

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement reserved on : 21.03.2016
Judgement delivered on: 30.03.2016

+ **CO.PET. 420/2015**

IN THE MATTER OF

ANUSHA ENGINEERING CONSULTANTS & CONSTRUCTION
PRIVATE LIMITED

..... Petitioner Company 1/Demerged Company

AND

RAHINI CONSTRUCTIONS PRIVATE LIMITED

... Petitioner Company 2/ Resulting Company

Through: Mr. Chander Shekhar and
Mr. M.D.Sharma, Advocates.
Ms. Aparna Mudiam, Asstt.
ROC for the RD.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by Anusha Engineering Consultants & Construction Private Limited (i.e. petitioner no.1/demerged company) with Rahini Constructions Private Limited (i.e. petitioner no.2/resulting company) under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the Scheme of arrangement/demerger (hereafter referred to as the scheme).

2. The petitioner no.1/demerged company and petitioner no.2/resulting company, as referred to above, will hereafter be collectively referred to as the petitioners.

3. The registered office of the petitioners is located within the territorial jurisdiction of this court.

4. The details with respect to the petitioners' authorised, issued, subscribed and paid up capital are set out in paragraph 6 and 18 in the petition.

5. The copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2014, have been filed by the petitioners.

6. Copies of Board of Directors' resolution of even date i.e. 18.03.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

7. The petitioners have averred that the demerger will result in better, efficient and economical : management, control and running of the businesses and, further development as also growth of the businesses of the companies concerned.

8. In terms of clause 2.2 of the scheme, the share exchange ratio as provided therein is as follows:

"37 equity shares of Rs.1 0/- each fully paid up of the resulting company for every 01 equity share of Rs.1 0/- each fully paid up held in the demerged company".

9. The petitioners have averred that there are no proceedings pending against them, under Sections 235 to 251 of the Act.

10. To recapitulate, the petitioners had in the earlier round filed an

application (i.e. the first motion), being: CA (M) No.77/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meeting of shareholders and unsecured creditors. This court vide order dated 25.05.2015, having regard to the fact, that all shareholders of the petitioners and unsecured creditors of petitioner no.1/demerged company had given their consent to the scheme, dispensed with the requirement of convening meetings as prayed.

10.1 The court, also noted, that since, petitioner no.2/ resulting company did not have any secured or unsecured creditors, therefore, there was no requirement to convene a meeting with respect to the said class of persons/entities.

11. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 08.07.2015. Notice was accepted on behalf of the Regional Director (RD). Furthermore, citations were ordered to be published.

12. Pursuant thereto, reply/ representation has been filed by the RD. Citations were published, on 15.11.2015, in Delhi Editions of the following newspapers: Indian Express (English) and Jansatta (Hindi).

12.1 An affidavit dated 05.12.2015 establishing publication of citation alongwith the newspaper extracts, has been filed by the petitioners.

12.2 Further, in the aforementioned affidavit it is stated that subsequent to the publication of the notice of the petition they had not received any objection or complaint qua the scheme.

13. Pursuant thereto, the RD filed its affidavit under Section 394 A of the Act. In the affidavit, the RD relied upon the general circular bearing no.53/2011 dated 26.07.2011 and, circular bearing no. 1/2014, dated

15.04.2014. Based on the aforementioned circulars, as per the affidavit of the RD, communication was sent to the Registrar of Companies, Delhi and Haryana (in short the ROC), and the Income Tax Department seeking their response to the scheme.

13.1 The RD, though, received information from I.T. Department vide communication dated 12.10.2015 whereby it is conveyed that there is no outstanding demand pending, as on 12.10.2015, qua the demerged company.

13.2 The affidavit of the RD adverts to the fact that it has received information from the ROC vide report dated 30.10.2015 which, inter alia, is indicative of the fact that the said authority had not received any complaint or objection from the shareholders or any of the other stakeholders who would be concerned with the petitioners.

14. Therefore, in so far as the RD is concerned, there are no objections taken by him qua the scheme.

15. The petitioners have also taken a stand in consonance with clause 3 of the scheme, that upon the scheme being effective, the respective book values of the assets and liabilities of the demerged undertaking of the petitioner no.1/demerged company shall be adjusted in its books of accounts in accordance with the applicable accounting standard.

16. Since, this is a case of demerger, as far as the Official Liquidator (in short the OL) is concerned, it would have no role to play in this case. Mr.Behl, the learned counsel for the OL affirms this position.

17. To be noted, the scheme in clause 4.2 provides that all employees of the demerged business of the petitioner no.1/demerged company in service on the effective date shall become the employees of resulting company on such date without any break and interruption in service and on the terms and

conditions not in any way less favorable to them than those subsisting in petitioner no.1/demerged company as on the effective date.

18. Accordingly, in view of the approval accorded to the scheme by the shareholders and creditors of the petitioners and, given the fact, that Ms.Aparna Mudiam, who appears for the RD confirmed that the RD has no objection to the scheme being sanctioned, in my opinion, there appears to be no impediment in the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioners will, however, comply with all statutory requirements, as mandated in law. A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

18.1 In terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 2.1.1 of the scheme the entire undertaking including assets, investments, properties, rights, privileges, benefits and interests of the demerged undertaking of the petitioner no.1/ demerged company will stand transferred to and vest in petitioner no.2/resulting company without any further act or deed. Similarly, in terms of the scheme, all liabilities, duties and obligations of the demerged undertaking of the demerged company shall stand transferred to petitioner no.2/resulting company without any further act or deed.

19. It is made clear, that this order will not be construed as an order granting exemption from: payment of stamp duty or, taxes or, other penalties/ charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

20. Resultantly, the petition is allowed and disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

MARCH 30, 2016

