

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
CA No. 122 of 2015 in/and
CP No. 144 of 2014
Date of decision March 9, 2015**

In the matter of : Top Victory Investments Limited

....Petitioner No.1-Transferor Company

TPV Technologies India Private Limited

....Petitioner No.2-Transferee Company

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Deepak Suri, Advocate
for the petitioner-Companies.

Mr. Divay Sarup, Advocate with
Mr. M. Jayakumar, Official Liquidator.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J (ORAL).
CA No. 122 of 2015

Prayer in this application is for placing on record additional affidavit along with Annexures A-1 to A-4 i.e. documents/ application submitted for approval from Reserve Bank of India (RBI) and Foreign Investment Promotion Board (FIPB) on the premise that

the petitioner-Company had already filed an application for approval from RBI and FIPB which is stated to be under process and acknowledgment thereof has been attached as Annexures A-1 to Annexure A-2. It has further been stated that as per clause 14 of the Scheme which provides “Conditionality of the Scheme” can be only approved subject to the approval granted by RBI and FIPB and similar schemes wherein approval from RBI and FIPB was obtained later on, had been sanctioned by the High Court of Bombay. Copies of the orders passed in CP No. 276 of 2013 and 483 of 2014 (Annexure A-3 and Annexure A-4).

Affidavit along with Annexure A-1 to Annexure A-4 is taken on record.

The application is disposed of.

CP No. 144 of 2014

The present petition has been filed under Section 391 and 394 of the Companies Act, 1956 for sanction of the Scheme of Arrangement between petitioner No.1-Transferor Company with petitioner No.2-Transferee Company for demerger of “Indian Undertaking” of the Transferor Company into Transferee Company. The Scheme of Arrangement has been annexed as Annexure P-1.

Main objects of the Transferor Company and Transferee Company are detailed in Memorandum and Article of Association are annexed as Annexure P-6 and Annexure P-10.

Similarly copies of the resolution of the Board of

Transferor Company and Transferee Company dated 30.5.2014 have been annexed as Annexure P-2 and Annexure P-3, respectively.

The authorized, Issued, Subscribed and Paid up Share Capital of petitioner No.1-Transferor Company as on 31.12.2013 is respectively extracted hereunder:-

<i>Particular</i>	<i>Amount(US\$)</i>
10,000 Class “A” ordinary share of HK \$ 1 each	1,282
10,000 non-voting deferred shares of HK\$ 1 each	1,282
Total	2,564
Issued and fully Paid up Capital	
1,000 Class “A” oridnary shares of HK\$1, each	128
10,000 non-voting deferred shares of HK\$ 1 each	1,282
Total	1,410

The authorized, Issued, Subscribed and Paid up Share Capital of petitioner No.2-Transferee Company:-

<i>Particulars</i>	<i>Amount(Rs)</i>
Authorized Capital	
5,00,00,000 equity shares of Rs.10/- each.	50,00,00,000
Total	50,00,00,000
Issued Capital	
2,50,00,000 equity shares of Rs.10/-	25,00,00,000
Total	25,00,00,000
Subscribed and Fully Paid up	
60,441 equity shares of Rs.10/-	6,04,414
Subscribed but not Fully Paid up	24,93,95,586
2,49,39,559 equity shares of Rs. 10/-	
Total	25,00,00,000

The petitioners have earlier approached this Court by Company Petition No.134 of 2014 and vide order dated 12.8.2014

this Court had directed the convening of meeting of share holders of petitioner-Transferor Company and equity share holders of Transferee Company as well meetings of secured and unsecured creditors of the “Indian Undertaking” of the Transferor Company and meetings of secured and unsecured creditors of the Transferee Company were dispensed with and the petition for first motion was disposed of.

On presentation of this second motion petition, this Court vide order dated 9.9.2014 issued a notice to the Regional Director, Ministry of Corporate Affairs, Noida and also ordered the publication of the notice in the newspapers 'Indian Express (English Version)' and 'Jansatta (Hindi Version)' both Delhi Edition as well as in the Official Gazette of State of Haryana. The compliance affidavit of the said order has been placed on record.

The Regional Director, Ministry of Corporate Affairs, Noida has filed his affidavit and pointed out that as per clause 4.7 of Part B of the Scheme of Arrangement it has been stated that the Scheme has been drawn up to comply with the conditions relating to “Demerger” as specified under Section 2 (19-AA) of the Income Tax Act, 1961 and in case any of the terms or provisions of the scheme after its incorporation found to be inconsistent with the provisions of aforementioned section including the amendment in the law, the provisions of the said section of the Income Tax Act shall prevail and the Scheme will accordingly stood modified to the extent determined necessary to comply with said section of Income Tax Act.

The Regional Director has also pointed out that Transferor Company being foreign company, carrying on its business in India, through provisional office and it has taken a requisite approval from RBI for carrying on business in India and necessary registration documents have also been annexed.

