

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH - II, CHENNAI**

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Composite Scheme of Amalgamation
(Demerger and Amalgamation)*

CA(CAA)/61(CHE)/2022

SUNDARAM-CLAYTON LIMITED,

A company incorporated under Companies Act, 1956, having its registered office at, "Chaitanya", No.12, Khader Nawaz Khan Road, Nungambakkam, Chennai-600 006.

... Applicant/Transferee/Demerged Company

TVS HOLDINGS PRIVATE LIMITED,

A company incorporated under Companies Act, 2013, having its registered office at, "Chaitanya", No.12, Khader Nawaz Khan Road, Nungambakkam, Chennai-600 006.

... Applicant/Transferor Company -1

VS INVESTMENTS PRIVATE LIMITED,

A company incorporated under Companies Act, 2013, having its registered office at, "Chaitanya", No.12, Khader Nawaz Khan Road, Nungambakkam, Chennai - 600 006.

...Applicant/Transferor Company -2

SUNDARAM-CLAYTON DCD LIMITED,

A company incorporated under Companies Act, 2013, having its registered office at, "Chaitanya", No.12, Khader Nawaz Khan Road, Nungambakkam, Chennai-600 006.

... Applicant/Resulting Company

Order Pronounced on **09th November 2022**

CORAM

**JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant(s): Mr.Pawan Jhabakh, Advocate
Mr.P.H.Arvinth Pandian, Sr.Advocate



ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is a joint application filed by the Applicant Companies, namely **SUNDARAM-CLAYTON LIMITED** (for brevity "Applicant/Transferee/Demerged Company"), **TVS HOLDINGS PRIVATE LIMITED** (for brevity "Applicant/Transferor Company -1"), **VS INVESTMENTS PRIVATE LIMITED** (for brevity "Applicant/Transferor Company -2"), **SUNDARAM-CLAYTON DCD LIMITED** (for brevity "Applicant/Resulting Company") under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME") proposed by the Applicant Companies. The said Scheme is also appended as "Annexure - A1" to the CA(CAA)/61(CHE)/2022.

2. The Composite Scheme of Arrangement (at pages 45 to 93 of Volume-1 of the Type Set) provides for the following to take place chronologically;

- (i) The issuance of non-convertible redeemable preference shares of the Transferee/Demerged Company by way of a bonus to the Equity Shareholders of Transferee/Demerged Company; ("Part II of the Scheme")
- (ii) The amalgamation of the Transferor Company (1) with the Transferee/Demerged Company and cancellation of the share capital of the Transferee/Demerged Company

held by the Transferor Company (1) and the consideration thereof, ("Part III of the Scheme").

(iii) The amalgamation of the Transferor Company (2) with the Transferee/Demerged Company and cancellation of the share capital of the Transferee/Demerged Company held by the Transferor Company (2) and the consideration thereof; ("Part IV of the Scheme").

(iv) The transfer and vesting of the Demerged Undertaking (i.e., the manufacturing business of the Transferee/Demerged Company) from the Transferee/Demerged Company into the Resulting Company on a going concern basis, reduction and cancellation of the existing paid-up share capital of the Resulting Company held by the Transferee/Demerged Company and the consequent issue of shares of the Resulting Company to the shareholders of the Demerged Company. ("Part V of the Scheme").

3. The Applicant Companies in this Company Application have sought the following reliefs;

	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
<i>Transferee/Demerged Company</i>	To convene the meeting	To dispense with the meeting	To dispense with the meeting
<i>Transferor Company -1</i>	To dispense with the meeting	To dispense with the meeting	To dispense with the meeting
<i>Transferor Company -2</i>	To dispense with the meeting	To dispense with the meeting	To dispense with the meeting
<i>Resulting Company</i>	To dispense with the meeting	To dispense with the meeting	To dispense with the meeting

4. Affidavits in support of the present Application sworn for and on behalf of the Applicant Companies are listed hereunder: -

i) **Mr.R. Raja Prakash** on behalf of **Transferee/Demerged Company** in the capacity of the authorized signatory.



- ii) **Mr.P.D.Dev Krishnan**, on behalf of **Transferor Company -1** in the capacity of the authorized signatory.
- iii) **Mr.N.Srinivasa Ramanujam** on behalf of **Transferor Company-2 and Resulting Company** in the capacity of the authorized signatory

and it is also represented that the Registered offices of all the Applicant Companies are situated within the territorial jurisdiction of the Bench of this Tribunal and fall within the purview of Registrar of Companies, Chennai.

