IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 671 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 632 OF 2015

KSH INTERNATIONAL PRIVATE LIMITED

………… Petitioner / the Demerged Company

AND

COMPANY SCHEME PETITION NO 672 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 633 OF 2015

WATERLOO MOTORS PRIVATE LIMITED

………… Petitioner / the Resulting Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 read with Section 52 of Companies Act, 2013 and Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Arrangement between KSH International Private Limited AND Waterloo Motors Private Limited AND Their Respective Shareholders

<u>Called for Hearing</u>

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioners in all the Petitions.

Mr. R.C.Master, Panel Counsel for Regional Director in both the Company Scheme Petitions.

CORAM: K R Shriram, J.

DATE: 4th December, 2015

1. Heard the learned counsel for the Petitioner Companies. No objector has come 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 of the Companies Act, 1956 read with Section 52 of Companies Act, 2013 and Sections 100 to 103 of Companies Act, 1956, to the Scheme of Arrangement between KSH International Private Limited and Waterloo Motors Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioners states that the Petitioners in Company Scheme Petition No. 671 of 2015 is engaged in the business of manufacturing and supply of copper and conductors as well as other business carried out through its investments in subsidiaries / associates / joint ventures. The Petitioner in Scheme Petition No. 672 of 2015 is presently engaged in the business of servicing fuel injection pumps that go into various applications – trucks, tractors, genets etc.

4. The rationale for the demerger is that both the companies under this Scheme of Arrangement are part of Promoter Group ('the Group'). The Group believes that the restructuring would benefit the companies and its stakeholders on account of simplification of group structure, segregation of core and non-core business of the Demerged Company, reduction of overall administrative overheads, greater administrative efficiency, and operational rationalization, organizational efficiency and optimal utilization of various resources.

5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. Learned Advocate for the Petitioner in Company Scheme Petition No. 671 of 2015, states that the Scheme includes reduction of share capital of the Demerged Company which does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and the procedure prescribed under Section 101 of the Companies Act, 1956 was also dispensed with as per order dated 31st July, 2015 passed in CSD No. 632 of 2015. The Special Resolution for the said Reduction of Capital is annexed as Exhibit 'E' to the Petition filed by the Petitioner Company.

7. Learned Advocate for the Petitioner in Company Scheme Petition No. 672 of 2015, states that the Scheme includes reduction of share capital of the Resulting Company which does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and the procedure prescribed under Section 101 of the Companies Act, 1956 was also dispensed with as per order dated 31st July, 2015 passed in CSD No. 633 of 2015. The Special Resolution for the said Reduction of Capital is annexed as Exhibit 'I' to the Petition filed by the Petitioner Company.

8. The learned Advocate for the Petitioners states that Petitioner Companies have complied with all directions passed in company summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.

9. Counsel 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 there under. The said undertakings given by the Petitioner Companies are accepted.

10. The Regional Director has filed an Affidavit dated 18th November, 2015 stating therein that save and except as stated in paragraph 6 (a) to 6(d) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) of the said affidavit it is stated that:

a) With reference to clause 8.2 read with 8.4 of this Scheme, it is submitted that the Resulting Company shall credit to the share capital account the face value of shares issued. The Securities Premium referred to in those clauses be deleted. Accordingly, these clauses be corrected in the following manner and the Petitioner Company shall carry out necessary corrections / amendments in the Scheme

8.2 "The Resulting Company shall credit to the share capital account the face value of equity shares issued and allotted by it pursuant to clause 5.1 of the Scheme"

8.4 "The difference between the net assets (assets minus liabilities) value of the Demerged Undertaking transferred to the Resulting Company as per clause 8.1 of this Scheme, after considering the adjustments mentioned in clause 8.3 of this Scheme and as reduced by the face value on the new equity shares issued by the Resulting Company as per clause 5.1 of the Scheme, would be credited to Capital Reserve. In case there is a deficit, the same would be recorded as goodwill."

