

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 359 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 220 OF 2016
Aurangabad Electricals Limited

.....Petitioner/Demerged Company

AND

COMPANY SCHEME PETITION NO. 360 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 221 OF 2016
Bagla Electricals and Electronics Private Limited

.....Petitioner/Resulting Company 1

AND

COMPANY SCHEME PETITION NO. 361 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 222 OF 2016
Bagla Industries Private Limited

.....Petitioner/Resulting Company 2

In the matter of the Companies Act, 1956 (1 of 1956)

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between
AURANGABAD ELECTRICALS LIMITED

("Demerged Company") And BAGLA ELECTRICALS AND ELECTRONICS PRIVATE LIMITED ("Resulting Company 1") And BAGLA INDUSTRIES PRIVATE LIMITED ("Resulting Company 2") and their respective shareholders and creditors

Called for Hearing

Ms. Alpana Ghone a/w Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mr. Anand O Singh, i/b Mr. A. A. Ansari for Regional Director.

CORAM: S.C.GUPTA, J.

DATE: 25th NOVEMBER 2016

P.C. :-

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 averment made in the Petitions.
2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013, to the Scheme of Arrangement between AURANGABAD ELECTRICALS LIMITED, Demerged Company and BAGLA ELECTRICALS AND ELECTRONICS PRIVATE LIMITED, Resulting Company 1 and BAGLA INDUSTRIES PRIVATE LIMITED, Resulting Company 2 and their Respective shareholders and creditors.

3. The learned Counsel for the Petitioner states that the Demerged Company is primarily engaged in manufacturing of automobile and brake system components which includes auto electrical components and aluminium die-casting components. The Resulting Company 1 is yet to commence any business. The Resulting Company 2 is engaged in the manufacturing, assembling, processing, importing, exporting, trading, fabricating and dealing in various kinds of electrical, electromechanical and electronic parts, components, instruments, apparatus, etc.
4. Learned Counsel for the Petitioner Companies submits that the Demerged Company has three strategic business units and the segregation of Electrical Undertaking and Real Estate Undertaking from the Demerged Company into different entities is to enable business to grow and achieve its full potential. The business units need concentrated efforts and focus and hence the Management of Demerged Company thought it fit to segregate the three business units of Demerged Company into separate companies, viz., Resulting Company 1 and Resulting Company 2. This will help the Die Casting Business division of Demerged Company to grow independently with better focus and focused operations.
5. The Petitioner Companies approved the said Scheme by passing the Board Resolution in their respective meetings and which are annexed to the respective Company Scheme Petitions.
6. The learned counsel for the Petitioners states that the 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.

7. 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 and Companies Act, 2013 and the Rules made there under, as may be applicable. The said undertaking is accepted.
8. The Regional Director has filed an Affidavit on 25th October, 2016 in the above Petition stating therein that save and except as stated in paragraph 6(a) to (l) of the said Affidavit, it appears that the scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6(a) to (l) of the said Affidavit, the Regional Director has stated that:-

“That the Deponent further submits that:-

- a) *The Statutory Auditors of the M/s Aurangabad Electricals Limited, the Demerged Company in his report dated 31.08.2015 for the year 2014-15 (emphasis of matter- para) has indicated that there is noncompliance of AS-14 in respect of previous scheme of arrangement. The said para clearly indicates violation of section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014. As the violation subsists for the relevant period, the company may be directed to compound the offence under section 621A of the Companies Act, 1956, corresponding to Sec 450 of the Companies Act. 2013.*