5. SUNDARAM-CLAYTON LIMITED [Transferee / Demerged Company]

- (i) There are **21,493** (Twenty-One Thousand Four Hundred and Ninety-Three only) Equity Shareholders and the list of shareholders to this effect is placed at Page Nos. **642-649** of the typed set filed with the application and has sought for convening, holding and conducting of the meeting.
- (ii) There are **3** (Three) Secured Creditors and the certificate issued by the Chartered Accountants to this effect is placed at Pages Nos.**698-700** of the typed set filed with the application. Consent Affidavits given **by 97.46%** of the secured creditors are placed at **Page Nos. 701-705** and sought dispensation of holding the meeting.
- (iii) There are **1,143** (One Thousand One Hundred and Forty-Three only) Unsecured Creditors and the certificate issued by the Chartered Accountants to this effect is placed at **Page Nos. 732-800** of the typed set filed with the application. Consent Affidavits given **by 91.17%** of the

creditors are placed at **Page Nos. 801-1122** and sought dispensation of holding the meeting.

6. TVS HOLDINGS PRIVATE LIMITED [Transferor Company -1]

- (i) There are **70** (Seventy) Equity Shareholders and the list of shareholders to this effect is placed at Page No.**650-653** of the typed set filed with the application and consent by way of Affidavit given by **97.05%** of the Equity Shareholders is placed at Page Nos.**654-660** and sought for dispensation of holding the meeting.
- (ii) There is NIL Secured Creditor and the certificate issued by the Chartered Accountant to this effect is placed at **Pages No. 706-708** of the typed set filed along with the application. Hence the necessity of Convening, holding and conducting the meeting does not arise.
- (iii) There are **15** (Fifteen) Unsecured Creditors and the certificate issued by the Chartered Accountants to this effect is placed at **Page Nos. 1123-1127** of the typed set filed with the application. Consent Affidavits given by **95.79%** of the creditors are placed at **Page Nos. 1128-1135** and sought dispensation of holding the meeting.

7. VS INVESTMENTS PRIVATE LIMITED [Transferor Company -2]

- (i) There are **2** (Two) Equity Shareholders and the list of shareholders to this effect is placed at Page No.**661** of the typed set filed with the application. The consent Affidavits given to **all** the shareholders are placed at **Page Nos.662-668** and sought for dispensation of holding the meeting.

- (ii) There are **4** (Four) Secured Creditors and the certificate issued by the Chartered Accountants to this effect is placed at Pages **Nos.709-711** of the typed set filed with the application. The consent Affidavits given by **all** the secured creditors are placed at **Page Nos. 712-728** and sought dispensation of holding the meeting.
- (iii) There are **5** (Five) Unsecured Creditors and the certificate issued by the Chartered Accountants to this effect is placed at **Page Nos. 1136-1138** of the typed set filed with the application. Consent Affidavits given **by 98.17%** of the creditors are placed at **Page Nos. 1139-1151** and sought dispensation of holding the meeting.

8. SUNDARAM-CLAYTON DCD LIMITED: [Resulting Company]

- (i) There are **7** (Seven) Equity Shareholders and a list of shareholders to this effect is placed at Page No.**669** of the typed set filed with the application. Consent Affidavits given by **all** the shareholders are placed at **Page Nos.670-697** and sought dispensation of holding the meeting.
- (ii) There is **NIL** Secured Creditor and the certificate issued by the Chartered Accountant to this effect is placed at **Page Nos. 729-731** of the typed set filed along with the application. Hence the necessity of Convening, holding and conducting the meeting does not arise.
- (iii) There are **2** (Two) Unsecured Creditors and the Certificate issued by the Chartered Accountants to this effect is placed at Page Nos. **1152-1154** of the typed set filed with the application. Consent Affidavits given **by 90.44%** of the creditor are placed at **Page Nos. 1155-1157** and sought dispensation of holding the meeting.



9. We have perused the applications and the connected documents/papers filed therewith including the Scheme contemplated between the Applicant companies.

