

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-07-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 5847 of 2022

AND

WMP NO. 5942 and 5943 OF 2022

1. M/s.Manav Packaging Private
Limited
Plot No.A4, A5 and A6, Phase-1,
MEPZ Special Economic Zone,
Tambaram, Chennai-45.

Petitioner(s)

Vs

1. The Development
commissioner
MEPZ-Special Economic Zone,
Administrative Office Building,
Tambaram, Chennai-45.

2.The Secretary
Special Economic Zone Of India,
Department Of Commerce,
Ministry Of Commerce And
Industry, Udyog Bhawan, New
Delhi-110 107.

Respondent(s)

PRAYER

Writ petition filed under Article 226 of Constitution of India for the issuance of writ of Certiorarified Mandamus to quash the decision taken by the 1st respondent in its 21st meeting held on



10.06.2019 and to direct the 1st respondent to pass appropriate orders in accordance with the scheme sanctioned by the NCLT, by its order dated 23.04.2018.

For Petitioner(s): A.K.Mylsamy and Associates LLP
For Respondent(s): Mr.P.G.Santhosh Kumar,
Central Government
standing counsel
for Ms.Sangeetha Rajkumar, for respondents

ORDER

When this writ petition came up for hearing on 17.06.2025, this Court after hearing both sides passed the following order:-

The subject matter of challenge in the present writ petition pertains to the decision taken by the 1st respondent at its 21st meeting held on 10.06.2019, wherein, the 1st respondent has fixed the lease rent payable by the petitioner at the rate of Rs.2215/- per sq. meter per annum and for consequential direction to the 1st respondent to pass orders with the Scheme approved and sanctioned by the NCLT by order dated 23.04.2018.

2.M/s.Swabs India Private Ltd., is a unit, located in MEPZ-SEZ. It was engaged in the business of export of corrugated boxes. The said Company incurred losses



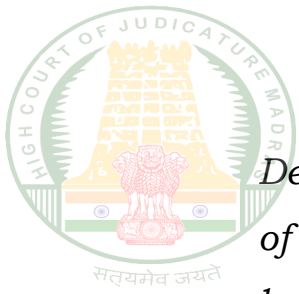
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and hence, to facilitate better management, the petitioner and the said Company entered into a Scheme of Arrangement whereby, the entire corrugated boxes undertaking of M/s.Swabs India Private Ltd., will be taken over by the petitioner. This Scheme was approved by the NCLT, Chennai by order dated 23.04.2018.

3.The petitioner and the said M/s.Swabs India Private Ltd., intimated the same to the respondents and sought for the transfer of the premises in favour of the petitioner. The Unit Approval Committee of the 1st respondent, in the meeting held on 21.12.2018, approved the transfer of the schedule of the premises to the petitioner with a condition that the lease rent for the same will be determined by the SEZ authority. Thereafter, the 1st respondent in its 21st meeting held on 10.06.2019, fixed the lease rent of the schedule premises at Rs.2215/- per sq. meter from the existing rent that was paid by M/s.Swabs India Private Ltd., at the rate of Rs.176/- per sq. meter.

4.The learned counsel for the petitioner submitted that vide Instruction No.109 dated 18.10.2021 issued by the Ministry of Commerce and Industries, Government of India, the earlier Instruction No.89 dated 17.05.2018 was superseded and it provided as follows:

In super session of Instruction No. 89 dated 17.05.2018 and Instruction no. 90 dated 03.08.2018 of this



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Department on the subject cited above and in exercise of provisions of Section 10(10) of the SEZ Act, 2005, it is hereby conveyed that the guidelines for approval in the cases of reorganization including change of name, change of shareholding pattern, business transfer arrangements, court approved mergers and demergers, change of constitution, change of Directors, etc. of SEZ Developers / Co-developers as well as SEZ Units shall be as follows.

(1) Reorganization including change of name, change of shareholding pattern, business transfer arrangements, court approved mergers and demergers, change of constitution, change of Directors, etc. may be undertaken by the Unit Approval Committee (UAC) concerned subject to the condition that the Developer / Co-developer / Unit shall not opt out or exit out of the Special Economic Zone and continues to operate as a going concern. All liabilities of the Developer / Co-developer / Unit shall remain unchanged on such reorganization.

5. The learned counsel for the petitioner also brought to the notice of this Court Section 232(4) of the Companies Act, 2013 and submitted that where an order of merger has been passed under Section 232, the property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property



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may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect. In short, the learned counsel submitted that Instruction No.109 is more or less in line with Section 232(4) of the Act.

