

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2016

DELIVERED ON : 27.09.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos. 147 and 148 of 2016

M/s.Brindavan Cotton Mills Private Limited
rep. by Mr.R.Chinnasamy
Chairman and Managing Director,
119-C, Selvapuram Colony,
Somanur - 641 668
Sulur Taluk, Coimbatore District
Tamil Nadu

.. Petitioner in C.P.No.147 of 2016/
Demerged Company

Adhilakshmi Spinning Mills Private Limited
rep. by Mr.S.K.Subramaniam
Director
149-A, Mallegoundenpalayam,
Kamanaickenpalayam road,
Karadivavi Post,
Palladam Taluk, Tirupur District
Tamil Nadu, India - 641 658.

.. Petitioner in C.P.No.148 of 2016/
Resulting Company

Petitions filed under sections 391 to 394 of the Companies Act,
1956 read with Rules 11(a)(10) and 79 of Companies (Court) Rules,
1959 to sanction the scheme of arrangement (demerger).

For Petitioners : Mr.N.P.Vijayakumar
For M/s.Iyer and Thomas

Mr.G.Venkatesan
for Regional Director
Ministry of Company Affairs
Chennai

COMMON ORDER

1. These Company Petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of arrangement (demerger) (in short Scheme) between the Demerged company with the Resulting company with effect from 01.10.2015. The Scheme is appended as Annexure '5' to C.P.No.147 of 2016 and Annexure '4' to C.P.No.148 of 2016.

2. M/s.Brindavan Cotton Mills Private Limited, the petitioner in C.P.No.147 of 2016 is the Demerged company and M/s.Adhilakshmi Spinning Mills Private Limited, the petitioner in C.P.No.148 of 2016 is the Resulting Company.

3. A perusal of the records shows that the respective petitioner company have complied with the formalities as prescribed under the Companies Act and the Rules framed therein. A Certificate of the Chartered Accountant has been filed which, inter alia, holds out that the Demerged Company has only one secured creditor, which is appended as Annexure '6' to C.P.No.147 of 2016.

3.1. Furthermore, no objection to the proposed scheme has been obtained from the secured creditor of the Demerged Company, which is appended as Annexure '7' to C.P.No.147 of 2016.

3.2. It is stated that there is no secured creditor as far as Resulting Company is concerned. A certificate of the Chartered Accountant confirming the said position is appended as Annexure '5' to C.P.No.148 of 2016.

4. A copy of two separate resolutions of even date, i.e., 04.12.2015, passed by the Board of Directors of both the Demerged Company as well as the Resulting Company adopting the scheme is enclosed as Annexure '3' to C.P.No.147 of 2016 and Annexure '2' to C.P.No.148 of 2016.

5. The affidavits of the equity shareholders of both the Demerged and Resulting companies giving their consent to the scheme is appended as Annexure '8' to C.P.No.147 of 2016 and Annexure '6' to C.P.No.148 of 2016.

5.1. By order dated 30.03.2016 in C.A.Nos.336 and 337 of 2016, this Court dispensed with the convening, holding and conducting of the meeting of the shareholders of both the Demerged Company and Resulting company for the purpose of considering and if thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving arrangement (demerger).

6. In this matter, arguments were heard and the judgment was reserved on 11.07.2016. On a perusal of the matter, it came to light that the petitioner companies had not filed the details of their unsecured creditors. Hence, the matter was directed to be posted on 18.07.2016 under the caption 'for clarification'.

6.1. When the matter was listed on 18.07.2016, learned counsel appearing for the petitioners sought time to furnish the relevant details. Accordingly, the matter stood adjourned to 29.07.2016. Upon when the matter being listed on 29.07.2016, learned counsel filed the Chartered Accountant Certificate, indicating therein, the details of the unsecured creditors concerning the petitioner companies. Hence, the Court directed the Regional Director to examine the same and file a report.

6.2. On 14.09.2016, when the matter was called, learned counsel appearing for the Regional Director brought to Court, an additional affidavit dated 09.09.2016, wherein, it is stated that the Chairman and Managing Director of the demerged company has furnished a certificate of a Chartered Accountant. The relevant averments made in paragraphs 3 and 4 of the Additional Affidavit of the Regional Director dated 09.09.2016, are culled out hereinbelow :

".... 3) It is submitted that on examination

it reveals that the Chairman and Managing Director of the demerged company has furnished the certificate of a Chartered Accountant in respect of making full payment of the Long term trade payable, the total consideration payable by the resulting company to the shareholders of the demerged company, list of unsecured creditors of the demerged company with Unit wise break up and also certifying the fact that there is only one Secured creditor alone. No objection certificate from the said Secured creditor is furnished.

4) It is submitted that the demerged company has furnished the details of the liabilities which is certified by a Chartered Accountant and hence the Central Govt. has no objection to the scheme of arrangement. It is therefore prayed that this Hon'ble Court may dispose of the petitions on merits and pass such order/orders as deemed fit and proper."

6.3. Consequent thereto, on 14.09.2016, the matter came to be reserved.

7. The petitioners state that no investigation proceedings are pending against the petitioner companies under Sections 235 to 251 of the Companies Act, 1956.

8. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report stating that he has no objection

to the scheme being sanctioned.

9. I have perused the proposed scheme filed along with the company petitions. I find that the said Scheme is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner companies. The said scheme as framed is not violative of any statutory provisions.

9.1. The proposed scheme as formulated is fair, just, sound and is not contrary to any public policy or public interest. No proceedings appear to be pending under the provisions of Sections 231 to 251 of the Companies Act, 1956. All the statutory provisions appear to have been complied with.

10. Consequently, there shall be an order approving the scheme of arrangement (demerger) of the Demerged company, viz., M/s.Brindavan Cotton Mills Private Limited, the petitioner in C.P.No.147 of 2016 with the Resulting Company, viz., M/s.Adhilakshmi Spinning Mills Private Limited, the petitioner in C.P.No.148 of 2016, as provided in "Annexure '5' to C.P.No.147 of 2016 and Annexure '4' to C.P.No.148 of 2016 with effect from 01.10.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act, 1956. Needless to say, the procedure prescribed will be duly complied with.

11. It is made clear, that this order will not be construed as an order granting exemption from payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

12. The learned Senior Central Government Standing Counsel is entitled to a fee of Rs.5,000/- from the Demerged company.

13. The above petitions are disposed of in the aforementioned terms.

27.09.2016

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RAJIV SHAKDHER,J.

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Pre-Delivery Order in

C.P.Nos.147 and 148 of 2016

Dated: 27.09.2016