10. From the certificate of incorporation filed, it is evident that **SUNDARAM-CLAYTON LIMITED** (Transferee/Demerged Company) a listed public Limited company was incorporated under the provisions of the Companies Act, 1956 on 24.05.1962. Transferee/Demerged Company is a subsidiary of TVS Holdings Private Limited (*Transferor Company -1*) the Authorized Share Capital of the Transferee/Demerged Company as on 31.07.2022 as follows:

PARTICULARS	AMOUNT IN RS.
<u>AUTHORISED CAPITAL</u>	25,00,00,000
5,00,00,000 equity shares of Rs.5 each	
TOTAL	25,00,00,000
<u>ISSUED, SUBSCRIBED AND PAID UP CAPITAL</u>	10,11,60,425
2,02,32,085 equity shares of Rs.5 each fully paid up	
TOTAL	10,11,60,425

11. From the certificate of incorporation filed, it is evident that **TVS HOLDINGS PRIVATE LIMITED** (Transferor Company -1) a private limited company was incorporated under the provisions of the Companies Act, 2013 on 23.03.2018. The Authorized Share Capital of the Transferor Company -1 as on 31.07.2022 is as follows:

PARTICULARS	AMOUNT IN RS.
<u>AUTHORISED CAPITAL</u>	
21,00,00,000 equity shares of Rs.1 each	21,00,00,000
TOTAL	21,00,00,000
<u>ISSUED, SUBSCRIBED AND PAID UP CAPITAL</u>	
20,00,31,664 equity shares of Rs.1 each	20,00,31,664
TOTAL	20,00,31,664

12. From the certificate of incorporation filed, it is evident that **VS INVESTMENTS PRIVATE LIMITED** (*Transferor Company -2*) is a private limited company incorporated on 29.09.2021 under the Companies Act, 2013. The Authorized Share Capital of the *Transferor Company-2* as on 31.07.2022 is as follows:

PARTICULARS	AMOUNT IN RS.
<u>AUTHORISED CAPITAL</u>	
10,00,000 equity shares of Rs.1 each	10,00,000
TOTAL	10,00,000
<u>ISSUED, SUBSCRIBED AND PAID UP CAPITAL</u>	
1,00,000 equity shares of Rs.1 each	1,00,000
TOTAL	1,00,000

13. From the certificate of incorporation filed, **SUNDARAM-CLAYTON DCD LIMITED** is an unlisted public limited company incorporated under the Companies Act, 2013 on 29.08.2017. The Authorized Share Capital of the *Resulting Company* as on 31.03.2022 is as follows:

PARTICULARS	AMOUNT IN RS.
<u>AUTHORISED CAPITAL</u>	
2,500 equity shares of Rs.10 each	25,000
TOTAL	25,000
<u>ISSUED, SUBSCRIBED AND PAID UP CAPITAL</u>	
2,500 equity shares of Rs.10 each	25,000
TOTAL	25,000

14. The Applicant companies have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses. The Applicant Companies have filed their last available audited financial statements for the year ended as on 31.03.2022 and unaudited financial statements as on 31.06.2022.

15. The Board of Directors of the Applicant Companies vide meetings held on 09.02.2022 have unanimously approved the proposed Scheme as contemplated above and copies of resolutions passed thereon have been placed on record by the companies.

16. The Appointed dates as specified in the Scheme are given below:-

"Appointed Date 1" for Part II of the Scheme	The date on which the last of the conditions specified in Clause 37 (Conditions Precedent) of his Scheme are complied with waived, as applicable.
"Appointed Date 2" for Part III of the Scheme	The 1 st (First) Business Day after receipt of approval of the Stock Exchanges for the listing and trading Preference Shares of SCL issued in terms of Clause 4 of

	this Scheme.
"Appointed Date 3" for Part IV of the Scheme	The 5 th (fifth) Business Day after receipt of approval of Stock Exchanges for the listing and trading Preference Shares of SCL and equity shares issued in terms of Clause 10 of this Scheme.
"Appointed Date 4" for Part V of the Scheme	The 5 th (fifth) Business Day after the Effective Date 3.

17. The Statutory Auditors of all the Applicant Companies have examined the Scheme in terms of provisions of Sec. 232 of the Companies Act, 2013 and the rules made thereunder and certified that the Accounting Standards are in compliance with Section 133 of the Companies Act, 2013.

