

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 20/2015

Reserved on 24th 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 of the
Companies Act, 1956 read with Rules 6 & 9 of
the Companies (Court) Rules, 1959**

Scheme of Demerger between:

Golden Peacock Overseas Limited

Applicant/Demerged Company No. 1

Indo-Dan Lampshades Private Limited

Applicant/Demerged Company No. 2

AND

GPL Exports Limited

Applicant/Resulting Company

**Through Mr. Vivek Malik and Mr. Mukul
Thakur, Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 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 Demerger between Golden Peacock Overseas Limited (hereinafter referred to as the demerged company no. 1); Indo-Dan Lampshades Private Limited (hereinafter referred to as the demerged company no. 2) and GPL

Exports Limited (hereinafter referred to as the resulting company). In the alternative, the applicants have prayed that if this court does not grant exemption for holding any meeting as prayed for above, the meeting may be directed to held at the registered office of the applicant companies.

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 no. 1 was originally incorporated under the Companies Act, 1956 on 28th February, 1989 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Golden Peacock Overseas Private Limited. The company changed its name to Golden Peacock Overseas Limited and obtained the fresh certificate of incorporation on 22nd July, 1996.

4. The demerged company no. 2 was incorporated under the Companies Act, 1956 on 28th December, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The resulting company was incorporated under the Companies Act, 1956 on 10th January, 2003 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The authorized share capital of the demerged company no. 1, as on 31st March, 2014, was Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company was Rs.2,57,13,000/- divided into 25,71,300 equity shares of Rs.10/- each.

7. The authorized share capital of the demerged company no. 2, as on 31st March, 2014, was Rs.75,00,000/- divided into 7,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company was Rs.45,76,000/- divided into 4,57,600 equity shares of Rs.10/- each.

8. The authorized share capital of the resulting company, as on 31st March, 2014, was Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company was Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each.

9. 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, along with the report of the auditors, have also been filed.

10. A copy of the Scheme of Demerger 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 as a measure of corporate restructuring, more efficient use of existing resources, operation on a broader scale, increasing efficiency in business operations, and to realize the potential for further growth, Demerged Company No. 1 and Demerged Company No. 2 propose to separate their Manufacturing Divisions by demerging it to the resulting company. It is claimed that the proposed demerger will enable both the demerged companies to concentrate on their other businesses. It is further claimed that the demerger will provide a specialized manufacturing business to the resulting company, which in turn, shall be able to chalk out growth plan thereby increasing consolidated profitability of the company with benefits of synergies and economies of scale.

11. 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 companies in the following ratio:

“01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 89 fully paid up equity shares of Rs.10/- each held by the shareholders in the demerged company no. 1.”

“01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 17 fully paid up equity shares of Rs.10/- each held by the shareholders in the demerged company no. 2.”

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

13. The Board of Directors of the demerged and resulting companies in their separate meetings held on 16th August, 2014 have unanimously approved the proposed Scheme of Demerger. Copies of the Resolutions passed at the meetings of the Board of Directors of the demerged and resulting companies have been placed on record.

14. The demerged company no. 1 has 09 equity shareholders, 01 secured creditor and 106 unsecured creditors. 08 out of 09 equity shareholders holding 99% of the paid up capital, the only secured creditor and 46 out of 106 unsecured creditors, being 43% in number and 83% in value, have given their consents/no objections in writing to the proposed Scheme of Demerger. Their consents/no objections have been placed on record. They have been examined and found in order. Prima facie, it is noticed that the unsecured sundry creditors are having running account with the company. In view thereof, the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the demerged company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Demerger is dispensed with.

15. The demerged company no. 2 has 04 equity shareholders and 03 secured creditors. All the equity shareholders and all the secured creditors have given their consents/no objections in writing to the proposed Scheme of Demerger. 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 secured creditors of the demerged company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Demerger is dispensed with.

16. The resulting company has 08 equity shareholders, 01 secured creditor and 68 unsecured creditors. All the equity shareholders, the only secured creditor and 26 out of 68 unsecured creditors, being 38% in number and 80% in value, have given their consents/no objections in writing to the proposed Scheme of Demerger. Their consents/no objections have been placed on record. They have been examined and found in order. Prima facie, it is noticed that the unsecured sundry creditors are having running account with the company. In view thereof, the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the resulting company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Demerger is dispensed with.

17. The demerged company no. 2 has 45 unsecured creditors, out of which the applicants have placed on record the consents of only 20 unsecured creditors holding 60% of the total unsecured debt. I do not find the consents sufficient to justify dispensation of the meeting of the unsecured creditors. Under the circumstances, the applicant/demerged company no. 2 is directed to convene and hold the meeting of its unsecured creditors to seek their approval to the proposed Scheme of Demerger. The meeting of the unsecured creditors of the demerged company no. 2 shall be held on 2nd May, 2015 at 12:00 noon at the registered office of the company at 3E/2, Jhandewalan Extension, New Delhi – 110055. Mr. Rajeev Kumar, Advocate, (Mobile No. 9810466870) is appointed as the Chairperson and Ms. Tanya Khanna, Advocate, (Mobile No. 9650313588) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the demerged company no. 2 shall be 8 in number and more than 15% in value of the total unsecured debt.

18. 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 no. 2 at least 48

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

19. The Chairperson and Alternate Chairperson shall ensure that notices for convening the aforesaid meeting of the unsecured creditors of the demerged company no. 2, along with copies of the Scheme of Demerger and the statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the demerged company no. 2 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.

20. The Chairperson and Alternate Chairperson will be at liberty to issue suitable directions to the management of the demerged company no. 2 so that the aforesaid meeting of the unsecured creditors of the demerged company no. 2 is conducted in a just, free and fair manner.

21. 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.

22. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

March 26, 2015