

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 89/2016

Reserved on 31st May, 2016
Date of pronouncement: 27th July, 2016

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 67 & 87
of the Companies (Court) Rules, 1959**

Composite Scheme of Arrangement between:

SMS Iron Technology Private Limited

Applicant/Transferor Company No. 1

SMS Concast Engineering (India) Private Limited

Applicant/Transferor Company No. 2

SMS Meer India Private Limited

Applicant/Demerged Company

AND

SMS India Private Limited

Applicant/Transferee Company

Through Mr. Satwinder Singh,
Advocate 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 67 & 87 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 and secured creditors and for convening the separate meetings of the unsecured creditors of the transferor company

no. 2, the demerged company and the transferee company to consider and approve, with or without modification, the proposed Composite Scheme of Arrangement between SMS Iron Technology Private Limited (hereinafter referred to as the transferor company no. 1); SMS Concast Engineering (India) Private Limited (hereinafter referred to as the transferor company no. 2); SMS Meer India Private Limited (hereinafter referred to as the demerged company) and SMS India Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor companies, the demerged company and the transferee company are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company no. 1 was originally incorporated under the Companies Act, 1956 on 20th April, 1989 with the Registrar of Companies, Maharashtra under the name and style of Indomag Steel Technology Private Limited. The word 'private' was deleted from the name of the company w.e.f. 01.04.1995. The word 'private' was added in the name of the company w.e.f. 23.05.2001. The company changed its name to SMS Demag Private Limited and obtained the fresh certificate of incorporation on 27th September, 2001. Thereafter, the company shifted its registered office from the State of Maharashtra to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi

& Haryana at New Delhi on 1st September, 2003. The company finally changed its name to SMS Iron Technology Private Limited and obtained the fresh certificate of incorporation on 3rd September, 2007.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 23rd June, 1998 with the Registrar of Companies, Pune under the name and style of Concast Standard Engineering (India) Private Limited. The company changed its name to SMS Concast Engineering (India) Private Limited and obtained the fresh certificate of incorporation on 25th May, 2005. Thereafter, the company shifted its registered office from the State of Maharashtra to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 30th March, 2016.

5. The demerged company was incorporated under the Companies Act, 1956 on 5th March, 2008 with the Registrar of Companies, West Bengal. Thereafter, the company shifted its registered office from the State of West Bengal to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 14th October, 2015.

6. The transferee was originally incorporated under the Companies Act, 1956 on 17th March, 1994 with the Registrar of Companies,

Maharashtra under the name and style of SMS India Private Limited. The word 'private' was deleted from the name of the company w.e.f. 02.03.1995. Thereafter, the company shifted its registered office from the State of Maharashtra to West Bengal and obtained a certificate in this regard from the Registrar of Companies, West Bengal on 24th September, 1998. The company again shifted its registered office from the State of West Bengal to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT Of Delhi & Haryana at New Delhi on 18th September, 2002.

7. The present authorized share capital of the transferor company no.1 is Rs.60,00,00,000/- divided into 6,00,00,000 equity shares of Rs.10/- each. The 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.

8. The present authorized share capital of the transferor company no.2 is Rs.3,00,00,000/- divided into 3,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid up share capital of the company is Rs.93,19,100/- divided into 93,191 equity shares of Rs.100/- each.

9. The present authorized share capital of the demerged company is Rs.50,00,00,000/- divided into 50,00,000 equity shares of Rs.100/- each.

The issued, subscribed and paid up share capital of the company is Rs.35,00,00,000/- divided into 35,00,000 equity shares of Rs.100/- each.

10. The present authorized share capital of the transferee company is Rs.15,00,00,000/- divided into 15,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,15,000/- divided into 1,00,150 equity shares of Rs.100/- each.

11. Copies of the Memorandum and Articles of Association of the transferor companies, the demerged company and the resulting company have been filed on record. The audited balance sheets, as on 31st March, 2015, of the transferor companies, the demerged company and the resulting company, along with the report of the auditors, have also been filed.

12. A copy of the Composite 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 affidavits. It has been submitted by the applicants that the Scheme, *inter alia*, provides for amalgamation of the transferor companies no. 1 & 2 into the transferee company and demerger of the Forging and other services Undertaking of the demerged company and its merger into the transferee company. It is claimed that the proposed restructuring will enable the transferee

company to carry on its activities more efficiently and economically and would also sharpen operational focus and optimum utilization of resources thereby increasing the market share of the transferee company at global level.

13. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor companies and the demerged company in the following ratio:

“105 equity shares of Rs.100/- each of the transferee company, credited as fully paid up, for every 5,297 equity shares of Rs.10/- each held by the shareholders in the transferor company no. 1.”

“18 equity shares of Rs.100/- each of the transferee company, credited as fully paid up, for every 137 equity shares of Rs.100/- each held by the shareholders in the transferor company no. 2.”

“49 equity shares of Rs.100/- each of the transferee company, credited as fully paid up, for every 73,105 equity shares of Rs.100/- each held by the shareholders in the demerged company.”

14. It has been submitted by the applicants that no proceedings under Sections 237, 243, 247, 248, 249, 250 and 251 of the Companies Act, 1956 and under Sections 210, 214, 215, 216, 225 & 228 of the Companies Act, 2013 are pending against the applicant companies.

15. The Board of Directors of the transferor companies, the demerged company and the transferee company in their separate meetings held on 8th March, 2016 have unanimously approved the proposed Composite Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor companies, the demerged company and the transferee company have also been placed on record.

16. The transferor company no. 1 has 03 equity shareholders. All the equity shareholders have given their consents/no objections in writing to the proposed Composite 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 transferor company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Composite Scheme of Arrangement is dispensed with. There is no secured or unsecured creditor of the transferor company no. 1, as on 31st March, 2016.

17. The transferor company no. 2 has 02 equity shareholders. Both the equity shareholders have given their consents/no objections in writing to the proposed Composite 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 transferor company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Composite Scheme of Arrangement is dispensed with. There is no secured creditor of the transferor company no. 2, as on 31st March, 2016.

18. The demerged company has 02 equity shareholders. Both the equity shareholders have given their consents/no objections in writing to the proposed Composite 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 demerged company to consider and, if thought fit, approve, with or without modification, the proposed Composite Scheme of Arrangement is dispensed with. There is no secured creditor of the demerged company, as on 31st March, 2016.

19. The transferee company has 04 equity shareholders. All the equity shareholders have given their consents/no objections in writing to the proposed Composite 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 transferee company to consider and, if thought fit, approve, with or without modification, the proposed

Composite Scheme of Arrangement is dispensed with. There is no secured creditor of the transferee company, as on 31st March, 2016.

20. The transferor company no. 2 has 182 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Composite Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferor company no. 2 shall be held on 3rd September, 2016 at 10:30 a.m. at Hotel Tourists Deluxe, Ground Floor, 7361, Qutab Road, Ram Nagar, New Delhi-110055. Mr. V. K. Diwan, Advocate, (Mobile No. 9811237371) is appointed as the Chairperson and Mr. Jitender Bhardwaj, Advocate, (Mobile No. 9811672065) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferor company no. 2 shall be 40 in number and more than 25% in value of the total unsecured debt.

21. The demerged company has 115 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Composite Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the demerged company shall be held on 3rd September, 2016 at 12:30 p.m. at Hotel Tourists Deluxe, Ground Floor,

7361, Qutab Road, Ram Nagar, New Delhi-110055. Mr. N. K. Tyagi, Advocate, (Mobile No. 9871402101) is appointed as the Chairperson and Mr. Ishaan Madan, Advocate, (Mobile No. 9999730312) 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 25 in number and more than 25% in value of the total unsecured debt.

22. The transferee company has 847 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Composite Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferee company shall be held on 3rd September, 2016 at 02:30 p.m. at Hotel Tourists Deluxe, Ground Floor, 7361, Qutab Road, Ram Nagar, New Delhi-110055. Ms. Pallavi Sharma, Advocate, (Mobile No. 9899447004) is appointed as the Chairperson and Mr. Pranav Gautam, Advocate, (Mobile No. 7838490860) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferee company shall be 150 in number and more than 25% in value of the total unsecured debt.

23. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings 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 meetings is filed with the registered offices of the applicant companies at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

24. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the unsecured creditors of the transferor company no. 2, the demerged company and the transferee company, along with copies of the Composite Scheme of Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the transferor company no. 2, the demerged company and the transferee company by ordinary 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 "Business Standard" (English) and "Veer Arjun" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

25. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the applicant companies so that the aforesaid meetings of the unsecured creditors of the transferor company no. 2, the demerged company and the transferee company are conducted in a just, free and fair manner.

26. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.50,000/- each in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

27. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

July 27, 2016