

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 67 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO. 844 OF 2015

Sterlite Technologies Limited

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 68 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO. 845 OF 2016

Sterlite Power Technologies Limited

...Petitioner Company

In the matter of the Companies
Act,
1956;

And

In the matter of Sections 391 to
394 read with Sections 100-103 of
the Companies Act, 1956 and
Section 52 of the Companies Act,
2013;

And

In the matter of the Scheme of
Arrangement under sections 391
to 394 of the Companies Act read
with Sections 100- 103 of the
Companies Act, 1956 and Section
52 of the Companies Act, 2013
between Sterlite Technologies

Limited and Sterlite Power Transmission Limited and their respective shareholders and creditors

Called for Hearing

Mr. Janak Dwarkadas, Senior Advocate, Mr. Shyam Mehta, Senior Advocate, along with, Mr. Peshwan Jehangir, Mr. Madhav Kanoria and Mr. Anindya Basarkod i/b. M/s. Khaitan & Co., Advocates for the Petitioner Companies.

Ms. Jasneet Kaur, Ms. Arpita Bishnoi, Mr. Vaibhav Niti, Mr. Gaurav Chauhan, i/b. GDG & Co., Manish Pabale, Advocate for the Objectors Huawei Technologies Company Limited and Huawei Telecommunications (India) Company Private Limited

Mr. Dushyant Kumar i/b A.A. Ansari for the Regional Director in the petitions.

Mr. Arjun K. Sreenivas i/b. M/s. Manilal Kher Ambalal & Co. for the National Stock Exchange

Mr. Pulkit Sukhramani i/b. The Law Point for the Securities and Exchange Board of India

Coram: B.P. Colabawalla, J.

Date: 22nd April, 2016

P.C:

1. Heard Learned Counsel for the Parties.
2. Save and except two unsecured creditors, namely Huawei Technologies Company Limited and Huawei Telecommunications (India) Company Private Limited no other objector has come before the Court to oppose the Scheme and nor has any party controverted any averments made in the Petitions. Learned Counsel appearing for these objectors states that the parties entered into settlement agreements dated 21st April, 2016 and that the objectors are hence, withdrawing

their objections in terms of the settlement. As such, there are no objectors before the Court. The settlement agreements are taken on record.

3. The sanction of the Court is sought under 391 to 394 of the Companies Act read with Sections 100- 103 of the Companies Act, 1956 and Section 52 of the Companies Act, 2013 for a Scheme of Arrangement between Sterlite Technologies Limited (“STL” or “**Demerged Company**”) and Sterlite Power Transmission Limited (“SPTL” or “**Resulting Company**”) and their respective shareholders and creditors.
4. The Learned Senior Counsel for the Petitioner Companies states that the Demerged Company is presently engaged in the business of manufacturing optical fiber and optical fiber cables, power conductors and high voltage and extra high voltage power cables and providing turnkey transmission solutions for the telecom and power industries in addition to participating in the creation of power transmission infrastructure across the country; and whereas the Resulting Company is presently engaged in the business of manufacturing power transmission products such as power conductors and high voltage and extra high voltage cables, providing turnkey solutions for power industries and participating in the creation of power transmission infrastructure across the country
5. The Learned Senior Counsel for the Petitioner Companies states that proposed Scheme of Arrangement is beneficial since, inter alia, the proposed Arrangement will (i) allow each business to create a strong and distinct platform which enables greater flexibility to pursue long-term objectives; (ii) enable accelerated growth of the telecom business and allowing the power business to explore suitable strategies to fund its growth plans; (iii) offer shareholders a clear focussed investment opportunity in the telecom sector and thereby unlocking value of their holding; and (iv) allow shareholders an option to align with their investment philosophy by

continuing to participate in the long term capital intensive power sector if they choose or select available options to fairly and appropriately exit.

6. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petitions.
7. The Learned Senior Counsel for the Petitioners Companies further states that, the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the order passed in the respective Summons for Directions.
8. The Learned Counsel appearing on behalf of the Petitioner Companies have further stated that the Petitioner Companies have complied with all the 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 the statutory requirements, if any, under the Companies Act, 1956 and 2013, and rules made thereunder, whichever is applicable. The said undertaking is accepted.
9. The Regional Director has filed an Affidavit dated 28th March, 2016 stating therein that save and except as stated in paragraph 6 (a) to 6 (e) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.
“a. The Shares of the Demerged company are held by Foreign Body Corporate/Non Resident Indian. Hence, while giving effect to the Scheme, by issuing new shares by the Resulting Company to the shareholders of Demerged Company, the Resulting Company has to comply with the provisions of FEMA/RBI regulations as applicable in this regard.
b. Clause no. 10 of the Scheme provides for issue of shares upon coming into effect of this Scheme. The authorised share capital of Resulting Company may not be sufficient to issue further shares as provided in the Scheme. The

Resulting Company shall, if and to the extent required, increase its Authorised Share Capital to facilitate issue of New Equity Shares under this Scheme as provided in Clause 10 of the Scheme. In this connection, the Resulting Company may be directed to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

- c. *It is further submitted that the Securities and Exchange Board of India vide its letter dated 27/08/2015 addressed to National Stock Exchange and Bombay Stock Exchange has raised some observations/comments on this Scheme of Arrangement more particularly in Para No. 6 and 7 of the Annexure – I to said SEBI's letter. Copy of the said letter is annexed hereto and marked as **Exhibit "D1"**. The National Stock Exchange and Bombay Stock Exchange have also incorporated the observations raised by SEBI in their letters dated 28/08/2015 addressed to M/s. Sterlite Technologies Limited, the Demerged Company herein. Copy of the said letters are annexed hereto and marked as **Exhibit "D2" & "D3"** respectively. In this connection, the views of the SEBI, BSE and NSE may be heard by this Hon'ble High Court before taking final decision in this matter.*
- d. *It is respectively submitted that 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 returns filed by the Resulting Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Demerger Company and Resulting Company.*

e. Clause 19 of the Scheme provides for Modification and Amendments to the Scheme wherein the Board of Directors of Demerged Company and Resulting Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies may be directed to undertake to this effect."

10. As far as the observation in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies undertakes that the Resulting Company shall comply with the provisions of FEMA/RBI regulations as applicable in this regard.
11. As far as the observation in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies undertakes that the Resulting Company shall comply with the provisions of Section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms and as required by law.
12. As far as the observation in paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that notices have already been issued to the National Stock Exchange, Bombay Stock Exchange and Securities and Exchange Board of India, who are present before this Hon'ble Court.
13. As far as the observation in paragraph 6 (d) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies are bound to comply with all applicable provisions of the

Income Tax Act and that all tax issues arising out of the Scheme will be met and answered in accordance with law.

14. As far as the observation in paragraph 6 (e) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that as more particularly set out in paragraph 24 of both the Company Scheme Petitions, notwithstanding anything contained in Clause 19 of the Scheme, no modification or variation of the Scheme will be given effect to unless also approved by this Hon'ble High Court.
15. The Learned Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director Legal, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given hereinabove by the Petitioner Companies through its counsel. The above undertakings are accepted.
16. 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.
17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (f), (h) and (i) of both the Company Scheme Petitions.
18. 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 purposes of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.
19. The Petitioner Companies are directed to file a copy of this order alongwith a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form 21/INC28 in addition to physical copy as per relevant provisions of

the Companies Act, 1956 and the Companies Act, 2013 and Rules made thereunder whichever are applicable.

20. The Petitioner Companies are directed to pay a cost 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.
21. Filing and issuance of the drawn up order is dispensed with.
22. All concerned regulatory authorities to act on a copy of this order along with Scheme attached thereto, duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(B.P. Colabawalla, J.)

C E R T I F I C A T E

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

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