IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.375 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.351 OF 2015

Western India Forgings Private Limited.
.....Petitioner/the Demerged Company.

AND

COMPANY SCHEME PETITION NO.376 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.352 OF 2015

Western Heat and Forge Private Limited.
.....Petitioner/the Resulting 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 103 of the Companies Act, 1956.

AND

In the matter of the Scheme of Arrangement between:

Western India Forgings Private Limited.

AND

Western Heat and Forge Private Limited.

AND

their Respective Shareholders.

Called for Hearing

Mr. Chandrakant Mhadeshwar, Advocate for the Petitioner in both the Petition.

Mr.N.D.Sharma i/b Shri. A. A.Ansari for Regional Director in both the Petitions.

CORAM: S. C. GUPTE, J

DATE : 21TH AUGUST, 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 sanction of the Court is sought under Sections 391 to 394 read with Section 100 to 103 of the Companies Act, 1956, to a Scheme of Arrangement between Western India Forgings Private Limited and Western Heat and Forge Private Limited and their respective shareholders.

3. The learned Advocate for the Petitioner Companies states that the Demerged Company mainly carries on the business of manufacturing of open and close die forgings and the Resulting Company is presently not carrying on any business operations and has invested funds in fixed deposits.

4. The learned Advocate for the Petitioner Companies further states that the Resulting Company will take over the “Bhosari Plant” on going concern basis from the Demerged Company. Demerger of “Bhosari Plant” would facilitate to pursue inorganic and organic growth opportunities by the respective management. Focused management attention to the respective business.Efficient

management control and system. Enhance values of all stake holders in the long run.

5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioner in Company Scheme Petition No 376 of 2015, states that the Scheme includes reduction and cancellation of Share Capital of the Resulting Company and the same shall be effected as integral part of the Scheme as the same does not involve either diminution of liability in respect of unpaid share capital and the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 24th April, 2015 passed in CSD No 352 of 2015.

7. The learned Advocate 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 Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

8. The Learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all 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 Learned Advocate appearing on behalf of the Petitioners submits that since the detailed description of immovable properties to be transferred as part of Demerged Undertaking to the Resulting Company are not getting properly captured in the Scheme and there will not be any change in exchange ratio of Equity Shares as value of above immovable properties have been already captured in valuation and shareholding of each of the shareholder will continue to remain in the same proportion as there will be mirror image of shareholding in the Resulting Company.The Board of Directors of the Petitioner Companies by passing a Board Resolution on 14th August, 2015 has decided to amend the Scheme by renumbering present Clause 2.8.5 as Clause 2.8.6 and insert new Clause 2.8.5 of the Scheme so as to accurately capture intention of all the parties to the transaction and hence the amendment are required to be made in Scheme of Arrangement annexed to Company Scheme Petition filed by the respective Petitioner Companies as under:

Present Clause 2.8.5 of the Scheme of Arrangement to be renumbered as Clause 2.8.6

Insert new Clause 2.8.5 stating that

For the purpose of this Scheme, it is clarified that immovable assets pertaining to the Demerged Undertaking shall include Plot No B 73/1/1 Chakan Industrial Area, Phase II Village Bhamboli Pune 410 501.

10. Learned Advocate for the Petitioners seeks leave of this Court to amend the Scheme by renumbering present Clause 2.8.5 as Clause 2.8.6 and insert new Clause 2.8.5 in the Scheme annexed to both the Company Scheme Petition.

11. The Regional Director has filed his affidavit on 23rd July, 2015 inter alia, stating therein that save and except as stated in paragraphs 6 (a) to (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (c) of the said Affidavit, the Regional Director has stated that :

"6. That the Deponent further submits that:-

a) Clause 8.1 of the scheme provides for reorganization of authorized capital of Demerged Company. By this clause out of 20 crores of the authorized capital of Demerged Company Rs 10 crores divided into 1 crores equity share of Rs 10/- each will be transferred to the Resulting Company, consequently, as per clause 8.2 of the scheme the existing authorized capital of Resulting Company shall be increased from Rs 10 lacs to Rs 10,50,000/- represented by 1,05,00,000 equity share of Rs 10/-each. Such cancellation and reduction of authorized capital of demerged company and transferring that part of cancelled capital of demerged company to resulting company is unknown to law and is not permissible. In this regard it is submitted that the Provisions of Section 94(l)(e) of the Companies Act 1956 corresponding to Section 61(1) (e) of the Companies Act, 2013 enables the petitioner company to cancel its authorized capital which have not been taken or agreed to be taken by any person. Such cancellation or reduction of Authorized Capital if effected will not be available for the petitioner *company for issue of its own new equity shares. Under this circumstances, when the petitioner company itself has no power to issue fresh shares against the cancelled Authorized Capital, corollary it has no power to transfer such part of cancelled Authorized Capital to any other company. Such power is not enshrined in the provisions of section 94(1) (e) of the Companies Act, 1956/ 61(1) (e) of the Companies Act, 2013. Consequently clause 8.1 and 8.2 are not enforceable.*

b) *Clause 9.4 of the scheme, the present authorized capital of the Resulting Company is not sufficient to issue new shares. Hence the Resulting Company shall ensure increase its authorized share capital suitably and comply with the provisions of section 94/97 of the Companies Act, 1956 corresponding to section 61/64 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.*

c) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation The decision of the Income Tax Authority is binding on the petitioner company.

12. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a) of his affidavit is concerned, the Petitioner Companies seeks leave of this court to delete clause 8 of the Scheme.

13. So far as the objection of the Regional Director,Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies through its learned advocate undertakes that the Resulting Company shall comply with provisions of Sections 94/97 of the Companies Act, 1956 corresponding to Sections 61/64 of the

Companies Act,2013 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary fees and Stamp Duty as applicable on the said forms for increase of its Authorised share capital. The said undertaking is accepted.

14. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(c) of his Affidavit is concerned, the Petitioner Companies submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

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 and submissions made by the Petitioner Company through their advocate. In view thereof, the said undertakings 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 9 and 12 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.375 of 2015 filed by the Demerged Company are made absolute in terms of prayer clauses (a) & (b) and Company Scheme Petition No.376 of 2015 filed by the Transferee Company are made absolute in terms of prayer clauses (a) to (e)

19. The Petitioner Companies to lodge a copy of this order and the 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 this order.

20. Petitioner is directed to file/lodge a copy of this order along with a copy of the Scheme of Arrangement 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 both the Company Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.

22. The Petitioner in Company Scheme Petition No.376 of 2015 to publish a notice of registration of order and form of minutes of reduction of capital annexed as Exhibit 'I' to Company Scheme Petition No.376 of 2015 by Registrar of Companies once each in the two local newspaper, viz, "The Economic Times", in English language and translation thereof in "Maharashtra Times", in Marathi language, both having circulation in Pune and also in the Maharashtra Government Gazette within 14 days of registration.

23. Filing and issuance of the drawn up order is dispensed with.

24. All concerned regulatory authorities to act on a copy of this order along with the amended Scheme and Form of Minutes annexed as Exhibit "I" to the Company Scheme Petition No.376.of 2015 duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. GUPTE, J.)