Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 30/08/2026

(2023) 10 NCLT CK 0065

In the National Company Law Tribunal

Case No : CA (CAA) No. 28/ALD of 2023 (First Motion)

Moon Beverages Ltd Vs

Date of Decision : 19-10-2023

Acts Referred:

Companies Act, 2013 — Section 52, 66, 102, 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(3), 230(5), 230(7), 232, 232(2)(e), 232(3)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251
Companies (CAA) Rules, 2016 — Rule 7

Citation : (2023) 10 NCLT CK 0065

Hon'ble Judges : Praveen Gupta, Member (J);Ashish Verma, Member (T)

Bench : Division Bench

Advocate : Kartikeya Goel, Rajeev K Goel, Viplav Goel

Final Decision : Disposed Of

Judgement

1. This is a joint First Motion Application filed by Applicant Companies namely; Moon Beverages Ltd (for short hereinafter referred to as Applicant Company No. 1/Demerged Company) and MMG Realtech Pvt Ltd (for short hereinafter referred to as Applicant Company No. 2/Resulting Company) under Sections 230 & 232 of the Companies Act, 2013, read with Sections 52 and 66 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Arrangement between the Applicant Companies. The said Scheme is attached as Annexure A-4 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of convening meetings of the Equity Shareholders and Debenture Holders of the Demerged Company and Equity Shareholders and Unsecured Creditors of the Resulting Company. It is further prayed to convene separate meetings of Secured Creditors and Unsecured Creditors of the Demerged Company. The Resulting Company does not have any Secured Creditor.

3. The Applicant Company No. 1/ Demerged Company is engaged in the business

of processing and packaging of carbonated and non-carbonated soft drinks, juices, drinking water, non-alcoholic beverages and other related activities. The Company is one of the largest authorised bottlers of the Coca Cola Company in India. Apart from the Beverages Business as its core business activities, the Company is also engaged in real estate and securities investments business and other ancillary activities. Thus, the Demerged Company has two business verticals-Beverages Business and Investment Business.

4. The Applicant Company No. 2/Resulting Company is recently incorporated on 6th December, 2022, to carry on securities investments, real estate business and other ancillary activities.

5. It is submitted that the registered office of both the Applicant Companies are situated in the State of Uttar Pradesh and hence are under the territorial jurisdiction of this Bench.

6. The rationale of the Scheme is given below:

The circumstances which justify and/or necessitate the proposed Scheme of Arrangement of Moon Beverages Ltd and MMG Realtech Pvt Ltd; and benefits of the proposed Demerger of 'Real Estate and Securities Investments Business' of Moon Beverages Ltd into MMG Realtech Pvt Ltd, to the Shareholders and other stakeholders are, inter alia, given below:

i. The Demerged Company is engaged in processing and packaging of carbonated and non-carbonated soft drinks, juices, drinking water, non-alcoholic beverages and other related activities. The Company is one of the largest authorised bottlers of the Coca Cola Company in India. Apart from the Beverages Business as its core business activities, the Company is also engaged in real estate and securities investments business and other ancillary activities. Thus, the Demerged Company has two business verticals-Beverages Business and Investment Business.

ii. The Management is proposing to hive off the Investments Business of the Demerged Company into the Resulting Company to segregate the same from its core business activities.

iii. The proposed Demerger will enable better management focus on both the businesses. It will facilitate administrative convenience and will ensure optimum utilization of various resources by the Demerged and Resulting Companies.

iv. The proposed Demerger will enable the Demerged Company and the Resulting Company to hire suitable manpower, raise necessary funds, invite strategic investors and other stakeholders for their respective businesses.

v. The proposed Demerger will provide scope for independent expansion of both the businesses. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business.

vi. The proposed Demerger will have beneficial impact on the Demerged

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/moon-beverages-ltd-appellant-hash…

Company and the Resulting Company, their shareholders, employees, and other stakeholders and all concerned.

7. It is stated that the Board of Directors of the Demerged Company and the Resulting Company in their respective meetings held on 18th September, 2023 considered and unanimously approved the proposed Scheme of Arrangement subject to sanctioning of the same by this Tribunal. The copies of the Board Resolutions of the Applicant Companies No. 1 & 2 are attached as Annexure: A-1/5 and A-2/4, respectively, with the application.

