

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 159 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.933 OF 2014
Kirloskar Brothers Investments Limited.
.....Petitioner/the Demerged Company

AND
COMPANY SCHEME PETITION NO.160 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.932 OF 2014
Pneumatic Holdings Limited.
.....Petitioner/the Resulting Company.

AND
COMPANY SCHEME PETITION NO.161 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.934 OF 2014
Kirloskar Oil Engines Limited.
.....Petitioner/the Transferee Company.

In the matter of the Companies Act I of 1956.

AND

In the matter of Sections 391 to 394 read with Section 100 to 105 of the Companies Act, 1956.

AND

In the matter of the Composite Scheme of Arrangement and Amalgamation between Kirloskar Brothers Investments Limited AND Pneumatic Holdings Limited AND Kirloskar Oil Engines Limited AND their respective shareholders and creditors.

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co, Advocate for the Petitioner in all the Petition.

Mr.C.J.Joy i/b Shri. A. A. Ansari for Regional Director in all the Petitions.

Mr. Chetan Agarwal Advocate for HDFC Bank in CSP No. 161 of 2015.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P No. 159 of 2015.

CORAM: S. J. KATHAWALLA, J

DATE : 30TH APRIL, 2015

PC:

1. Heard learned counsel for parties. None appears before the Court to oppose the Scheme and nor any party has controverted any averments made in the Petition.
2. The learned Advocate for the Petitioners states that HDFC Bank is one of the Unsecured Creditor of Kirloskar Oil Engines Limited and clarifies that rights of HDFC Bank are not affected by the proposed Scheme of Arrangement and Amalgamation.
3. The sanction of the Court is sought under Sections 391 to 394 and read with Section 100 to 105 of the Companies Act, 1956, to a Composite Scheme of Arrangement and Amalgamation between Kirloskar Brothers Investments Limited and Pneumatic Holdings Limited and Kirloskar Oil Engines Limited and their respective shareholders and creditors.
4. The learned counsel for the Petitioner Companies states that the Demerged Company/ Transferor Company is presently carrying on business of investment in shares & securities and also make strategic investments in Kirloskar Group Companies. The Resulting Company is formed recently to take over Demerged Undertaking of the Demerged Company. It is yet to commence its business operations. The Transferee Company is presently carrying on business of Manufacturing and selling of Diesel Engines, agricultural pumpsets and generating sets and parts thereof.
5. The learned counsel for the Petitioner Companies further states that the Composite Scheme of Arrangement and Amalgamation between Kirloskar Brothers Investments Limited and Pneumatic Holdings Limited and Kirloskar Oil Engines Limited and their respective shareholders and

creditors will result into following benefits namely focused management attention, resources and skill set allocation, no change in economic interest for any of the shareholder pre and post the Scheme and greater flexibility to the shareholders of KBIL.

6. The Petitioner Companies have approved the said Composite Scheme of Arrangement and Amalgamation by passing the Board Resolution which is annexed to the respective Company Scheme Petition.
7. The learned Counsel for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.
8. The Learned Counsel appearing on behalf of the Petitioners has stated that they have complied with all the requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.
9. The Official Liquidator has filed his report on 24th April, 2015 in Company Scheme Petition No. 159 of 2015, *inter alia*, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
10. The Regional Director has filed his Affidavit on 22nd April, 2015, *inter alia*, stating therein that save and except as stated in paragraphs 6 (a) to (d) of the said Affidavit, it appears that the Scheme is not prejudicial to the

interest of shareholders and public. In paragraphs 6 (a) to (d) of the said Affidavit, the Regional Director has stated that :

“6. That the Deponent further submits that:-

- a) *The appointed date is defined in clause 3.5 of the scheme which states that "Appointed date" shall be the effective date. This is a scheme of demerger by which demerged undertaking is proposed to be transferred to the Resulting Company. It is therefore necessary to ascertain the nature of assets/liabilities and quantum of the amount thereto to be transferred as on specific date is required. Therefore, the company was directed to clarify in this regard. The advocate for the petitioner companies vide its letter dated 08/04/2015 has clarified that there is no objection for considering 01/04/2015 as Appointed Date. It is therefore suggested that petitioner companies shall make suitable correction in the scheme annexed to the company scheme petitions.*
- b) *As per clause 13.6 of the scheme the excess arising out of the scheme will be transferred to general reserve account and deficit will be debited to good will account of resulting company. In this regard, it is submitted that the excess or deficit if any remaining after recording the entries provided in clause 13.1 to 13.5 of the scheme including the reserve so transferred and adjusted by the Demerged Company shall be credited by the PHL to its capital reserve account or debited to goodwill account as the case maybe.*
- c) *Clause 10 of the scheme provides for transferring part of the authorized capital amounting to Rs 8 crores from the authorized capital of demerged company by reducing 80,00,000 shares of Rs 10/- each and thereby the authorized capital of the demerged company on such reorganization would be Rs 6 crores.*

