

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
(ORIGINAL JURISDICTION)**

**COMPANY PETITION NOS.12 & 13 OF 2014
CONNECTED WITH
COMPANY APPLICATION NOS.8 & 9 OF 2014**

**IN THE MATTER OF THE COMPANIES ACT, 1956
(1 OF 1956)**

SECTION 391 & 394; 100 to 104

AND

**IN THE MATTER OF SCHEME OF ARRANGEMENT OF
AND**

**IN THE MATTER OF
SHRAMIK INDUSTRIES PRIVATE LIMITED**

.... PETIONER/

TRANSFEROR COMPANY

AND

SANSKAR AGRO PROCESSORS PRIVATE LIMITED

PETITIONER/

TRANSFeree COMPANY

Coram : A.S. Chandurkar. J

Dated : 19.06.2015

Mr. Nitin Lalwani, Advocate
for the Petitioners

Mr. Rohit Deo, appears
for respondent – Regional Director

1. The above Petitions are for sanction of the Scheme of Merger of M/s Shramik Industries Private Limited (hereinafter referred to as the Transferor Company) into M/s Sanskar Agro Processors Private Limited (hereinafter referred to as the Transferee Company). The Court examined the Petition filed by the Petitioner Transferor Company and Transferee Company. The Petitioner Transferor Company and the Transferee Company had earlier filed Company Application No. 8 of 2014 and 9 of 2014 seeking directions of this Court for dispensation/convening of

meetings. Vide order dated 25th April, 2014, this Court allowed both the Applications and dispensed with the requirement of convening meetings of Shareholders, Secured and Un-secured Creditors of the Transferor Company and the Transferee Company.

2. The Petitioner Transferor Company and the Transferee Company have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. This Court vide order dated 9th May, 2014 had directed notice of petition to be issued to the Regional Director,(Western Region), Mumbai, Registrar of Companies, Mumbai and the Official Liquidator, Nagpur . Citations were also directed to be published in 'Lokmat Times' (English) and 'Lokmat Samachar' (Hindi) for the next date of hearing. Affidavit of service has been filed by the petitioners showing compliance regarding service on Regional Director, Western Region, Registrar of Companies, Mumbai and the Official Liquidator and also regarding publication of citation in the aforesaid newspapers.

3. The Court examined the report filed by the Official Liquidator stating therein that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or Creditors or the public.

4. The Court also examined the Affidavit filed by the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai submitted in this Court on behalf of the Central Government. In Para No. 6 (a) the Regional Director has expressed that the reserve arising out of this scheme if any, be transferred to capital reserve account of the Transferee Company. Such reserve shall not be treated as revenue reserve of the transferee company and cannot be considered as free reserve and available for distribution. The petitioner transferee company has given an undertaking to this Court by filing an affidavit on record. The same is accepted.

5. The Regional Director has then stated in para No. 6(b) that the tax implication if any arising out of this scheme is subject to the final decision of the income tax authorities. The approval of scheme by this Court may not deter the Income Tax Authorities to scrutinise the tax returns, filed by the transferee company after giving effect to this scheme. The petitioner transferee company has given an undertaking to this effect also in the above affidavit, which is also accepted.

6. The Regional Director has then observed that on amalgamation the shares held by the transferor company in the transferee company shall get cancelled, which would result in reduction in the share capital of the transferee company. As per the affidavit filed by the Regional Director, the scheme needs to be amended to give effect to such reduction. Pursuant to the same, the transferor company as well as transferee company have stated in their above said affidavits that a resolution for amending the present scheme has been passed by their Board of Directors. The said amended scheme has been placed on record by the Learned Counsel for the petitioners along with pursis dated 12.06.2015. The said amended scheme is taken on record. Thus, the said requirement also stands complied.

7. Lastly, the Regional Director has observed that clause 8.6 of the scheme provides for modification of the scheme wherein the Board of Directors of the transferor company and transferee company have been authorised to make any amendments to the scheme, if necessary, after the scheme is approved by the Honourable High Court. The Regional Director is not in the favour of granting any such liberty to the Board of Directors of the petitioners. The petitioners in their affidavit stated herein above, have given an undertaking that they shall not make any changes to the scheme, without the prior approval of this Court. The same is accepted.

8. In view of the above undertakings given by the Petitioner Company and compliances made by them, this court is satisfied that the points raised by the Regional Director have been duly answered in the Court.

9. The Court has also noted that no objection has been received to the Scheme of Arrangement from any other party. The Transferor Company and Transferee Company submitted an affidavit confirming that neither the Petitioner Company nor their Counsel has received any objection pursuant to citation in the newspapers.

10. Upon hearing Mr. Nitin Lalwani, Advocate for the Petitioner, Mr. Rohit Deo, Advocate for respondent- Regional Director, and in view of the approval of the Scheme of Arrangement by the Shareholders and Creditors of the Transferor Company and the Transferee Company; and there being no investigation proceedings pending in relation to the Petitioner Company under Sections-235 to 251 of the Companies

Act, 1956.

