IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 569 OF 2015

WITH

COMPANY SUMMONS FOR DIRECTION NO. 896 OF 2014

Uttam Value Steels Limited…Petitioner/the Demerged Company

COMPANY SCHEME PETITION NO. 570 OF 2015

WITH

COMPANY SUMMONS FOR DIRECTION NO. 897 OF 2014

Lloyds Steel Industries Limited …Petitioner/the Resulting Company

In the matter of the Companies Act of 1956.

AND

In the matter of Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956 and Section 52 of the Companies Act, 2013.

AND

In the matter of the Scheme of Arrangement between:

Uttam Value Steels Limited

AND

Lloyds Steel Industries Limited

AND

their Respective Shareholders.

Called for Hearing

Mr. Ashish Parwani, i/b Rajani Associates, Advocate for the

Petitioner Company

G. Hariharan, i/b A.A Ansari for Regional Director

CORAM: S. C. GUPTE, J
DATE: 30th October, 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 Company Scheme Petition.

2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100 to 104 of Companies Act, 1956 and Section 52 of the Companies Act, 2013 to a Scheme of Arrangement between Uttam Value Steels Limited and Lloyds Steels Industries Limited and their respective shareholders.

3. The learned Advocate for the Petitioner Companies states that the Demerged Company mainly carries on the business of manufacture, import, export, dealing of electric resistance welded steel tubes, iron and steel metal (ferrous and non-ferrous), alloys, scrap, pipes wire drawing of any metal along with the business of fabrication of all types of mechanical, structural, electrical, metallurgical, chemical plants equipments including dryers, boilers, power plant equipments, manufacturing of capital equipments, and execution of turnkey projects right from conceptualising to commissioning, supply of spares and services to all the major oil, gas, port, trust and

various government bodies; and the Resulting Company is engaged in business of providing consultancy services in steel and engineering products.

4. The learned Advocate for Petitioner Companies further states that the Resulting Company will take over the Engineering Division (the "*Demerged Undertaking*") on a going concern basis from the Demerged Company. The demerger of the Demerged Undertaking would facilitate focused management attention, provide leadership vision, facilitate efficiency in operations due to individual specialization, provide greater leveraging due to financial independence and strategic/ financial investment, increase financial strength and flexibility and enhance the ability of the Petitioner Companies to undertake their respective projects, thereby contributing to enhancement of future business potential.

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 Company in Company Scheme Petition No 569 and 570 of 2015 states that the Scheme includes reduction and cancellation of share capital of the Demerged Company as contemplated under Clause 9 of the Scheme of Arrangement alongwith the adjustment in books of accounts of the Demerged Company as contemplated under Clause 12.1.3 read with 12.1.4 of the

Scheme of Arrangement; and reduction and cancellation of share capital of the Resulting Company as contemplated under Clause 10 of the Scheme of Arrangement 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 December 12, 2014 passed in CSD No 896 of 2014 and dated December 12, 2014 passed in CSD No 897 of 2014, respectively.

7. The Learned Advocate for the Petitioner Companies states that they 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 Petitioner Companies 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, the Petitioner Companies undertakes 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 Petitioner Companies submits that due to some error in formatting of the

Scheme of Arrangement, an error is appearing in Clause 9.2 and Clause 12.1.4 instead of the reference Clause number.

10. The Petitioner Companies seek leave of this Hon’ble Court to rectify the error by amending existing Clause 9.2 and Clause 12.1.4 in the Scheme of Arrangement as under:-

"*In line 2 of Clause 9.2 the words "Error! Reference source not found." shall be replaced with "9.1"*
In line 2 & line 3 of Clause 12.1.4 the words "Error! Reference source not found." shall be replaced with "12.1.3""

11. The Regional Director has filed his affidavit dated 21st October, 2015 stating therein that save and except the observation as stated in paragraphs 6(a) to 6(g) of the said Affidavit, the proposed Scheme of Arrangement is not prejudicial to the interest of the shareholders and public. In paragraphs 6 (a) to (g) of the said Regional Director has stated that

"6 That the Deponent further submits that,

(a) Clause no. 11.1.2 of the scheme states that the Excess, if any, shall be credited by LSIL to the General Reserve Account and it shall be deemed to constitute revenue reserve. In this regard, it is submitted that surplus/reserve is arising on transfer of capital assets from Demerged Company to Resulting Company and hence that part of the reserve cannot be construed as revenue reserve and cannot form part of the net worth of the Resulting Company.