As per clause 10.2 of the scheme the authorized capital of the resulting company shall be increased to Rs 10 crores from the existing capital of Rs 2 crores. Such transfer of part of the authorized capital from demerged company to resulting company is against the provisions of the Companies Act, and shall not be allowed to. In this regard it is submitted that if at all on amalgamation of residual portion of demerged company/transferor company merging with Transferee Company, then the existing authorized capital of the demerged company can be merged with Transferee Company. In view of the above, the entire clause 10 of the scheme be deleted from the scheme and further submitted that the resulting company has to increase its authorized capital suitably to enable the

resulting company to issue the new shares to the shareholders of demerge company as contemplated in clause 11.1 of the scheme.

- d) *In view of the foregoing clause 28.1 of the scheme if so desired by the petitioner company can be modified by merging the authorized capital of demerged/transferor company with transferee company thereby the existing authorized capital of transferee Company can be increased to Rs 40 crores to Rs 54 crores and accordingly the petitioner company make suitable corrections in clause no 28 of the scheme.*

11. As far as observations made in paragraph 6(a) of the affidavit of Regional Director is concerned, the Petitioner Companies through its counsel states that in view of the objection raised by the Regional Director, Western Region, Mumbai Clause 3.5 of the Scheme is required to be amended. Hence, learned Counsel for the Petitioner Companies seeks leave to amend clause 3.5 of the scheme by substituting the words "the Effective Date" with "1st April, 2015".

12. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its Learned Counsel undertakes that the excess or deficit, if any remaining after recording the entries provided in clause 13.1 to 13.5 of the scheme including the reserve so transferred and adjusted by the Demerged Company shall be credited by the PHL to its Capital Reserve Account or debited to Goodwill account as the case maybe.

13. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Companies seeks leave to delete clause 10 of the Scheme. The Petitioner Companies through its Counsel further undertakes that the Resulting Company will increase its

Authorised Share Capital suitably to enable it to issue new shares to the shareholders of the Demerged Company.

14. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(d) of his Affidavit is concerned, the Petitioner Companies through its Counsel submits that in view of the objection raised by the Regional Director, Western Region, Mumbai Clause 28.1, 28.2 and 28.3 of the Scheme is required to be suitably amended. The Counsel for the Petitioner Companies seeks leave to amend clause 28.1, 28.2 and 28.3 of the Scheme in the following manner :-

- I. *“Clause 28.1 be deleted and substituted by “Upon the Scheme becoming effective the Authorised Share Capital of the Transferee Company shall automatically stand increased without any further act on the part of the Transferee Company including payment of stamp duty and registration fees payable to the Registrar of Companies, by clubbing the Authorised Share Capital of the Transferor Company which is Rs.14,00,00,000 (Rupees Fourteen Crores only) divided into 1,40,00,000 Equity shares of Rs. 10/- each.”*
- II. *In Clauses 28.2 the figure “ Rs 46,00,00,000 (Rupees Forty Six Crores only) be deleted and substituted with “Rs 54,00,00,000 (Rupees Fifty Four Crores only) and figure “23,00,00,000” (Twenty Three Crores) be deleted and substituted with “27,00,00,000” (Twenty Seven Crores).*
- III. *In Clauses 28.3 the figure “ Rs 46,00,00,000 (Rupees Forty Six Crores only) and figure “23,00,00,000” (Twenty Three Crores) as*

appearing in *Clause V of the Memorandum of Association and Article 6 of the Articles of Association* be deleted and substituted with *figure* “Rs 54,00,00,000 (Rupees Fifty Four Crores only) and *figure* “27,00,00,000” (Twenty Seven Crores).

15. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Companies are accepted.
16. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they agree with the amendments sought by the Petitioner Companies as mentioned in paragraphs 11, 13 and 14 hereinabove, in view thereof leave to amend the Scheme including all consequential amendments are granted. Amendments to be carried out within four weeks from the date of the order.
17. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.159 of 2015 filed by the Demerged Company/the Transferor Company is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No.160 of 2015 filed by

the Resulting Company is made absolute in terms of prayer clauses (a) to (e) and Company Scheme Petition No.161 of 2015 filed by the Transferee Company is made absolute in term of prayer clauses (a) and (b).

19. The Petitioner Companies are directed to lodge a copy of this order and the amended Scheme duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the order.
20. Petitioner is directed to file a copy of this order along with a copy of the amended Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.
21. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition Nos. 159 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
22. Filing and issuance of the drawn up order is dispensed with.

23. All concerned regulatory authorities to act on a copy of this order along with the amended Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. KATHAWALLA , J.)