18. Taking into consideration the application filed by the Applicant Companies and the documents filed therewith this Tribunal issues the following directions:-

A) IN RELATION TO THE SUNDARAM-CLAYTON LIMITED
[Transferee/Demerged Company]:

(i) With respect to Equity shareholders:

Since it is represented by Transferee/Demerged Company that there are **21493 (Twenty-One Thousand Four Hundred and Ninety-Three only)** Equity Shareholders in the Company. A Meeting of the Equity Shareholders of the above Company is directed to be held at **10.00 AM** on **16.12.2022** at the registered office of the Transferee Company or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal

within a period of 7 days from the date of this order and prior to the issue of notices.

(ii) With respect to Secured Creditors:

Since it is represented by the Transferee/Demerged Company that there are **4 (Four)** Unsecured Creditors in the Transferee Company whose consents by way of affidavits have been obtained and are placed on record, the necessity of convening and holding a meeting is ***dispensed with***

(iii) With respect to Unsecured Creditors:

Since it is represented by the Transferee Company that there are **1143 (One Thousand one Hundred and Forty-Three)** 91.17% Unsecured Creditors in the Transferee Company whose consents by way of affidavits have been obtained and are placed on record. Upon perusal, it is seen that only the consent affidavit of Mr.Paramasivam M, who is an authorised representative of Citi Bank which holds 2.96% of total unsecured credit is placed on record at page 834. But the approval by the Board of Directors authorising Mr.Paramasivam M, is not placed on record. Moreover, the list of unsecured creditors in the Chartered Account Certificate does not have any serial number and the credit values are not mentioned in corresponding consent affidavits of unsecured creditors, hence is incomplete. In view of the above, this Tribunal feels it is necessary to order the meeting of unsecured creditors of the above Company and the meeting is directed to be held at **12.00 PM** on **16.12.2022** at the registered office of the Transferee Company or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of

7 days from the date of this order and prior to the issue of notices.

B) IN RELATION TO THE TVS HOLDINGS PRIVATE LIMITED
[Transferor Company -1]:

(i) **With respect to Equity shareholders:**

Since it is represented by the Transferor Company-1 that there are **70 (Seven)** Equity shareholders in the Company whose consents by way of affidavits have been obtained and are placed on record, the necessity of convening and holding a meeting is ***dispensed with***.

(ii) **With respect to Secured Creditors:**

Since it is represented by the Transferor Company-1 that there are **NIL** Secured Creditors in the Company hence the necessity of Convening, holding and conducting a meeting ***does not arise***.

(iii) **With respect to Unsecured Creditors:**

Since it is represented by the Transferor Company-1 that there are **15 (Fifteen)** Unsecured Creditors in Transferor Company-1 whose consents by way of affidavits have been obtained and are placed on record, the necessity of convening and holding a meeting is ***dispensed with***.

C) IN RELATION TO THE VS INVESTMENTS PRIVATE LIMITED
[Transferor Company-2]:

(i) **With respect to Equity shareholders:**

Since it is represented by the Transferor Company-2 that there are **2 (Two)** Equity shareholders in the Company whose consents by way of affidavits have been obtained and

are placed on record, the necessity of convening and holding a meeting is ***dispensed with***.

(ii) **With respect to Secured Creditors:**

Since it is represented by the Transferor Company-2 that there are **4 (Four)** Secured Creditors in Transferor Company-2 whose consents by way of affidavits have been obtained and are placed on record. Upon perusal, it is seen that only consent affidavits of,

- i) Mr.Mahalingam.R, who is an authorised representative of CFIL(Citicorp Finance (India) Ltd.) which holds 29.63% of the total secured credit.
- ii) Saurav Sahal who is an authorised representative of Aditya Birla Finance Limited which holds 25.00% of the total secured credit.

are placed on record at pages 717-722. But the approval by the Board of Directors of the respective organisations authorising the above persons is not placed on record. Hence, a meeting of the secured creditors of the Transferor Company-2 is directed to be held at **02.00 PM** on **16.12.2022** at the registered office of the Transferor Company-2 or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

(iii) **With respect to Unsecured Creditors:**

Since it is represented by the Transferor Company-2 that there are **5 (Five)** Unsecured Creditors in Transferor Company-2 whose consents by way of affidavits have been

obtained and are placed on record, the necessity of convening and holding a meeting is ***dispensed with.***

