preference share of Rs. 100/- each including the arrears of dividend thereon (d)- for reduction of the authorized capital of the company to Rs. 37,50,000/- divided into 3,75,000 ordinary shares of Rs. 10/- each (e) for further issue of Rs. 2,83,142/- ordinary shares of Rs. 10/- each subject to the sanction of the Controller of the Capital Issues out of which 1,20,000/- ordinary shares are to be allotted to the Managing Agents or their nominees in part satisfaction of their dues from the company to the extent of Rupees 12 lacs, 66, 858 ordinary shares are to be offered to the existing shareholders of the company and the remaining 96,284 ordinary shares are to be disposed of by the Directors in such manner as they deem fit. The explanatory circular pointed out that by the proposed cancellation of capital a sum of Rs. 22,5l,720/- would become available for wiping out the debit balance in the Profit and Loss Account and that on making such adjustment a sum of Rs. 13,48,280/- would remain to the debit of the Profit and Loss Account. The circular states that the Managing Agents had subject to the acceptance of the scheme, agreed to forego Rs. 13 lacs out of their advance to the company and to convert Rs. 12 lacs out of the balance of the advance into

> ordinary shares of the company. The circular added that the Managing Agents had not charged any interest on their advance since August, 1951 and had thereby foregone interests amounting to over Rs. 10½ lacs and had also foregone their monthly allowance amounting to Rs. 3,75,000/-. "

(29) In ***Core Healthcare Limited's*** case (supra), the Scheme of arrangement presented before the Company Court for approval was amongst two companies, namely, Core Healthcare Limited vs Nirma Limited, only.

(30) In ***Maneckchowk and Ahmedabad Manufacturing Company Limited's*** case (supra), the Scheme presented for approval before the Company Court was a compromise between the creditors and members of the company. The salient features of the Scheme, as noticed in the judgment, are extracted below:-

> "3. The scheme as finally submitted to the court for its sanction envisages reorganization of the share capital of the company which includes reduction of the share capital by reducing the face value of the ordinary share of Rs. 1000 fully paid to Rs. 250 fully paid, and preference share of Rs. 100 fully paid to Rs. 25 fully paid. The scheme also envisages increase of share capital by issue of shares to the unsecured creditors of the company excluding the workers to the tune of 50% of the verified claim of each unsecured creditor. The scheme envisages dismantling and scrapping of Unit No.II of the mills of the company and the sale proceeds to be utilised towards the payment to the secured creditors, namely, Union Bank of India and the Regional Provident Fund Commissioner. After Unit No.II is scrapped, the open land is to be let out to the intending lessee which will fetch a steady income. It is proposed to restart Unit No.I of the mills of the company. The secured creditors are to be paid in full in the manner set out in the scheme. The balance of 50 per cent. of the claim of the unsecured creditors are to be frozen for a period of two years and thereafter the said claims are to be satisfied as provided in the scheme. The dues of the workers are to be paid by certain stages. Some of the detailed features of the scheme will be examined while considering the objections raised by those contesting the scheme."

(31) In ***Vodafone Essar Gujarat Limited's*** case (supra), the Scheme envisaged demerger of part of business of A company and merger thereof with other. It provided for demerger of passive infrastructure assets of the transferor companies and vesting with transferee companies.

(32) In ***Hindustan Lever's*** case (supra), as well, the scheme provided for arrangement between two companies only.

(33) In ***PMP Auto Industries Limited's*** case (supra), the Scheme involved three companies, in terms of which Company A was to be amalgamated with Company B and immediately thereafter company B was to be amalgamated with Company C but it was not part of a single petition filed before the Company Court, as for sanction of schemes different petitions were filed.

(34) A perusal of the various judgments, referred to above, by learned counsel for the petitioners does not show that in any case single composite scheme providing for merger/demerger of different companies, was placed before the Court for sanction by filing single petition.

(35) If the scheme of the kind, as has been placed before the Court in the case in hand is to be considered, the exact figure, numbers, financial of the companies sought to be merged /demerged will not be available before the Court as well as for presentation before the members and creditors of the companies in the meetings. What will be the status of the company after implementation of the first part, which is independent to the second part in the scheme will not be known. In the meetings, it may not be possible for the members or the creditors to examine the Scheme. The issue is always examined on the basis of data furnished.

(36) Section 392 of the Act authorises to the Company Court to pass any order at the time or any time after sanction of the scheme to monitor as to whether the scheme is being properly implemented or not. In case the object is not achieved, the company can even be ordered to be wound up. If a composite scheme involving different companies with different objects is presented before the Court, it will not be possible for the Court to examine as to whether the object sought to be achieved by the first part in the scheme has, in fact, been achieved or not. After the implementation of part one of the scheme, shareholding pattern, the business, the profits etc. of the transferor and the transferee company will certainly have a change. Those figures are

required to be presented before the members and shareholders of the resultant company and the other companies, which are sought to be merged or demerged with the resultant company.

(37) Merely because, as is sought to be claimed by learned counsel for the petitioners that, there may be some delay in the process of sanctioning the scheme will not be a good ground to approve a composite scheme involving different companies and different aspects having no relations inter-se. If a composite petition is to be filed, it should be arrangement between two or more companies not different arrangements involving different companies. No doubt, the Court will not examine the business principles or commercial wisdom of the members of the companies at the time of sanctioning of scheme, but still compliance of procedural requirement is within the domain and this would fall in that. It is the duty of the Company Court to ensure presentation of correct facts, numbers, figures before the members and the creditors of the company. The companies have different causes of actions and may have to approach the Court independently.

(38) Hence, in my opinion, the petitions seeking approval of kind of Scheme presented before the Court, cannot be entertained.

(39) The petitions are accordingly, dismissed. However, the dismissal of the petitions will not debar the petitioner companies from filing appropriate petitions.

Manpreet Sawhney

Before Hemant Gupta, Ritu Bahri & Raj Rahul Garg, JJ.

LAKHA SINGH—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No. 7072 of 1994

October 21, 2015

Constitution of India, 1950 — Art.226 — Punjab Civil Services Rules — Rls. 1.2, 1.4, 3.12, 3.17 & 6.17 — Work-charged employee — Pension/Family pension — Petitioner was appointed on work-charged basis and was discharged on attaining age of attaining age of superannuation — He claimed pension/family pension — As per Circular issued on 19.11.1992, services of all those work-charged employees, who had completed 5 years of service, were to be regularized consequent to sanction of 4037 regular posts in lieu of