

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 72/2015

Reserved on 12th May, 2016
Date of pronouncement: 19th July, 2016

In the matter of

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

And

Petition under Sections 391(1) to 394 of the Companies Act, 1956

Scheme of Arrangement between:

Futuristic Sales Private Limited

Petitioner/Demerged Company

AND

Globe Panel Industries India Private Limited

Petitioner/Resulting Company

**Through Mr. Ashish Midha, Advocate
for the petitioners**

**Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391(1) to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Arrangement between Futuristic Sales Private Limited (hereinafter referred to as the demerged company) and Globe Panel Industries India 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 incorporated under the Companies Act, 1956 on 6th July, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The resulting company was incorporated under the Companies Act, 1956 on 28th April, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the demerged company is 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 is Rs.74,76,400/- divided into 7,47,640 equity shares of Rs.10/- each fully paid-up.

6. The present authorized share capital of the resulting company is Rs.25,00,00,000/- divided into 2,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.18,30,18,420/- divided into 1,83,01,842 equity shares of Rs.10/- each fully paid-up.

7. Copies of the Memorandum and Articles of Association of the demerged and resulting companies have been filed on record with the joint application, being CA(M) 6/2015, earlier filed by the petitioners. The

audited balance sheets, as on 31st March, 2014, of the demerged and resulting companies, along with the report of the auditors, had 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 petition and the accompanying affidavits. It is submitted by the petitioners that the Scheme, inter-alia, provides that except land & building of demerged company running business activities, assets and liabilities of plywood and laminate described in Schedule-I of the Scheme of Arrangement shall be transferred from the appointed date on a going concern basis with all attachment and liabilities including advance from customers/tenants, to the resulting company. It is claimed that the proposed arrangement will strengthen, consolidate and stabilize the business of these companies and will facilitate further expansion and growth of their business. It is further claimed that the proposed arrangement would enhance the shareholder's value of both the companies.

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 of Rs.10/- to the demerged

company equivalent to an amount of net book value of assets transferred by the demerged company to the resulting company.

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 have been initiated or are pending against the petitioner companies.

11. The Board of Directors of the demerged and resulting companies in their separate meetings held on 30th September, 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 petitioner companies had earlier filed CA (M) No. 6/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 28th January, 2015 this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the demerged and resulting companies to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 8th April, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in 'Business Standard' (English) and (Hindi) editions. An affidavit has been filed by the petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 22nd September, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 16th October, 2015. Relying on Clause 8.1 of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Arrangement, the permanent employees of the demerged company engaged in the Demerged Undertaking shall become the employees of the resulting company without any break or interruption in their services. He has further submitted that in Clause 13.3 of Part-VI of the Scheme, it has been stated that all accounting treatment in the books of the petitioner companies shall be in accordance with the applicable provisions of the Act read with relevant Accounting Standards issued by the Institute of Chartered Accountants of India.

15. The Regional Director in Para 10.4 of his report has submitted that it has been observed from Schedule of assets and liabilities as at 01.04.2014 to be transferred to the resulting company as annexure-1, that there is a difference of Rs.8,89,20,647.10. Further, as per para 13 of the Scheme, the difference between the amount of assets and liabilities so transferred shall be written off against/added to the General Reserve account in the books of account of the demerged company and this amount shall be free for distribution as dividend, and shall for all purposes constitute a part of the free reserves of the resulting company. The Regional Director has submitted that the surplus arising out of the Scheme of Arrangement i.e. arrangement/amalgamation reserve is of capital nature and cannot be considered as general reserve as the same is free for distribution to the shareholders of a company in the form of dividend/bonus shares.

16. In response to the aforesaid objection of the Regional Director, the petitioner companies in the affidavit dated 16th March, 2016 of Mr.Sourabh Aggarwal, Director of the resulting company, have submitted that in terms of para 11 of the Scheme, the demerged company shall be issued shares qua the said surplus value by the resulting company and therefore, there will be no amount available to be carried to any reserve. It has been further submitted that the petitioner companies shall not

transfer any amount to the general reserve as for the entire excess amount of Rs.8,89,20,647.10/-, shares shall be allotted to the shareholders of the demerged company and after allotting shares, no excess amount shall be left with the resulting company. The resulting company also undertakes that if there is any reserve in terms of Clause 13 of the Scheme, the same shall be transferred to the Capital Reserve and will treat the same accordingly. In view of the aforesaid, the objection raised by the Regional Director stands satisfied.

17. No objection has been received to the Scheme of Arrangement from any other party. The petitioner companies, in the affidavit dated 23rd November, 2015 of Mr. Sourabh Aggarwal, Director of the resulting company have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 22nd September, 2015.

18. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Arrangement and there being no surviving objection to the same by the Regional Director, Northern Region, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the Scheme of Arrangement under Sections 391 and 394 of the Companies Act, 1956. The petitioner

companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of arrangement, i.e. 1st April, 2014, the demerged undertaking of the demerged company shall stand merged in the resulting company.

19. The Assistant Registrar of Companies appearing for the Regional Director prays that costs of at least Rs.50,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to him. As already directed vide order dated 12.05.2016, the petitioners shall deposit a sum of Rs.50,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

July 19, 2016