IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 476 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 387 OF 2016

NITIN CASTINGS PRIVATE LIMITED
………… Petitioner / the Demerged Company

AND

COMPANY SCHEME PETITION NO 477 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 388 OF 2016

NITIN ALLOYS GLOBAL LIMITED
………… Petitioner / the Resulting Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between Nitin Castings Private Limited ('the Demerged Company') AND Nitin Alloys Global Limited ('the Resulting Company') AND Their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for Petitioners in both the Company Scheme Petitions.

Mr. Dhanesh R. Shah, i/b Mr. Pankaj Kapoor, Regional Director in both the Company Scheme Petitions.

Coram: A. K. Menon, J.
Date: 13th October, 2016

1. Heard the learned advocate for the Petitioner Companies. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956 / Companies Act, 2013 to the Scheme of Arrangement of between Nitin Castings Private Limited And Nitin Alloys Global Limited And Their Respective Shareholders.

3. Learned Counsel for the Petitioners states that the Petitioners in Company Scheme Petition No. 476 of 2016 is incorporated to carry out multiple businesses – Real Estate and Casting Business and Petitioner in Scheme Petition No. 477 of 2016 is presently engaged in the business of manufacturing of products relating to Alloy Steel Castings.

4. The rationale for the demerger is that both the companies under this Scheme of Arrangement are part of Nitin Castings Group ('the Group'). The Group believes that the restructuring would benefit the companies and its stakeholders on account of businesswise segregation of companies thereby ensuring focused management, Improved Organizational capability, leadership, Achieving operational, management efficiency, ability to leverage financial and operational resources of each company.

5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned Advocate for the Petitioners state that 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 / 2013 and the Rules made there under.

8. The Regional Director has filed an Affidavit dated 30th September, 2016 stating therein that save and except as stated in paragraph 6 of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

   In paragraph 6(i) to 6(vi)(h), of the said affidavit it is stated that:

   6(i) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Resulting Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.

9. As far as observations made in paragraph 6(i) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Advocate submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

   6(ii) Petitioner in clause 5.2. of Part B of the scheme inter alia has mentioned that no equity shares shall be allotted in respect of fractional entitlement by NAGL.

   Deponent pray that Hon'ble court may pass such order as deem fit.

10. As far as observations made in paragraph 6(ii) of Affidavit of the Regional Director is concerned, the petitioner company submits that as per Clause 5.2 of the Scheme, in case of there being any fraction arising on the discharge of consideration, the Resulting Company will not be allotting any new equity shares for the fractional entitlements. Further, there will not be any cash consideration or separate issue of new equity shares in respect of such

fractional entitlement. The Public shareholders are not adversely impacted since the waving of fractional right is by the Promoter shareholders. The said undertaking is accepted.

6(iii) Petitioner in clause 5.7 and 5.8 inter alia has had mentioned that NAGL shall to the extent require increase in Authorised Share Capital and approval of the scheme by shareholder of NAGL shall be deemed compliance of provision of section 42 r.w. section 62 of the Companies Act, 2013

Deponent pray that Hon'ble court may direct the company to increase its capital in accordance with provision of the Companies Act, 2013.

6(vi)(c) With reference to the para no.5.7 of the scheme, it is required to pay necessary fee / stamp duty on the increase of authorized capital proposed.

11. As far as observations made in paragraph 6(iii) and 6(vi)(c) of the Affidavit of the Regional Director is concerned, the Petitioner Company submit that the shares to be issued by the Resulting Company pursuant to the Scheme is within the limits of the existing Authorized Share Capital of the Resulting Company. Accordingly, no increase of authorized capital is required. The Petitioner Company in paragraph 6 of the Affidavit in rejoinder dated 3rd day of October, 2016 have clarified position, therefore no further increase in Authorised share capital is warranted.

6(iv) Petitioner in Clause 6 of the scheme inter alia mentioned accounting treatment but not mentioned accounting standard adopted for the same.