D) IN RELATION TO THE SUNDARAM-CLAYTON DCD LIMITED
[Resulting Company]:

(i) With respect to Equity shareholders:

Since, it is represented by the Resulting Company that there are **7** (Seven) Equity shareholders in the Company whose consents by way of affidavits have been obtained and are placed on record, the necessity of convening and holding a meeting is ***dispensed with.***

(ii) With respect to Secured Creditors:

Since it is represented by the Resulting Company that there are **NIL** Secured Creditors in the Company hence the necessity of Convening, holding and conducting a meeting ***does not arise.***

(iii) With respect to Unsecured Creditors:

Since it is represented by the Resulting Company that there are **2 (Two)** unsecured creditors in the Resulting Company whose consents by way of affidavits have been obtained and are placed on record, the necessity of convening and holding a meeting is ***dispensed with.***

19. The quorum for the meetings of the companies infra shall be as follows;

COMPANY	CLASS	QUORUM
TRANSFEREE COMPANY	EQUITY SHAREHOLDERS	100
	UNSECURED CREDITORS	100
TRANSFEROR COMPANY-2	SECURED CREDITORS	2

- i) The Chairperson appointed for the above-said meeting shall be **Mr. N.P.Vijaya Kumar**, Advocate (**Mobile: 9790911370**) would be entitled to a fee of **Rs.75,000/-** for services in addition to meeting incidental expenses.
- ii) **Mr. R.Rajesh**, Advocate (**Mobile: 9884313220**) is appointed as a Scrutinizer and would be entitled to a fee of **Rs.35,000/-** for services in addition to meeting incidental expenses. The Chairperson(s) will file the reports of the meeting within a week from the date of holding of the above-said meetings.
- iii) In case the quorum as noted above, for the above meeting of the Applicant Companies is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the applicant companies at least 48 hours before the meeting. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the applicant companies to attain at least the quorum fixed, if not more in relation to the approval of the scheme.
- iv) The meetings shall be conducted as per the applicable procedure prescribed under the MCA Circular MCA General

Circular Nos. (i) 20/2020 dated 5th May 2020 (AGM Circular), (ii) 14/2020, dated 08.04.2020 (EGM Circular-I) and (iii) 17/2020 dated 13.04.2020 (EGM Circular-II);

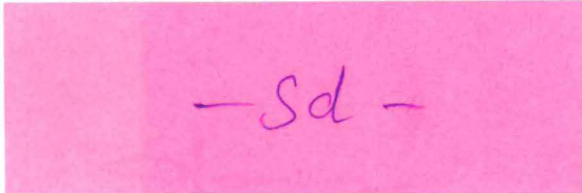
- v) That individual notices of the above said meetings shall be sent by the Applicant Company through registered post or speed post or courier or e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, place and time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above, any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

- vi) That the Applicant Company shall publish an advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily "*The Hindu*" (All India Edition), and "*Dinamani*" *Tamil* (Tamil Nadu Edition) in Vernacular stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the respective Applicant Companies. Further, the Transferee Company shall also effect a publication in the "**Navbharat Times**" (**Hindi All India Edition**) since it is a listed Company.

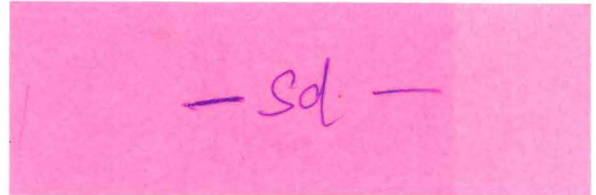
- vii) The Chairperson shall as aforesaid be responsible to report the result of the meeting within a period of 3 days of the conclusion of the meeting with details of voting on the proposed scheme.
- viii) The companies shall individually send notice to the concerned Regional Director, MCA, Registrar of Companies Chennai, Official Liquidator, The Reserve Bank of India and the Income Tax Authorities, as well as other Sectoral regulators who may have a significant bearing on the operation of the applicant companies or the Scheme *per se* along with a copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.
- ix) The applicant companies shall further furnish a copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of the applicant companies entitled to attend the meetings as aforesaid.
- x) The Authorized Representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.
- xi) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises,

Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

20. The Applications stand **allowed** on the aforesaid terms.



SAMEER KAKAR
MEMBER (TECHNICAL)



JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Gopishankar D