8. The appointed date of the Scheme for the purpose of the Arrangement shall be with effect from 1st April, 2023 as mentioned in Clause 1.1.3 of Scheme of Arrangement which is attached as Annexure: A-4 of the application.

9. It is stated that the Applicant Demerged Company has filed its Audited Financial Statements for the year ended 31st March, 2022 which is attached as Annexure A-1/2 of the application. The Applicant Demerged Company has also filed its Un-audited Financial Statements (provisional) for the year ended 31st March, 2023 which is attached as Annexure A-1/3 of the application. The Resulting Company which is recently incorporated has filed its Audited Financial Statements for the period from the date of incorporation till 31st March, 2023 which is attached as Annexure A-2/2 of the application.

10. It is submitted that no corporate debt restructuring is envisaged in the proposed Scheme of Arrangement.

11. It is further submitted that in pursuance of the proviso to Section 230(7) and Section 232(3) of the Act, the Applicant Demerged Company has filed certificate dated 26.09.2023 and the Applicant Resulting Company has filed certificate dated 20.09.2023 issued by their respective Statutory Auditors certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as

12. It is further submitted by the counsel for the Applicant Companies that as per Valuation Report/Share Entitlement Ratio Report dated 14.09.2023 submitted by Ms Mallika Goel, Registered Valuer in respect of Securities or Financial Assets, registered with the Insolvency and Bankruptcy Board of India (IBBI) vide Registration No. IBBI/RV/11/2022/14784 is attached as Annexure A-3. The Share Entitlement Ratio is given below:

12.1 Share Exchange Ratio for Arrangement:

a. The Resulting Company-MMG Realtech Pvt Ltd will issue 1 (one) Equity Share of ☐ 10 each, credited as fully paid-up, to the Equity Shareholders of the Demerged Company for every 1 (one) Equity Share of ☐ 10 each held in the Demerged Company-Moon Beverages Ltd.

Provided that Equity Shareholders of the Demerged Company shall have an option to receive Optionally Convertible Preference Shares instead of Equity

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/moon-beverages-ltd-appellant-hash…

Shares, in the Resulting Company. In such a situation, the Resulting Company will issue 1 (one) 7% Non-Cumulative Optionally Convertible Preference Shares (OCPS) of □ 10 each, credited as fully paid-up, to all such Equity Shareholders of the Demerged Company for every 1 (one) Equity Share of □ 10 each held in the Demerged Company-Moon Beverages Ltd. Any fraction arising out of the aforesaid process, if any, will be rounded off to the nearest whole number.

13. It is submitted by the learned counsel that the Scheme (Annexure A-4) also takes care of the interest of the staff/workers and employees of the Applicant Companies by virtue of Clause 8 of the Scheme.

14. The authorised signatories of Applicant Companies have deposed by way of affidavits that both the Demerged Company and the Resulting Company are closely held unlisted Group Companies and are not regulated by any sectoral regulator. The aforesaid affidavits of the authorised signatories are along with the application.

15. It is deposed by the authorised representative of Applicant Companies that there are no material investigations or legal proceedings pending against any of the Applicant Companies under Section 210 to 227 of the Companies Act, 2013 and Section 235 to 251 of the Companies Act, 1956 or any other applicable law. Moreover, there are no proceedings pending under the Companies Act, 2013 before the jurisdictional Adjudicating Authority.

16. The Applicant Companies have furnished the following documents:

i. Proposed Scheme of Arrangement (Annexure A-4 of the application).

ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Demerged Company and the Resulting Company (Annexure A-1/1 and A-2/1 respectively of the application).

iii. List of Equity Shareholders and Debenture holders of the Applicant Demerged Company as on 15.09.2023, and List of Equity Shareholders of the Resulting Company as on 15.09.2023 along with consent affidavits (Annexure A-1/6, 1/7 and A-2/5, respectively of the application).

iv. List of Secured Creditors of the Applicant Demerged Company as on 31.03.2023 duly certified by Chartered Accountants (Annexure A-1/8 of the application).

v. List of Un-secured Creditors of the Applicant Demerged Company as on 31.03.2023 duly certified by Chartered Accountants (Annexure A-1/9 of the application).

vi. Nil list of Secured Creditors of the Applicant Resulting Company as on 31.03.2023 duly certified by Chartered Accountants (Annexure A-2/6 of the application).

vii. List of Un-secured Creditors of the Applicant Resulting Company as on

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/moon-beverages-ltd-appellant-hash…

31.03.2023 duly certified by Chartered Accountants along with consent affidavits (Annexure A-2/7 of the application).

viii. Certificates of Statutory Auditors to the effect that the Accounting treatment proposed in the Scheme is in conformity with Section 133 of the Companies Act, 2013 (Annexure A-5 of the application).

ix. Audited Financial Statements as on 31.03.2022 of the Applicant Demerged Company (Annexure A-1/2 of the application).

x. Un-audited Financial Statements (provisional) as on 31.03.2023 of the Applicant Demerged Company (Annexure A-1/3 of the application).

xi. Audited Financial Statements for the period from the date of incorporation till 31st March, 2023 of the Applicant Resulting Company (Annexure A-2/2 of the application).

xii. Report on Valuation of Shares & Share Entitlement Ratio (Annexure A-3 of the application).

17. The Applicant Companies have furnished the details of the Equity Shareholders, Debenture Holders, Secured Creditors and Unsecured Creditors as follows:

Demerged Company:

Particulars	Total No.	Consent Affidavits Obtained
Equity Shareholders	8	All
Debenture holders	4	All
Secured Creditors	7	Meeting to be convened
Un-secured Creditors	845	Meeting to be convened

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/moon-beverages-ltd-appellant-hash…

Resulting Company:

Particulars

Total No.

Consent Affidavits

Obtained

Page No.

Page No.

Equity Shareholders

2

All

Secured Creditors

Nil

N.A.

Un-secured Creditors

2

All

18. Accordingly, the directions of this Bench in the present case are as under:

I.   In relation to Applicant Demerged Company:

a. The meeting of the Equity Shareholders of Applicant Demerged Company is dispensed herewith, keeping in view that all the Equity Shareholders have given their consents by way of affidavits;

b. The meeting of the Debenture Holders of Applicant Demerged Company is dispensed herewith, keeping in view that all the Debenture Holders have given their consents by way of affidavits;

c. The meeting of the Secured Creditors of the Applicant Demerged Company be convened as prayed for on Friday, 15.12.2023 at 3:00 P.M. through video conferencing with facility of remote e-voting, subject to notice of the meeting being issued. The quorum of the meeting of the unsecured creditor shall be in accordance with the provisions of the Companies Act, 2013 and the applicable Rules made thereunder.

d. The meeting of the Un-secured Creditors of the Applicant Demerged Company be convened as prayed for on Friday, 15.12.2023 at 4:00 P.M. through video conferencing with facility of remote e-voting, subject to notice of the meeting being issued. The quorum of the meeting of the unsecured creditor shall be in

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/moon-beverages-ltd-appellant-hash…

accordance with the provisions of the Companies Act, 2013 and the applicable Rules made thereunder.

e. In addition to the aforesaid Unsecured Creditors, the Demerged Company had some 'Statutory and Other Dues' which have either been paid in full or being provision in nature, are not due for payment. Certificates from the Chartered Accountants confirming the same are enclosed.

II. In relation to Applicant Resulting Company:

a. The meeting of the Equity Shareholders of Applicant Resulting Company is dispensed herewith, keeping in view that all the Shareholders have given their consents by way of affidavits;

b. Since, there are no Secured Creditors in the Applicant Resulting Company, the requirement of convening the meeting of Secured Creditors does not arise;

c. The meeting of the Un-secured of Applicant Resulting Company is dispensed herewith, keeping in view that all the Un-Secured have given their consents by way of affidavits.

III. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons shall be deemed to constitute the quorum.

IV. Mr. Rajasekhar V.K., Mobile No. 8420463344, email id: rajasekhar.vk@gmail.com, is appointed as the Chairperson for the meeting to be called under this order. An amount of ☐ 2,00,000/- (Rupees Two lakhs Only) be paid for his/her services as the Chairperson.

V. Mr. Adarsh Bhushan, Advocate, Mobile No. 9984993930, e-mail id: adarsh.bhushan03@gmail.com, is appointed as the Alternate Chairperson for the meeting to be called under this order. An amount of ☐ 1,50,000/- (Rupees One Lakh fifty Thousand Only) be paid for his/her services as the Alternate Chairperson.