12. In so far as observations made in paragraph 6(iv) of the Affidavit, the Petitioner Company submits that there are no prescribed Accounting Standards framed by the Institute of Chartered Accountants of India applicable to the Scheme of Demergers. However, the Petitioner has adopted the accounting treatment in the Scheme akin to the Accounting Standard 14

applicable to amalgamations and mergers. It is further pertinent to note that the Scheme of Arrangement has been approved by BSE which evident from the no objection letter issued by SEBI on May 4, 2016.

6(v) *Petitioner submitted a copy of letter No. DCS/AMAL/MN/378/2016-17 dated 04.05.2016, inter alia mentioned that BSE has given NOC for the Demerger subject to compliance of directions mentioned therein.*

Deponent prays that Hon'ble court may pass such order as deem fit.

13. As far as observations made in paragraph 6(v) of Affidavit of the Regional Director is concerned, the Resulting Company undertakes that all compliances as required by BSE vide its letter DCS/AMAL/MN/378/2016-17 dated 4th May, 2016 will be complied with to the extent applicable.

6(vi)(a) *There are 12 prosecutions pending against the demerged company out of which 9 are Section 58A violations (C.A.1956) and are very serious in nature being non-compoundable offence filed on the basis of complaints received against the subject demerged company.*

14. As far as observations made in paragraph 6(f)(a) of Affidavit of the Regional Director is concerned, the Petitioner Company has filed an affidavit in rejoinder dated 3rd October 2016 and it is stated that the violations under Section 58A (Companies Act, 1956) against the Company are pending before Addl. Chief Metropolitan Magistrate 18th Court, Mumbai. Further, it also state that the Demerged Company has paid off those public deposits and the same was brought to the notice of Registrar of Companies (RoC) vide letter dated 26th August, 2016 and post the Scheme of Arrangement, the Demerged company would still be in existence, the said pending proceedings will continue against the Demerged Company the penal action taken by the Ministry / ROC against the Demerged Company and its Directors is not going to be diluted under the Proposed Scheme.

6(vi)(b) *Transferor Company was previously a public limited company and was converted into private company in 2015-16. Transferee Company is a listed company and new equity shares being issued by the transferee company are sought to be listed after the expiry of freezing period till trading permission is received.*

15. As far as observations made in paragraph 6(vi)(b) of Affidavit of the Regional Director is concerned, the Petitioner Company state that the pursuant to Section 18 of the Companies Act, 2013 (conversion into Private limited by shares company) the Demerged Company changed its name to "Nitin Castings Private Limited" with effect from 27th November, 2015. Further, the shares being issued by the Resulting Company shall be sought to be listed only after the trading permission is received and such issue of shares shall be in compliance with applicable SEBI regulations.

6(vi)(d) With reference to para no.5.9 of the scheme, it is required to comply with the provisions of section 186 as applicable.

16. As far as observations made in paragraph 6(vi)(d) of Affidavit of the Regional Director is concerned, the Petitioner Companies hereby undertakes to comply with the relevant provisions of the Companies Act, 2013. The said undertaking is accepted.

6(vi)(e) With reference to the para no. 1.7 of the scheme. Divisional Balance Sheet with full financial statements of Castings Business Undertaking (Demerged Undertaking) along with the remaining undertaking were not provided with the Scheme papers and accordingly, It is not clear whether the demerged undertaking meets the criteria as defined under Explanation below section 180(1)(a) of the C.A.2013 i.e. whether the investment of the transferor company in the demerged undertaking exceeds 20% of its net worth or not. Further, it is not known whether the Company has any other undertaking other than Casting Business undertaking so as to consider for demerging one of the undertaking out of more than one such undertakings. However, as per para Table II of MGT-9 Extract of Annual Return attached to *audited Balance Sheet as at 31.3.2015 confirms that the demerged company does not have any undertaking other than Castings Undertaking (copy enclosed - Annexure -5).*