THIS COURT HEREBY SANCTIONS THIS SCHEME OF ARRANGEMENT as filed along with the pursis dated 12.06.2015 in the Company Petition and hereby declares the same to be binding on all the shareholders and creditors of the transferor company and the transferee company and all concerned and approves the said scheme of arrangement with effect from the appointed date i. e., 01st April, 2013.

11. THIS COURT HEREBY ORDERS:

(i) That, all the property, rights and powers of the transferor company specified in the first, second and third parts of the schedule hereto and all other property, rights and powers of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to Section-394(2) of the Companies Act, 1956 be transferred to and vest in transferee company for all the estate and interest of the transferor company therein, but subject nevertheless to all charges now affecting the same, and

(ii) That, all the liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to Section-394(2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the transferee company; and

(iii) That, all the proceedings now pending by or against the transferor company be continued by or against the transferee company; and

(iv) That, the transferee company do without further application allot to members of the transferor company shares in the transferee company as is required in Clause-7 of the compromise or arrangement herein, to which they are entitled ; and

(v) That, the transferor company do within 30 days after the date of this order cause a certified copy of this order be delivered to the Registrar of Companies for registration and such certified copy being so delivered the transferor company shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company and register with him in the file kept by him in relation to the transferee company and

the files relating to the said two Companies shall be consolidated accordingly and

(vi) That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

JUDGE

Asmita

SCHEDULE
As on 01.04.2013

Particulars	Amount (Rs)
Part – I	
Short Description of Freehold Property of the Transferor Company	
Plant and Machinery	2,10,598.00
Vehical car	1,72,286.00
Tractor and Trailor	39,484.00
Computers	18,995.00
Furniture and Fixture	45,795.00
Printer	10,149.00
CC Camera System	59,178.00
Trader Mark	9,600.00
Factory Building	6,49,154.00
Godown at Inzapur	30,82,820.00
Part – II	
Short Description of Leasehold Property of the Transferor Company	
Plot	4,61,300.00
Part – III	
Short Description of all Stocks, Shares, Debentures and other Charge Action of the Transferor Company	
Current Assets:	
Inventories- As per Annexure 1	5,71,60,693.00
Sundry Debtors - As per Annexure 2	34,49,898.00

Cash and Bank Balance – As per Annexure 3	21,37,182.00
Deposits, Loans and Advances- As per Annexure 4	17,36,769.00
Share of Sanskar Agro Processors Pvt Ltd	1,44,93,840.00

Annexure – 1

INVENTORIES	Amount (Rs.)
Raw Material and Consumables	3,50,45,927.00
Finished Goods	2,21,14,766.00
Total	5,71,60,693.00

Annexure - 2

SUNDRY DEBTORS	Amount (Rs.)
Trade receivable: (exceeding six months) Unsecured, considered Good	19,79,437.00
Other Trade Receivables: (Below Six months)	14,70,461.00
Total	34,49,898.00

Annexure – 3

CASH AND CASH EQUIVALENT	Amount (Rs.)
a) Cash in Hand	30,43,547.00
b) Cash with Banks in Current Accounts	
<u>With Schedule Banks on Current A/c</u>	
Union Bank of India, C/A No. 25097	0.00
Buldhana U Co-Op. bank S/B A/c 24/147	5,719.00
Punjab National Bank, C/A No. 33701	2,425.00

<u>With other than Schedule Bank on Current A/c</u>	
Wardha Nagri Bank, Wardha Cur. A/C No. 1153	3,994.00
W.N.B., Sindhi Cur. A/C No. 191	0.00
Wardha Nagri Bank, Seloo C/A No.315(Reconciled)	-9,18,503.00
Total	21,37,182.00

Annexure - 4

SHORT TERM LOAN AND ADVANCES	Amount (Rs.)
a) Security Deposits	
A.P.M.C. Market Seloo	1,000.00
A.P.M.C. Market Wardha	60,000.00
A.P.M.C. Market Sindhi	5,000.00
B.S.N.L Wardha	2,195.00
Gajanan Trading Company Wardha	4,000.00
Mah. Fedration Wani	1,500.00
Mah. Fedration Nagpur	4,000.00
MSEB Wardha	66,290.00
VSPEL Wardha	5,000.00
 (b) Loans & Advances to Employees Secured, Considered Good	
<u>Advance to Suppliers and others</u>	
Bharat Petroleum Nagpur	6,248.00
Commision Receivable (Indira Sah.Soot Girni Ltd.)	34,309.00
Pre-paid Insurance	41,366.00
W.C.Claim Receivable	44,190.00
Suresh Khadse, wardha	8,500.00
Vijaya Kapse, WARDHA	10,000.00

ADM Ind Dumri	3,97,320.00
(c) Balance with Government Authorities Unsecured, Considered Good	
Advance Income Tax	3,50,000.00
Income Tax Refund Receivable	2,96,808.00
T.D.S. Advance Income Tax (A. Y. 2010-2011)	74,850.00
Vat Tax Receivable for 2011-12	24,193.00
Deposit against Appeal (Sales Tax)	3,00,000.00
Total	17,36,769.00