VI. The Chairperson shall have all the powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meetings, including for deciding procedural questions that may arise at the meeting(s) or at any adjournment thereof, or any other matter relating to the meetings, including an amendment to the Scheme of Amalgamation, if any, proposed by any persons.

VII. Mr. Devraj Gupta, Company Secretary, Mobile No. 7985128446, e-mail id: csdevraj@gmail.com, is appointed as the common Scrutinizer for the above meeting to be called under this order. An amount of ☐ 1,00,000/- (Rupees One Lakh Only) be paid for her services as the Scrutinizer.

VIII. Apart from the above remuneration, the Applicant Demerged Company shall make necessary and proper arrangements for travel / transport, stay and other

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/moon-beverages-ltd-appellant-hash…

allied expenses for Chairman, Alternate Chairman and Scrutinizer etc., if so required.

IX. It is further directed that individual notices of the said meetings shall be sent by the Applicant Demerged Company to its respective Secured Creditors and Un-secured Creditors through registered post or speed post or through courier or e-mail, 30 days in advance before the scheduled date of the meetings, indicating the day, date and time as aforesaid, together with a copy of the Scheme, copy of the explanatory statement with Share Exchange Ratio as discussed in para 12 of this order required to be sent under the Companies Act, 2013 and the applicable Rules and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

X. It is further directed that along with the notices, Applicant Demerged Company shall also send, statements explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members, etc. along with the effect of the Scheme of Arrangement on any material interests of the Directors of the Company, if any, as provided under sub-section (3) of Section 230 of the Act.

XI. It is also directed that the Un-audited Financial Statements (Provisional) of the Applicant Demerged Company and the Resulting Company not older than 6 months' from the date of the meeting be also circulated for the aforesaid meeting(s) in terms of Section 232 (2) (e) of the Act.

XII. That the Applicant Demerged Company shall publish an advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and place and the time of the meetings as aforesaid, to be published in "Business Standard" (English, Delhi NCR Edition) and "Business Standard" (Hindi, Delhi NCR Edition). The publication shall indicate the time within which copies of the Scheme of Arrangement shall be made available to the concerned persons, free of charge from the registered office of the Applicant Demerged Company. The publication shall also indicate that the explanatory statement required to be furnished pursuant to Sections 230 & 232 read with Section 102 of the Companies Act, 2013 can be obtained free of charge at the registered office of the Applicant Demerged Company in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016. The Applicant Demerged Company shall also publish the notice of the meetings on its website, if any.

XIII. It shall be the responsibility of Applicant Demerged Company to ensure that the notices are sent under the signature and supervision of the Chairperson and that the Applicant Companies shall file their affidavits in the Tribunal at 7 days before the date fixed for the meetings.

XIV. Voting is allowed on the proposed Scheme through remote e-voting process in compliance with the guidelines issued by the Ministry of Corporate Affairs in this regard.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/moon-beverages-ltd-appellant-hash…

XV. The Scrutinizer’s report will contain his/her findings on the compliance to the directions given in Para VIII to XIII above.

XVI. The Chairperson shall be responsible to report the result of the meetings to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 (fifteen) working days of the conclusion of the meetings. The Chairperson would be fully assisted by the authorized representative/Company Secretary of the Applicant Demerged Company and the Scrutinizer, who will assist the Chairperson/ Alternate Chairperson in preparing and finalizing the report.

XVII. The Applicant Demerged Company shall individually and in compliance of sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the “Rules” to (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh, Kanpur; (c) Official Liquidator, Allahabad; and (d) the Income Tax Department, in the respective circle/ward where these Companies are assessed or through the nodal office by mentioning the PAN number of the Applicant Companies, if any, stating that report on the same, if any, shall be sent to this Tribunal within a period of 30 days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the applicant companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

XVIII. The Applicant Demerged Company shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any Creditor entitled to attend the meetings as aforesaid.

XIX. The authorized representative of the Applicant Demerged Company shall furnish affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least (Seven) days before the proposed meetings.

XX. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Demerged Company.

19. The Second Motion petition shall be filed within 7 days from the date of submission of report by Chairperson in accordance with the provisions of rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

20. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer immediately.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/moon-beverages-ltd-appellant-hash…