6.The learned counsel for the petitioner further submitted that even as per the Scheme of Arrangement, the Committee had approved the transfer of lease hold rights over the plots to the petitioner and the 1st respondent after having approved the transfer, cannot unilaterally increase the rent to Rs.2215/- per sq. meter from existing of Rs.176/- per sq. meter. The learned counsel further submitted that the 1st respondent arbitrarily differentiated between the Company falling within the same management (Group Company) and a Company which comes to the surface pursuant to the mergers/acquisitions between unrelated parties. The learned counsel submitted that once the 1st respondent has approved the transfer and recognized the demerger, the 1st respondent cannot defeat the whole purpose of demerger and fix the rental, based on the market rates as is prevailing and deal with the petitioner like a new entity.

7.On carefully going through the Scheme which was approved by NCLT, it is seen that the SEZ authority has been given a free hand to determine the lease rent for the plot. The same is evident from Clause 12.11 of the



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Minutes of the Meeting held by the Unit Approval Committee. A stand has been taken in the counter affidavit to the effect that M/s.Swabs India Private Ltd., has already surrendered the original lease and the same has been cancelled and hence, the lease that is granted to the petitioner is considered to be a fresh lease. Therefore, taking cue from the Scheme which was approved by the NCLT, the SEZ authorities have fixed the lease rent as per the market rates on the basis of the higher bids immediately received in three auction proceedings held by the authority.

8.The following issues arise for consideration in the present writ petition and they are:

a)Whether the lease rent fixed by the 1st respondent based on Clause 12.11 of the Minutes of the Meeting held by the Unit Approval Committee can be faulted based on the reasons assigned in the impugned decision taken by the 1st respondent in the 21st meeting held on 10.06.2019.

b)Whether Instruction No.109 which clarifies the approval given in cases of reorganization which takes places pursuant to the approved mergers and demergers, while stipulating that all liabilities shall remain unchanged on such reorganization, can be stretched to the extent that the entity can continue to pay the same rent as was paid by the Company which demerged and the fixation and payment of rent by the



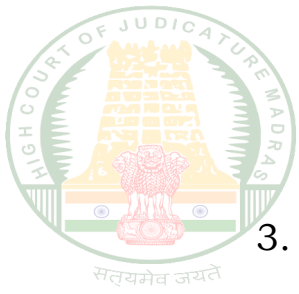
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petitioner can be brought within the fold of the term "Liability". This is in view of the stand taken at Paragraph No.28 to the effect that rent payable in future cannot be classified as a liability. and

c)Whether the original lease hold right in the name of M/s.Swabs India Private Ltd., was surrendered and it was cancelled and a fresh lease is being granted in favour of the petitioner.

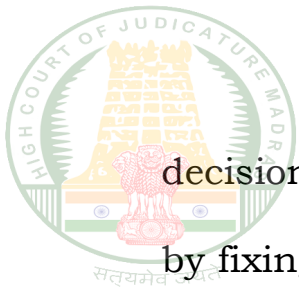
9.Post this writ petition under the caption 'Part Heard Cases' on 24.06.2025.

2. When the matter was taken up for hearing today, the learned Central Government Standing counsel submitted that the original lease that was held by M/s.Swab India Private limited was not surrendered and it was not cancelled and that such a stand that is taken in the counter affidavit filed by the respondents is not substantiated by any documents. The learned Standing counsel submitted that pursuant to the NCLT order, the transfer made in favour of the petitioner company was accepted subject to conditions. Accordingly, this clarification given by the learned Standing counsel answers query (c) that was raised by this Court on 17.06.2025.



3. That leaves this Court with queries (a) and (b) that were raised in the previous hearing.

4. The learned Central Government Standing counsel submitted that as per the decision taken in the meeting held on 21.08.2018 where the minutes was reduced to writing, the committee approved the transfer of leasehold rights in accordance with the NCLT order from M/s.Swabs India private limited to the petitioner company, subject to the condition that the lease rent for the plots will be paid by the petitioner company as is fixed by the SEZ authority based on the facts and circumstances of the case. The learned Central Government Standing counsel submitted that the petitioner and the said Swabs India Private Limited were found to be unrelated parties and the transfer had taken place between two unrelated parties in the name of merger. Therefore, as per the decision taken in the meeting dated 21.08.2018, the lease rental was fixed based on the market value arrived at on the basis of the average of the highest bids received in the immediately preceding three auction proceedings held by the authority. This decision that was taken in the meeting dated 21.08.2019 translated itself to a final



decision that was taken in the 21st meeting held on 10.06.2019 by fixing the lease rental payable by the petitioner at Rs.2215 per square meter per annum.