(b) Clause no. 12.1.3 of the Scheme states that the accumulated losses of UVSL as on March 31, 2014 will be set off against the Share Premium Account, Share Capital Account as set out particularly in Clause 9 of this Scheme and other reserves which are lying in the Reserves & Surplus Account. It is observed that the scheme is silent with respect to quantum of amount to be adjusted from the Securities Premium Account. In this regard, on enquiry made by the Deponent, the Demerged Company vide its letter dated 12/10/2015 has clarified that Rs. 582.57 crores will be adjusted against the Securities Premium Account and Rs. 231.51 crores will be adjusted against the Capital Reserve Account of Demerged Company. Copy of the said letter is annexed hereto and marked as 'Exhibit-E'.

(c) The Shares of the Demerged Company are held by Foreign Body Corporate/ Non Resident Indian. Hence, while giving effect to the Scheme, by issuing new shares by the Resulting Company to the shareholders of Demerged Company, the Resulting Company has to comply with the provisions of FEMA/RBI regulations as applicable in this regard.

(d) Clause No. 15 of the Scheme states that the authorized share capital of UVSL to the extent of Rs. 100,00,00,000/- shall stand combined/consolidated with the authorized share capital of LSIL and on the scheme coming into effect, the Authorised share capital of LSIL, shall stand increased to Rs. 100,05,00,000/- divided into 100,05,00,000 equity shares of Re. 1/- each. Further, Clause no. 16 of the Scheme provides for revising Authorised Share Capital of UVSL after Clause no. 15 is given effect to. In this regard, it is submitted that there is no such provision for cancelling such Authorised Share Capital of Demerged Company and

transferring the same to the Resulting Company and hence, the Petitioner companies may be directed to delete the clause no. 15 and 16 from the Schedule.

(e) *Clause no. 7 of the Scheme provides for issue of shares upon coming into effect of this Scheme. The authorized share capital of Resulting Company may not be sufficient to issue further shares as provided in the Scheme. The Resulting Company shall, if and to the extent required, increase its Authorised Share Capital to facilitate issue of New Equity Shares under this Scheme as provided in Clause 7 of the Scheme. In this connection the Resulting Company may be directed to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, 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.*

(f) *It is respectfully submitted that tax implications, if any arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Resulting Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

(g) *Clause 22 of the Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Demerged Company and Resulting Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner*

Companies may be directed to undertake to this effect.

12. So far as the observation made by the Regional Director in paragraph No.6 (a) of his Affidavit is concerned in relation to Clause 11.1.2 of the Scheme of Arrangement which deals with the surplus arising on the transfer of capital assets from Demerged Company to Resulting Company, the Petitioner Companies, through their advocate, undertakes that the surplus/reserve arising on the transfer of capital assets from Demerged Company to Resulting Company shall not be construed as revenue/ general reserve but shall be deemed to constitute the capital reserve and would not form part of the net worth of the Resulting Company. The undertaking is accepted.

13. So far as the observation made by the Regional Director in paragraph No.6 (b) of his Affidavit is concerned in relation to Clause 12.1.3 of the Scheme of Arrangement which deals with the quantum of amount to be adjusted from the Securities Premium Account with respect to the accumulated losses of the Petitioner Company, the Petitioner Companies, through their advocate, submit that the accumulated losses of the Demerged Company as on March 31, 2014 amounting to Rs. 1797.85 Crore will be set-off against the (i) Share Premium Account amounting to Rs.582.57 Crores (ii) Reduction in Share Capital Account amounting to Rs.660.81 Crores; and (iii) Capital Reserve amounting to Rs.231.51 Crores of the

Petitioner Company as provided in the letter dated October 12, 2015 by the Petitioner Company to the office of the Regional Director and which is exhibited as Exhibit E of the Affidavit filed by the Regional Director.

Accordingly, the Petitioner Companies seeks leave of this Hon'ble Court to amend existing Clause 12.1.3 with the following:

"*12.1.3* *The accumulated losses of UVSL as on March 31, 2014 will be set-off against its (i) Share Premium Account amounting to Rs.582.57 Crores (as on March 31, 2014 amounting to Rs.512.67 Crores and additional reserve amounting to Rs.69.90 Crores created on issue of additional equity shares on April 9, 2014); (ii) Reduction in the Share Capital Account amounting to Rs.660.81 Crores as set out particularly in Clause 9 of this Scheme; and (iii) Other Capital Reserves amounting to Rs.231.51 Crores of the Petitioner Company which are lying in the Reserve & Surplus Account.*"

14. As far as the observation made by the Regional Director in paragraph No.6 (c) of his Affidavit is concerned in relation to issue of new shares by the Resulting Company to Foreign Body Corporate/ Non Resident Indian shareholders of the

Demerged Company, the advocate for the Petitioner Companies undertakes that any such issue of shares by the Resulting Company to any foreign body corporate / Non Resident Indian shareholder of the Demerged Company shall be according to the applicable provisions of Foreign Exchange Management Act, 1999/ RBI and rules and regulations made thereunder. The undertaking is accepted.