- b) *The tax implication arising out of this scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax return filed by the demerged/resulting Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the petitioner company.*
- c) *As the Statutory Auditor, has qualified in his report dated 31.08.2015 noncompliance of AS-14 in respect of previous scheme of arrangement the violation is established and subsists for the relevant period. Hence the Company be directed to compound the offence under section 621A of the Companies Act, 1956, corresponding to Sec 450 of the Companies Act. 2013.*
- d) *Regarding the observation made by ROC that the Company implementing the scheme in piece meal. In view of the Companies reply given by the company vide letter dated 13/10/2016 the company may be directed to furnish an undertaking that the implementation of the Scheme shall not go beyond 31/12/2016.*
- e) *Regarding the observation made by ROC in respect of three properties not owned by the company, availability of agreement to sell and non-availability of sale deed, In view of the Companies reply vide letter dated 13/10/2016, the Company may be directed to make Collector of Stamps/ sub-registrar, party to the proceedings to offer their comments.*
- f) *Regarding the observation made by ROC in respect of the land held by the M/s Aurangabad Electricals Ltd., and joint holders. In view of the*

Companies reply vide letter dated 13/10/2016, the explanation given by the company appears to be satisfactory. However, the Company may be directed to furnish NOC from Joint holders.

- g) Regarding the observation made by ROC in respect of ultra-virus objects it is submitted that M/s Bagla Industries Private Limited was incorporated on 07.10.2014 under the Companies Act, 2013 under the name and style M/s Bagla Industries Limited. Subsequently, the Company converted in to a Private Limited Company (i.e., M/s Bagla Industries Private Limited) w.e.f. 09.11.2015. It is also a fact the Company does not have any operations and has not fixed assets too, It proposes to engage in Real Estate business of letting out properties/assets owned by the group. Further, Company was a limited company upto 08.11.2015 & converted into as Private Limited w.e.f 09.11.2015. During the relevant period when Company was a Public Limited Company, principle business in Main Objects covered under Clause III (A) of Memorandum of Association (MOA) didn't contained/covered Real Estate Business. Any activity not covered under the Main Objects is ultra-virus MOA, even though it is covered under Clause III (B) (32), (37) and (49), it amounts to violation of Sec 4 (1) (c) of the Companies Act, and 2013 read with section 6 of the Companies Act, 2013. Accordingly, the directors are squarely liable for losses caused to the Company. The proposed demerger seems to be to cover up the ultra-virus activity of the Company.*
- h) Regarding the observation made by ROC in respect of the principle business in Main Objects covered under Clause III (A) of the MOA of*

Aurangabad Electricals Limited is electrical, electromechanical and electronic business and does not contained real estate business. The Company claims in its statement that it operates in three strategic business, viz (1) Die-casting Business 2) Electrical Business and 3) Real Estate Business. Its claim to carry on Real Estate Business as stated under Part- B Rationale for the Scheme seems to be false statement even though the Real Estate Business is covered under incidental object no. Clause III (B) (5) & (7), and has shown in its Financial Statement, Profit and Loss Account from 2011-12 to 2014-15 rent income under the head (Other Income) The Company may transfer its Real Estate Business to a Company whose main objects contains an activity related to Real Estate Business. However, M/s Bagla Industries Pvt. Ltd., cannot carry on Real Estate Business in the absence of change/modification of objective clause in MOA. Accordingly, the company may be directed to furnish an undertaking that after amalgamation comes into effect change/modification of objective clause will be carried out in accordance with law

- j) Regarding the observation made by ROC in respect of Divisional Balance sheet. In view of the undertaking given Company be directed to submit an undertaking to maintain investments given in Divisional Balance sheet as on 31/03/2016 enclosed to its reply dated 13/10/2016 appears to be satisfactory. However, subject to filing of financial statement is in due course, ROC may verify for violation of sec. 180(1)(a) of the Companies Act, 2013.*

- k) *Regarding the observation made by ROC in respect of mandatory lock-in period. In view of the reply dated 13/10/2016, Company may please be directed to delete call option clause contained in Schedule II & III of the Scheme.*
- l) *Regarding the observation made by ROC in respect of reduction of share Capital of M/s Bagla Electricals and Electronics Pvt. Ltd. (Resulting Company No. 1) and M/s Bagla Industries Pvt. Ltd. (Resulting Company No. 2) Reply dated 13/10/2016 of the Company indicated proposed reduction of present equity share capital. Hence, the reduction of share capital subsequent to the scheme comes in to effect, for reduction of share Capital, the company has to comply with the provisions of Section 100 to 103 of the Companies Act, 1956."*