5. In reply to the above submission, the learned counsel for the petitioner brought to the notice of this Court the order passed by the NCLT and specific reliance was placed upon Paragraph 13 of the order which is extracted hereunder :-

13. It is observed that as per the scheme of Arrangement the demerging company has 2 (two) undertakings namely cotton Swabs Undertaking and Corrugated Boxes Undertaking. The Corrugated Boxes Undertaking is transferred to the resultant company as they share common business platform. It is submitted by the demerging company that the assets, shares etc pertaining to the Corrugated Boxes undertaking will be transferred to the resultant company after approval of the scheme. It is the observation of the tribunal that the break up figures concerning contribution of the Corrugated Boxes Undertaking to the profit/loss of the demerged company is not provided. Further, the resulting company has made an investment in the demerged company by way of share capital which is being relinquished, as a consideration to the transfer of the undertaking, in this respect it is observed that the asset value of the undertaking has not been provided. It

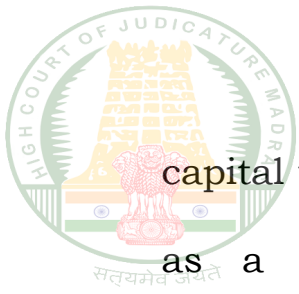


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is also observed that there is no issuance of shares to the resultant company and there is a reduction of share capital from the demerging company. All these terms have been consented to by secured, unsecured and trade creditors and unanimously consented to by the shareholders. The scheme of arrangement is without a valuation report and the interference by the Tribunal in the scheme of Arrangement at this juncture is not warranted.

i) With regard to objection made by the RD vide para 9(iii) of his Report the learned counsel for the petitioner submitted that the explanation to Section 230 (12) of the Companies Act clarifies that the provisions of Section 66 is not applicable to the reduction of share capital in pursuance of an order of this Tribunal. Further Section 66 of the Companies Act, 2013 the three methods of reduction mentioned are only illustrative and not exhaustive. This was held in *Re: Birla Global Finance Ltd.*, (2004) 50 SCL 387. It is further submitted that where the reduction of share capital is a part of a scheme of arrangement, the requirements of the Companies Act as regards reduction of capital is not applicable because the Court can sanction reduction as a part of the scheme. This was held in *Durairajan v. Waterfall Estates Ltd.*, (1972) 42 CC 563 and followed in *Re: Asia Investments Ltd.*, (1992) 73 CC 517.

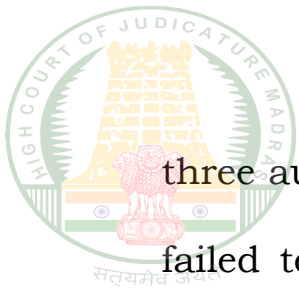
6. The learned counsel submitted that the petitioner company had already made some investment in the demerged company viz, M/s.Swab India Private Limited by way of share capital and in terms of the scheme of arrangement, the share



capital that was held by the petitioner company was relinquished as a consideration for the transfer of the undertaking.

Accordingly, there was no issuance of shares to the petitioner company and there was only reduction of share capital from the demerging company viz., M/s.Swab India Private Limited. In view of the same, it was contended that the basis on which the decision was taken by the respondents is erroneous since they came to a conclusion that the petitioner company and the demerged company are unrelated entities.

7. This Court finds a lot of force in the above submission made by the learned counsel for the petitioner. In the meeting that was held on 21.08.2018, while dealing with the scheme of arrangement (demerger), it was decided that the transfer of leasehold rights from the demerged company in favour of the petitioner company will be determined by the SEZ authority on the facts and circumstances of the case. Acting upon this decision taken, the authority came to a conclusion that transfer took place between unrelated parties. Therefore, while fixing the lease rentals, the market value was arrived at on the basis of the average of the highest bids received in the immediately preceding



three auction proceedings held by the authority. The respondents failed to take note of the fact that the petitioner company was holding shares in the demerged company and the consideration for the merger was the relinquishment of the share capital held by the petitioner company and to that extent, the share capital from the demerged company stood reduced. Thus, there was clearly a relationship between both the entities and based on which, the NCLT had passed an order. Therefore, this Court finds that the very basis on which the respondents determined the lease rentals as if the petitioner and the M/s.Swab India Private Limited are unrelated parties, suffers from an error apparent on the face of the decision. In view of the same, this Court has to necessarily interfere with the decision taken by the respondents.

8. The upshot of the above discussion is that the decision taken by the 1st respondent at the 21st meeting held on 10.06.2019, is hereby set-aside and the matter is remitted back to the file of the 1st respondent to pass appropriate orders in accordance with the scheme that was approved and sanctioned by the NCLT by order dated 23.04.2018 and a decision shall be taken after affording opportunity to the petitioner, within a period



of eight weeks from the date of receipt of a copy of this order.

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9. In the result, this writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

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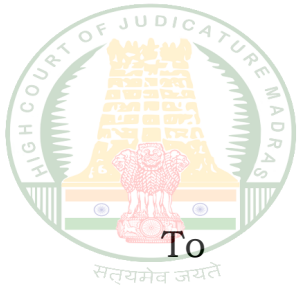
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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No



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commissioner

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N.ANAND VENKATESH J.
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**WP No. 5847 of
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WMP NOs. 5942
and 5943 OF 2022**

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