17. As far as observations made in paragraph 6(vi)(e) of Affidavit of the Regional Director is concerned, that the divisional balance sheet of the Demerged Company has been provided to the office of Registrar of Companies atleast 10 days before the filing of their report. Letter of acknowledgement dated 2nd September 2016 is annexed as 'Exhibit A' to the Affidavit in rejoinder dated 3rd October, 2016. Further, the Demerged Company being a private company is exempted from the purview of section 180 of the Companies Act. The said notification issued by the Ministry of Corporate Affairs dated 5th June 2015 is annexed as 'Exhibit B' to the Affidavit in rejoinder**.** The Counsel for the Petitioners further submits that as per AS - 17, if the revenue of the segmental division is 10 per cent or more of the total revenue it is only then to be reported in the balance sheet. Since, the income from real Estate business of the Demerged Company does not meet the criteria as prescribed in AS - 17 therefore there is no reporting required to be done. The counsel for the Petitioner Company submits that the Real Estate Business segment has generated income in the past, however, the year i.e. F.Y. 15, does not have any income from Real Estate Business Segment.

6(vi)(f) The Demerged Company has filed Balance Sheet as at 31.3.2015 vide SRN Q60896016 however it do not contain all the attachments as the important schedules (Notes) of entire financials and notes on accounts etc were not attached to the B/S filed before RoC office.

18. As far as observations made in paragraph 6(vi)(f) of Affidavit of the Regional Director is concerned, the Demerged Company has filed its Balance Sheet as at 31st March, 2015 in Form AOC-4 vide SRN Q60896016 however it has inadvertently missed the attachment with respect to the Notes to Accounts of the financials. However the copy of balance sheet as on 31st March, 2015 has been given in the office of Regional Director. It is clarified that sanctioning of the scheme will not dilute the proposed penal action that may have been taken or that may hereinafter be taken by the Ministry / RoC, if any against the Demerged Company.

6(vi)(g) Boards' Report dated 20.8.2015 states that the demerged company did not raise funds by way of fixed deposits and no amount of principal or interest was outstanding as on balance sheet data (31.3.2015). However, several 58A section cases (regarding deposits) are under prosecution/ open. On one hand, the demerged company / directors (accused) are facing the prosecution action in 9 cases regarding acceptance of deposits which are pending in Trial Court for Orders and penalty if any to be leviable by the Trial Court (if convicted) needs to be borne by the demerged company from its resources. However, it is demerging the entire company (casting undertaking of demerged company, ibid) vitiating the prospects of payment of penalty, if levied by the Trial Court.

19. As far as observations made in paragraph 6(vi)(g) of Affidavit of the Regional Director is concerned, the Demerged Company has not accepted any public deposits and no amount of principal or interest was outstanding as on 31st March, 2015. Further, the cases under Section 58A (regarding public deposits) are pending before court. The Demerged Company undertakes to pay the penalty leviable, if any. The Demerged Company has two segments of business – Castings and Real Estate and hence post the Scheme, the company will be left with Real Estate business segment which should be sufficient to meet with the liabilities, if any.

6(vi)(h) The demerged company stood as guarantor in favour of EXIM Bank for a charge amount of Rs 16.62 Cr (as per charge registration details).

20. In reply to the observations raised by Regional Director in paragraph 6(vi)(h) of his affidavit is concerned, the petitioner submit that point 'x' of the Annexure to the Auditors Report as on 31st March, 2015 of the Demerged Company states that the company has given the Corporate Guarantee for loans taken by other Company from EXIM Bank. However, no dues are payable as on date and the concerned party has paid out all its borrowings along with interest.

There is no violation of any provisions of the Companies Act, 1956 or Companies Act, 2013.

21. The Learned Counsel for the Regional Director on instructions of Mrs. P Sheila, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Companies. The said undertaking given by the Petitioner Companies are accepted.

22. 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.

23. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 476 of 2016 and 477 of 2016 filed by the Demerged Company and the Resulting Company respectively are made absolute in terms of prayer clauses (a) to (c) of the respective Petition.

24. The Petitioner Companies to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), 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 issuance of Order.

25. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme 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.

26. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.

27. Filing and issuance of the drawn up order is dispensed with.

28. All concerned regulatory authorities to act on a copy of this order along with 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