9. In so far as observations made in paragraph 6(a) and (c) of the Affidavit of the Regional Director are concerned, the Petitioner has explained before this Court that there have been disclosures insofar as the particular deviations from AS-14 are concerned within the meaning of Clause 42 of the AS. The Regional Director states that he now has no objection on this score.
10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Company undertakes that tax implications, if any arising out of the Scheme shall be subject to final decision of the Income Tax Authority and approval of the Scheme by the High Court may not deter the Income Tax Authority to scrutinize the tax

returns filed by the Petitioner Company after giving effect to the Scheme of Arrangement.

11. In so far as observations made in paragraph 6(d) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their counsel undertake that the Scheme of Arrangement shall be made effective on or before 31/12/2016.
12. As far as observations made in paragraph 6(e) of the affidavit of the Regional Director are concerned, considering the fact that the demerged company has already paid full stamp duty on the basis of a deemed conveyance on the three agreements to sell, whereupon the agreements have been registered, the objection has no merit at all.
13. In so far as observations made in paragraph 6(f) of the Affidavit of the Regional Director is concerned, the Demerged Company through its counsel represents that the said land is held in joint ownership with the promoter Mr. Rishi Kumar Bagla and Mrs. Mamta Bagla. These promoters have already consented to the Scheme as shareholders of Aurangabad Electricals Limited and further the Board of Directors of Aurangabad Electricals Limited has approved the Scheme. Thus, each party has consented to the scheme of arrangement. The said explanation is found to be satisfactory.
14. In so far as observations made in paragraph 6(g) and (h) of the Affidavit of the Regional Director is concerned, the Resulting Company 2 through its counsel undertakes to incorporate current clause III (B) (32), (37) and (49)

regarding the carrying out of Real Estate Business in the Main Objects Clause in the Memorandum of Association (MOA). The explanation is found to be satisfactory.

15. As far as the objection at Serial 6(j) of the affidavit of the Regional Director is concerned, it is completely meaningless and hence, ignored.
16. In so far as observations made in paragraph 6(k) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their counsel undertake to delete the call option clause contained in Schedule II and III of the Scheme. Learned Counsel for the Petitioner Companies seeks leave to amend the Scheme accordingly. The Leave is granted. Amendment to be carried out within four weeks from the date of the Order.
17. In so far as observations made in paragraph 6(l) of the Affidavit of the Regional Director is concerned, it is submitted that by order dated 16th April 2016, following of procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with for the reasons as set out in para 12 and para 22 of the Affidavit in support of Summons for Direction for Resulting Company 1 and Resulting Company 2. The Petitioner also submits that they have complied with all necessary provisions of law. The explanation is found to be satisfactory.
18. The Learned Counsel for Regional Director on instructions of Mr. S. Ramakantha Joint Director in the office of the Regional Director, Ministry of

Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking/submissions given by the Petitioner/ Resulting Companies. The said undertakings and submissions are accepted.

19. 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. None of the parties concerned has come forward to oppose the Scheme.
20. Since all the requisite statutory compliances have been fulfilled, all the Company Scheme Petitions are made absolute in terms of prayer clause of (a) to (d).
21. The Petitioner Companies to lodge a copy of this order and amended Scheme alongwith Form of Minutes 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 the order.
22. Petitioners are directed to file a copy of this order along with a copy of the amended Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court, Bombay 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 law.

23. The Petitioners in all the Company Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within period of four weeks from today.
24. Filing and issuance of the drawn up order is dispensed with.
25. All concerned regulatory authorities to act on a copy of this order along with amended Scheme and form of minutes duly authenticated by the Company Registrar, High Court, Bombay.

(S C GUPTE, J.)

CERTIFICATE

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

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