

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 17/2015

Reserved on 25th February, 2015
Date of pronouncement: 26th March, 2015

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Application under Sections 391 to 394 read
with Sections 100 to 104 of the Companies
Act, 1956**

Scheme of Arrangement between:

Bharat Foils Limited

Applicant/Demerged Company

AND

Bansal Engineers (Grain Milling) Private Limited

Applicant/Resulting Company

**Through Mr. Chander Shekhar Mishra,
Advocate for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Arrangement between Bharat Foils Limited (hereinafter referred to as the Demerged Company) and Bansal Engineers (Grain Milling) Private Limited (hereinafter referred to as the Resulting Company).

2. The registered offices of the Demerged and Resulting companies are situated at New Delhi, within the jurisdiction of this Court.

3. The Demerged Company was originally incorporated under the Companies Act, 1956 on 10th August, 1981 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Bharat Foils Private Limited. The company was converted into public limited company and obtained a certificate in this regard on 27th August, 2003.

4. The Resulting Company was incorporated under the Companies Act, 1956 on 10th October, 2013 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the Demerged Company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.2,29,18,300/- divided into 22,91,830 equity shares of Rs.10/- each.

6. The present authorized share capital of the Resulting Company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The

present issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the Demerged and Resulting companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the Demerged and Resulting companies have also been filed.

8. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is submitted by the applicants that the main objects of the Scheme is: (1) demerger of the 'Manufacturing Unit' of the demerged company situated at Kundli, Haryana into the resulting company; and (2) reduction of share capital of the demerged company. It is claimed that the proposed demerger will enable the demerged company in increasing the operational efficiency of its unit situated at Karnal Road through optimum use of resources in a focused manner, thus leading to an increase in its overall productivity. It is further claimed that the proposed demerger will equip the resulting company with a specialized business comprising of assets enabling it to actualize the growth plan conceived by it for increasing profitability of the unit.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the Resulting Company shall issue and allot equity shares to the shareholders of the Demerged Company in the following ratio:-

“01 equity share of Rs.10/- each of the Resulting Company, credited as fully paid up, for every 04 fully paid up equity shares of Rs.10/- each held in the Demerged Company.”

It is further provided that to give effect to the demerger in its books of accounts, the demerged company will cancel its existing issued and paid up share capital shall, without any further act or deed, issue and allot 03 equity shares of Rs.10/- each credited as fully paid-up, to its shareholders for every 04 equity shares of Rs.10/- each held in the demerged company as on the record date mentioned in the Scheme.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the applicant companies.

11. The Board of Directors of the Demerged and Resulting companies in their separate meetings held on 2nd August, 2014 have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the Demerged and Resulting companies have been placed on record.

12. The Demerged Company has 07 equity shareholders and 01 secured creditor. All the equity shareholders and the only secured creditor have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and the secured creditor of the Demerged Company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with.

13. The Resulting Company has 06 equity shareholders. All the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the Resulting Company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with. There is no secured or unsecured creditor of the Resulting Company, as on 31st July, 2014.

14. The demerged company has 168 unsecured creditors, out of which the applicants have placed on record the consents of only 25 unsecured creditors. On examination of the said consents, it is noticed that the consents given by the corporate creditors are not supported by any board

resolution authorizing the persons, who have given the said consents. Therefore, the consents of only 17 unsecured creditors holding 67.5% of the total unsecured debt are found to be in order. I do not find the consents sufficient to justify dispensation of the meeting of the unsecured creditors. Under the circumstances, the applicant/demerged company is directed to convene and hold the meeting of its unsecured creditors to seek their approval to the proposed Scheme of Arrangement. The meeting of the unsecured creditors of the demerged company shall be held on 7th May, 2015 at 11:30 am at the registered office of the company at 8-A, Rajasthani Udyog Nagar, G.T. Karnal Road, New Delhi – 110033. Mr. Rahul Pandey, Advocate, (Mobile No. 8010368164) is appointed as the Chairperson and Ms. Alka Srivastava, Advocate, (Mobile No. 9811950380) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the demerged company shall be 20 in number and more than 15% in value of the total unsecured debt.

15. In case the quorum as noted above for the above meeting is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the persons 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 demerged company at least 48 hours

before the meeting. The Chairperson and Alternate Chairperson shall ensure that the proxy register is properly maintained.

16. The Chairperson and Alternate Chairperson shall ensure that notices for convening the aforesaid meeting of the unsecured creditors of the demerged company, along with copies of the Scheme of Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the demerged company by speed post at their registered or last known addresses at least 21 days before the date appointed for the meeting, in their presence or in the presence of their authorized representatives. Notice of the meeting shall also be published in the Delhi editions of the newspapers "Statesman" (English) and "Veer Arjun" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meeting.

17. The Chairperson and Alternate Chairperson will be at liberty to issue suitable directions to the management of the demerged company so that the aforesaid meeting of the unsecured creditors of the demerged company is conducted in a just, free and fair manner.

18. The fee of the Chairperson and the Alternate Chairperson for the aforesaid meeting shall be Rs.50,000/- each in addition to meeting their

incidental expenses. The Chairperson will file his report within two weeks from the date of holding of the aforesaid meeting.

19. The application stands allowed in the aforesaid terms.

Dasti

SUDERSHAN KUMAR MISRA, J.

March 26, 2015