

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CP No. 114 of 2015 (O&M)
Date of decision : 9.10.2015

In the Matter of
Scheme of Arrangement between

1. Hero Motors Limited
... Demerged Company/ Petitioner Company No.1
2. Hero Cycles Limited
..... Resulting Company/Petitioner Company No.2

Present:- Ms. Munisha Gandhi, Senior Advocate with
Mr. Gaurav Goel, Advocate, for the petitioner.

Mr. Deepak Aggarwal, Advocate, with
Mr. D. K. Singh, Official Liquidator.

Rajesh Bindal, J.

In this petition, the petitioner companies seek sanctioning of Scheme of Arrangement (Annexure P-6), providing for demerger of Sheet Metals, Transmission and Cycle Production and Assemblies Business, referred to as “Demerged Undertaking” of Demerged Company/ Petitioner Company i.e. Hero Motors Limited to be merged into Hero Cycles Limited (Resulting Company-Petitioner Company).

The registered offices of the petitioner companies are situated at Ludhiana, Punjab.

The Memorandum and Articles of Association of the petitioner companies no.1 and 2 have been annexed with the petition at Annexures P-2 and P-4 respectively.

The Board of Directors of both the aforementioned Companies in their respective meetings held on 17.03.2015 have approved the Scheme of Arrangement. Copies of the same have been annexed at Annexures P-7 and P-8, respectively.

Earlier vide order dated 6.4.2015 passed in CP No. 41 of 2015, this Court has dispensed with convening of meetings of the Equity Shareholders of the Resulting/Petitioner Company i.e. Hero Cycles Limited and further directed to convene the meetings of the Secured and Un-Secured Creditors of Resulting Company/Petitioner Company- Hero Cycles Limited

on 30.5.2015 for seeking approval of Scheme of Arrangement. Notice of the meetings was also directed to be published in the newspapers and official gazette.

Vide order dated 3.7.2015, report of the Chairman appointed for conducting the meeting was taken on record and the first motion petition was disposed of accordingly.

The first motion petition of the Demerged company- Hero Motors Limited was filed in the Delhi High Court as the registered office of the said company was earlier situated at New Delhi. The same was disposed of on 25.5.2015. Thereafter, the registered office of petitioner company no.1 - Hero Motors Limited was shifted to Ludhiana, Punjab.

This is the second motion petition filed on behalf of both Demerged and Resulting Companies in this Court. Notice of the petition was directed to be issued to Regional Director, Ministry of Corporate Affairs and the Official Liquidator. Notice was also directed to be published in 'Indian Express' (English) and 'Punjab Kesari' (Hindi), both Punjab Edition, and in the official Gazette of Government of Punjab. The aforesaid order has been complied with and affidavit to this effect has been placed on record.

While referring to the report of report dated 24.9.2015 filed by way of affidavit of A. K. Chaturvedi, Regional Director, Northren Region, Ministry of Corporate Affairs, learned counsel appearing for the Official Liquidator submitted that the Regional Director has raised the issue regarding the transfer of employees of the Demerged Company to the Resulting Company and their service conditions.

In reply to the aforementioned issue raised by learned counsel appearing for the Official Liquidator, learned counsel for the petitioners submitted that Clause 11.1 of the Scheme provides that the staff and employees in relation to 'Demerged Undertaking' of Hero Motors Limited in service on such date shall be deemed to have become staff and employees of Hero Cycles Limited on same terms and conditions.

Heard learned counsel for the parties and perused the paper book.

The Regional Director has raised the issue that the Scheme is silent about the transfer of employees of the Demerged Company to the

Resulting Company and terms and conditions applicable on such employees. This issue has been taken care of in para 11.1 of the Scheme of Arrangement, which is reproduced hereunder:-

“11.1 On the Scheme coming into effect, all staff and employees of HML (in relation to Demerged Undertaking) in service on such date shall be deemed to have become staff and employees of HCL without any break in their service and on the basis of continuity of service and the terms and conditions of their employment with HML and shall not be less favourable than those applicable to them with reference to HML (in relation to Demerged Undertaking) on the Effective Date.”

Thus, the issue raised regarding transfer of staff/ employees does not survive any longer in view of the aforesaid clause 11.1.

The Official Liquidator has not raised any other objection to the Scheme of Arrangement.

The petitioner- companies have confirmed that there are no investigations or proceedings pending against them under the Act or under any provisions of Companies Act.

For the reasons afore-stated and on consideration of all the relevant facts and the procedural requirements contemplated under the Act and the relevant Rules and on due consideration of the reports of Regional Director, Northern Region, Ministry of Corporate Affairs and the Official Liquidator, the Scheme of Arrangement is hereby sanctioned. The assets and liabilities of “Demerged Undertaking” of the Demerged Company/ Petitioner Company shall stand vested in the Resulting Company.

The Scheme shall be binding on the Demerged and Resulting Companies, their respective Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme of Arrangement be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt thereof.

A notice of the order be published in the 'Indian Express' (English) and 'Punjab Kesari' (Vernacular), both Punjab Editions, and in the official Gazette of Government of Punjab.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the petitioner companies states that the petitioner companies would voluntarily deposit a sum of ₹ 1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks.

The statement is accepted.

Disposed of accordingly.

9.10.2015

vs

(Rajesh Bindal)
Judge