15. As far as the observation made by the Regional Director in paragraph No.6 (d) of this Affidavit is concerned in relation to Clause No. 15 & Clause No. 16 of the Scheme of Arrangement which deals with the merging of the authorized share capital of the Petitioner Company with the authorized share capital of the Resulting Company and the consequent revision of the authorized share capital of the petitioner companies under the Scheme of Arrangement, the Petitioner Companies, through their advocate, submit that it has decided not to pursue merging its authorized share capital with the authorized share capital of the Resulting Company as contemplated under the Scheme of Arrangement and consequently, there would not be any reduction of authorized share capital of the Petitioner Company and any increase in authorized share capital of the Resulting Company pursuant to the Scheme of Arrangement. The Petitioner Company seeks leave of the Hon'ble Court of Bombay to amend the Scheme of Arrangement by deleting entire Clause 15 and Clause 16 of the Scheme of Arrangement and consequently re-numbering of subsequent paragraphs of

the Scheme of Arrangement due to aforesaid deletion of two clauses.

16. As far as the observation made by the Regional Director in paragraph No.6 (e) of this Affidavit is concerned in relation to Clause no. 7 of the Scheme dealing with issue of New Equity Shares by the Resulting Company to the shareholders of the Petitioner Company, the Petitioner Companies seeks leave of the Hon'ble Court of Bombay to amend existing Clause 7.10 of the Scheme of Arrangement by replacing with the following paragraph:-

7.10 LSIL, shall, to the extent required, increase its authorised share capital in order to issue the New Shares under this Scheme. LSIL shall comply with provisions of Sections 61/64 of the Companies Act, 2013 corresponding to Sections 94/97 of the Companies Act, 1956 with respect to filing of necessary forms with the Registrar of Companies after payment of necessary fees and stamp duty as applicable on the said forms for any increase of its authorised share capital."

17. As far as the observation made by the Regional Director in paragraph No.6 (f) of this Affidavit is concerned in relation to any tax issue arising out of the Scheme of Arrangement, the Petitioner Companies, through their advocate, submit that this Scheme shall be subject to final decision of Income Tax Authority and the approval of the same by this Hon'ble High

Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Company/Resulting Company after giving effect to the arrangement. However, the Resulting Company shall have liberty to exercise all its legal rights under applicable laws including, under Income Tax Act, 1961 and/or under equity in the event the Petitioner Company/Resulting Company is not satisfied with the order/adjudication done by the Income Tax Authority (ies) in the aforesaid matter.

18. As far as the observation made by the Regional Director in paragraph No.6 (g) of this Affidavit is concerned in relation to amendments and modification to the Scheme, the Petitioner Companies undertake that any modifications or amendments to the Scheme by the Board of Directors of the Demerger Company or the Resulting Company shall be subject to the prior approval of the Hon’ble High Court of Bombay.

19. The Learned Advocate of the Petitioner Companies states that, an Unsecured Creditor of the Petitioner under Company Scheme Petition No. 569 of 2015 being, Bureau Vertias (India) Private Limited has filed an Affidavit in the Hon’ble Court on September 7, 2015 objecting the abovementioned Company Scheme Petition claiming an overdue amount of Rs.5,89,890/- (*Rupees five lakh eighty nine thousand eight hundred and ninety*) outstanding against the Petitioner. The concerned Petitioner has filed an Affidavit in Reply dated October 21, 2015 of Mr. Ram Gaud, Senior General Manager of the

Petitioner wherein the Petitioner has stated that Scheme of Arrangement between the Petitioner Company and the Resulting Company is not adversely affecting the right of any creditors including, the present Unsecured Creditor. The Petitioner is in a sound financial position having net worth of Rs. 284.23 Crores post demerger to settle the legitimate and undisputed dues of its unsecured creditors as and when due. The Learned Advocate of the Petitioner Companies further states the Petitioner Company undertakes to pay the legitimate and undisputed amount of the Unsecured Creditor subject to it proving its debt. The said undertaking is accepted.

20. 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.

21. 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 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.

22. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

23. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.569 of 2015 filed by the Demerged Company are made absolute in terms of prayer clauses (a) to (e) and the Company Scheme Petition No.570 of 2015 filed by the Resulting Company are made absolute in terms of prayer clauses (a) to (h).

24. The Petitioner Companies to lodge a copy of this order and the Scheme of Arrangement 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.

25. The Petitioner Companies are 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.

26. The Petitioners in both Company Scheme 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.

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

28. All concerned regulatory authorities to act on a copy of this Order along with the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.C. GUPTE, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of the original signed Order.

Uploaded by: S. Gawde
Stenographer