

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 325 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.356 OF 2016
Cooper Metals Private Limited.....Petitioner/the Demerged Company 1
/the Transferor Company.
AND
COMPANY SCHEME PETITION NO.326 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.357 OF 2016
Cooper Corporation Private
Limited Petitioner/the Demerged Company 2/
the Transferee Company.
AND
COMPANY SCHEME PETITION NO.327 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.358 OF 2014
HRman India Private Limited.....Petitioner/the Resulting Company.

In the matter of the Companies Act I of
1956.

AND

In the matter of Sections 391 to 394 read
with Sections 100 to 103 of the Companies
Act, 1956.

AND

In the matter of the Composite Scheme of
Amalgamation and Arrangement between:
Cooper Metals Private Limited.

AND

Cooper Corporation Private Limited.

AND

HRman India Private Limited.

AND

their Respective shareholders.

Called for Hearing

Mr. Chandrakant Mhadeshwar, Advocate for the Petitioner in all the Petition.

Mr. Anand. O. Singh i/b Shri. Pankaj Kapoor for Regional Director in all the Petitions.

Ms Yogini Chauhan, Deputy Official Liquidator, present in C.S.P No. 325 of 2016.

CORAM: A.K.MENON, J

DATE: 20TH OCTOBER, 2016

PC:

1. Heard learned counsel for parties. None appears to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956, to a Composite Scheme of Amalgamation and Arrangement between Cooper Metals Private Limited and Cooper Corporation Private Limited and HRman India Private Limited and their respective shareholders.
3. The Learned Counsel for the Petitioner Companies states that the Demerged Company 1/ the Transferor Company is presently carrying on business of Machining of Engine Components and Windmill Power Generation and also holding investments in group companies. The Demerged Company 2/the Transferee Company is presently carrying on the business of manufacturing of Engines, Gensets and its accessories/components and various

related services and wind power generation and the Resulting Company is presently not carrying on any business activities.

4. The Learned Counsel further states that the Board of Directors of the Petitioner Companies have approved the said Composite Scheme of Amalgamation and Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.
6. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and rules made there under whichever is applicable. The said undertaking is accepted.
7. The Regional Director has filed his Affidavit on 10th October, 2016 stating therein that save and except as stated in paragraphs 6(i)

to (iv) it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated as follows :

- i. *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.*
- ii. *Petitioner in clause 39 of Part V of the Scheme inter alia has mentioned that upon the scheme becoming effective the following clause shall stand substituted in clause III A of the Main objects of the Memorandum of Association of the Resulting Company without following the procedure laid down under the Companies Act, 2013.*

"To carry on the business of generators, procurers, supplier's distributors, transformers, convertors, transmitters, processors, stores, carries and dealers in electricity derived from wind, heat, solar, thermal, hydro, tidal and other conventional and non-conventional form of energy"

Deponent prays that the Hon'ble Court may direct the company to comply with the provisions of the Companies Act, 2013 read with relevant rules etc.

- iii. *Petitioner in clause 9.5 of Part-II and clause 20.5 of Part III and clause 32.6 of Part -IV of the scheme inter alia has mentioned that that capital shall be increased if necessary.*

Deponent prays that the Hon'ble Court may direct the company to comply with the provisions of the Companies Act, 2013 read with relevant rules etc for increasing the capital.

- iv. *The petitioner company in the clause 11,22,and 33 of Part I, II and III of the scheme inter alia has mentioned with reference to accounting treatment that would be followed that the Board of Directors of the Demerged Company -1,Demerged Company 2 and Resulting Company, in consultation with respective statutory auditors, is authorized to (a) account any of these or other balances or items in any manner whatsoever, as may be deemed fit or (b) to make such adjustments as may be necessitated including reclassification of assets.*

Deponent prays that the Hon'ble Court may direct the company to comply with the applicable laws and accounting policies.

8. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(i) of his affidavit is concerned, the

Petitioner Companies submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all other acts.

9. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(ii) of his Affidavit is concerned, the Petitioner Companies through its Learned Counsel undertakes that the Resulting Company shall comply with relevant provision of Section 13 of the Companies Act, 2013 read with relevant Rules under Companies (Incorporation) Rules, 2014 and undertakes to file a copy of the Memorandum of Association alongwith the relevant forms with the concerned Registrar of Companies.
10. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(iii) is concerned the Petitioner Companies through its Learned Counsel undertakes that the Resulting Company shall comply with provisions of Sections 61/64 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary fees and Stamp Duty as applicable on the said forms for increase of its authorised share capital if required.
11. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(iv) of his Affidavit is

concerned, the Petitioner Companies through its Learned Counsel undertakes that the Demerged Company 2/the Transferee Company and the Resulting Company shall comply with the applicable laws and accounting policies and shall make necessary disclosures of applicable accounting standards /accounting policies adopted for accounting treatment in their respective audited financial statements.

12. The Learned Counsel for Regional Director on instructions of Mr S. Ramakantha, Joint Director Inspection, in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions and undertakings given by the Petitioners. The above undertakings are accepted.
13. The Official Liquidator has filed his report on 21st September, 2016 in Company Scheme Petition No. 325 of 2016, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
14. From the material on record, the Scheme appears to be fair and reasonable and does not appear to be violative of any provisions of law or contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.325 of 2016 filed by

the Demerged Company 1/the Transferor Company is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No.326 of 2016 filed by the Demerged Company 2/the Transferee Company is made absolute in terms of prayer clauses (a) & (b) and Company Scheme Petition No.327 of 2016 filed by the Resulting Company is made absolute in term of prayer clauses (a) to (e).

16. The Petitioner Companies to lodge a copy of this order and the Scheme 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 this order.
17. Petitioner is directed to file/lodge a copy of this order along with a copy of the Scheme of Arrangement 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 Companies Act 1956 / 2013, whichever is applicable.
18. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition Nos. 325 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator,

High Court, Bombay. Costs to be paid within four weeks from today.

19. Filing and issuance of the drawn up order is dispensed with.
20. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(A. K. MENON, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.