The Petitioner Company undertakes to comply with the above observation, and the Scheme shall stand amended accordingly. The Learned Counsel for the Petitioner Companies prays for leave to amend. The same is granted amendment to be carried out within two weeks from the date of the Order.

In paragraph 6(b) of the said affidavit it is stated that:

> *b) With reference to clause 8.6 of the scheme, it is submitted that Section 2(19AA) of the Income Tax Act provides that the assets and liabilities of Demerged Company shall be transferred on book value basis. Hence, the word "fair value" appearing in clause 8.6 of the scheme be deleted and the petitioner company be directed to comply with provision of section 2(19AA) of the Income Tax Act, 1961*

The Petitioner Company states that the assets and liabilities of the Demerged Company shall be transferred to the Resulting Company at their respective book values, and the same shall be in compliance with Section 2(19AA) of the Income Tax Act, 1961, as applicable. Further, Clause 8.6 of the Scheme shall be amended and shall read as under:

As considered appropriate for the purpose of reflecting the true value of assets and liabilities of the Demerged Company on Appointed Date, suitable effect may be given including, but not restricted to, application of uniform accounting policies and methods.

The Learned Counsel for the Petitioner Companies prays for leave to amend the Scheme. The same is granted amendment to be carried out within two weeks from the date of the Order.

In paragraph 6(c) of the said affidavit it is stated that:

> *c) That the Deponent further submits that the" words "first" and the words "and then against Securities Premium Account" appearing in clause 8.7 of the scheme be*

> *deleted in as much as the scheme is silent as to reduction of securities premium account under section 78/100 of the Companies Act, 1956 corresponding to section 52/66 of the Companies Act, 2013. The revised clause may be read as follows and the petitioner company shall carry out necessary correction in the scheme.*
> *" The aggregate excess or deficit of the book value of net assets Determined as per sub-clause 8.5 of the scheme after considering sub-clause 8.6 of the scheme, shall be adjusted in the Capital Reserve and Profit and Loss Account of the Demerged Company"*

The Petitioner Company states that the shareholders of the Demerged Company have passed a special resolution for adjustment of any amount against the Securities Premium Account, as required under this Scheme. The said special resolution is attached as Exhibit 'E' to the Company Summons for Direction filed by the Demerged Company. Further, this High Court has granted a dispensation from the procedures prescribed under Section 101(2) of Companies Act, 1956. In view of this, clause 8.7 of the Scheme shall read as under:

"*The aggregate excess or deficit of the book value of net assets determined as per sub-clause 8.5 above after considering sub-clause 8.6 above, shall be first adjusted in the Capital Reserve and then against Securities Premium Account and Profit & Loss Account of the Demerged Company. The cancellation of share capital (reduction of balance lying in Securities Premium Account), if required, shall be effected as an integral part of the Scheme in accordance with the provisions of Sections 100 to 103 of the Act and the Order of the High Court sanctioning the Scheme shall be deemed to be also the Order under Section 102 of the Act for the purpose of confirming the reduction of capital. The reduction would not involve either a* *diminution of liability in respect of unpaid share capital or payment of paid-up share capital and the provisions of Section 101 of the Act will not be applicable."*

Hence, the Learned Counsel for the Petitioner Companies prays for amendment and to replace the clause 8.7 of the Scheme as above. Leave to amend granted to be carried out within two weeks from the date of the Order.

In paragraph 6(d) of the said affidavit it is stated that:

d) *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."*

The Petitioner Companies submit that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

11. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 671 of 2015 filed by the Petitioner Company are made absolute in terms of prayer clauses (a), (c), (d) and (e) and the Company Scheme Petition No. 672 of 2015 filed by the Petitioner Company are made absolute in terms of prayer clauses (a), (c), (d) and (e).

14. The Petitioner Companies to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), 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 issuance of Order.

15. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

16. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai within four weeks from the date of the order.

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

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

(K. R. Shriram, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer