

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 636/2015

Reserved on 22nd July, 2016

Date of pronouncement: 29th August, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Petition under Sections 391 to 394(A) read
with Sections 100 to 104 of the Companies
Act, 1956**

Scheme of Arrangement between:

Indeen Bio Power Limited

Petitioner Company

AND

Its shareholders

**Through Mr. Abhishek Kumar and
Mr. Vikas Goel, Advocates for the
petitioners**

**Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director**

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391 to 394(A) read with Sections 100 to 104 of the Companies Act, 1956 by the petitioner company seeking sanction of the Scheme of Arrangement between Indeen Bio Power Limited (hereinafter referred to as the petitioner company) and its shareholders.

2. The registered office of the petitioner company is situated at New Delhi, within the jurisdiction of this Court.

3. The petitioner company was incorporated under the Companies Act, 1956 on 18th August, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorized share capital of the petitioner company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued and subscribed capital of the company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The paid up share capital of the company is Rs.2,78,00,000/- divided into 13,00,000 equity shares of Rs.10/- each fully paid up aggregating to Rs.1,30,00,000/- and 37,00,000 partly paid up equity shares of Rs.10/- each (Rs.4/- paid up) aggregating to Rs.1,48,00,000/-.

5. A copy of Memorandum and Articles of Association of the petitioner company has been filed on record. The audited balance sheet, as on 31st March, 2014, of the petitioner company, along with the report of the auditors, and the unaudited provisional financial statements of the petitioner company, as on 15th February, 2015, has also been filed.

6. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavits. It is submitted

by the petitioners that the paid-up share capital of the company of Rs.2,78,00,000/- consists of 13,00,000 fully paid up equity shares of Rs.10/- each and 37,00,000 partly paid-up equity shares (Rs.4/- paid up) shall stand reduced to Rs.2,50,00,000/- consisting of 25,00,000 fully paid up equity shares of Rs.10/- each. It is further submitted that the present arrangement shall also result into reduction of issued and subscribed share capital of the company from Rs.5,00,00,000/- consisting of 50,00,000 equity shares of Rs.10/- each to Rs.2,50,00,000/- consisting of 25,00,000 equity shares of Rs.10/- each. The authorized share capital of the company will continue to be Rs.5,00,00,000/- consisting of 50,00,000 equity shares of Rs.10/- each. It is further submitted that the arrangement will result in creation of additional reserve and surplus to the extent of Rs.28,00,000/- which shall form part of Securities Premium Account. It is claimed that the proposed arrangement will result in retaining the cash reserve of the company and will not result in any outflow of funds from it.

7. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner company.

8. The Board of Directors of the petitioner company in their meeting held on 9th December, 2014 have unanimously approved the proposed Scheme of Arrangement. The members of the petitioner company in their

extra-ordinary general meeting held on 5th January, 2015 have also unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meeting of the Board of Directors and the extra-ordinary general meeting of the shareholders of the petitioner company has been placed on record.

9. The petitioner company had earlier filed CA (M) No. 102/2015 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 22nd July, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the petitioner company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

10. The petitioner company has thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 31st August, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Statesman' (English) and 'Dainik Jagran' (Hindi) editions. Affidavit of service has been filed by the

petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 12th October, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

11. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 8th February, 2016 wherein he has stated that the Scheme involves reorganization of share capital, whereby no company will get dissolved and that the Scheme of Arrangement is not prejudicial to the interest of either of the company or its shareholders and creditors in any manner and therefore, the Official Liquidator does not have any objection.

12. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 22nd February, 2016 not raising any objection to the proposed Scheme.

13. On 21st April, 2016 learned counsel for the petitioner has pointed out that a typographical error has crept in the Scheme and that he shall be filing the corrected copy of the Scheme. The petitioner company along

with the affidavit dated 27th April, 2016 of Mr. Mahesh Mansukhani, Managing Director of the petitioner company has placed on record the amended Scheme of Arrangement. However, on 26th May, 2016, learned counsel prayed and was granted permission to file further affidavit clarifying all doubts in respect of the working of paragraphs 2.1.1 and 5.1 of the amended Scheme. Thereafter, the petitioner company has placed on record an affidavit dated 30th June, 2016 of Mr. Mahesh Mansukhani, Managing Director of the petitioner company clarifying the method in which the share capital of the company will be reduced. Along with the said affidavit, the petitioner has also placed on record a copy of the Scheme, which was further revised to provide further clarity in the language used in para 2.1.1 of the amended Scheme.

14. No objection has been received to the Scheme of Arrangement from any other party. Learned counsel for the petitioner has submitted that the petitioner company has not received any objection pursuant to the citations published in the newspapers on 12th October, 2015.

15. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Arrangement and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Arrangement, there appears to be no impediment to

the grant of sanction to the amended Scheme of Arrangement. Consequently, sanction is hereby granted to the amended Scheme of Arrangement, annexed with the affidavit dated 30th June, 2016, under Sections 391 and 394 read with Sections 100 to 104 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law.

16. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 29, 2016