For the sake of brevity paragraph 4 to 8 of the affidavit of Regional Director is extracted hereunder:-

“That the Deponent craves leave to submit that as per Clause 4.7 of Part B of the Scheme of arrangement it has been stated that the scheme has been drawn up to comply with the conditions relating to “Demerger” as specified under section 2 (19AA) of the Income Tax Act, 1961. If any terms or provisions of the scheme are found or interpreted to be inconsistent with the provisions of the said section at a later date including resulting from an amendment of law or for any other reasons whatsoever, the provisions of the said section fo the Income Tax Act, 1961 shall prevail and the scheme shall stand modified to the extent determined necessary to comply with section 2 (19AA) of the Income Tax Act, 1961.

5. That the Deponent craves leave to submit that with reference to this Directorate's letter dated 15.10.2014, issued to the Chief Commissioner of Income Tax, Gurgaon requesting to furnish their comments on the Scheme, in response no comments are received till date.

6. That the Deponent craves leave to submit that, company vide para 08 of its reply dated 10.11.2014 has stated that The Transferor

Company is a foreign Company carrying on business in India through a Branch Office. The Branch Office is registered with Registrar of Companies, Delhi & Haryana. It has also taken requisite approvals from the Reserve Bank of India for carrying on business in India. Further, company has also enclosed the registration of documents pertaining to Permission to establish a Branch Office in India, Setting up of Branch office in India, Permission to establish additional Branch Offices at various places in India and Permission to undertake additional activities (copies of the letters of RBI are enclosed as Annexure A-Colly)

7. That the Deponent craves leave to submit that para 11 of the scheme interalia provies that on coming into effect of this scheme and in consideration of transfer and vesting of the Indian Undertaking into the Transferee Company, the Transferee Company shall without any further application or deed, issue and allot shares, aggregate of 4.64 million equity shares of the Transferee company of Rs.10/- each fully paid up in proportion to the shares held in Class A ordinary shareholders in the Transferor Company.

8. That the Deponent craves leave to submit that as per Clause 14 of Part D of the Scheme of Arrangement, it has been stated that the scheme is and shall be conditional upon and subjected to:
i) That the approval from the Foreign Investment Promotion Board with respect to the issue of shares by the Transferee Company to the shareholders of the Transferor Company in accordance with Clause 11.1

ii) Approval from Rbi with respect to the transfer of assets by Indian Undertaking to Transferee Company.

lii) All other sanctions and orders as are legally necessary or required in respect of the Scheme being obtained.”

From perusal of the paragraphs extracted above, the Regional Director has suggested that Scheme of Arrangement shall be conditional and subject to approval of RBI and FIPB and all other registration documents which are legally necessary.

The petitioner-Transferor Company No.1 vide C.A.No.122 of 2015 has filed an additional affidavit of Lorenz Chen, authorized signatory of the Company in this regard and stated that they have filed applications for seeking approval from RBI and FIPB are still under process. Copies thereof have been attached as Annexure A-1 and Annexure A-2. It has further been stated that similar Schemes have been sanctioned by High Court of Bombay in Company Scheme Petition No. 276 of 2013 and 483 of 2014. Copy of the said orders has been annexed as Annexure A-3 and Annexure A-4. It has been undertaken that the approval of the scheme shall be conditional upon the approval from RBI & FIPB.

This Court has seen the orders, passed by the High Court of Bombay, which has while approving the scheme, though held the same to be fair and reasonable and noticed the undertaking given by the Companies therein regarding the approval of RBI and FIPB.

The petitioners-Companies have confirmed that there are no investigations or proceedings pending against them under Section 235 to 251.

For the reasons aforementioned and keeping in view the procedural requirements under Section 391-394 of the Companies Act, 1956 and as well as relevant affidavit and rules and due consideration of the report of the Regional Director, Ministry of Corporate Affairs, Noida coupled with the affidavit filed by the authorized representative of the petitioner-Transferor Company the Scheme of Arrangement of the Transfer Company with the Transferee Company is hereby sanctioned and all the assets and liabilities of the "Indian Undertaking" of petitioner No.1-Transferor Company i.e. Top Victory Investments Limited shall merge into petitioner No.2-Transferee Company i.e. M/s TPV Technology India Private Limited.

The Scheme shall be binding on petitioner No.1-Transferor Company and petitioner No.2-Transferee Company, their respective share holders, creditors, both secured and unsecured and all concerned.

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

Copy of this order be published in 'Indian Express (English Version)' and 'Jansatta (Hindi Version)' both Delhi Edition as

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well as in the Ofifical Gazette of State of Haryana.

Any interested person shall be at liberty to apply to
this Court for any directions as per law.

The Company Petition is disposed of accordingly.

**(AMIT RAWAL)
JUDGE**

**March 9, 2015
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