

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 739/2015

Reserved on 2nd August, 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(2) & 394 read with
Sections 100 to 104 of the Companies Act,
1956**

Scheme of Arrangement between:

Chandpur Enterprises Limited

Non-Petitioner/Demerged Company

AND

Emdees Foods Limited

Non-Petitioner/Resulting Company No. 1

VKM Industries Limited

Petitioner/Resulting Company No. 2

**Through Mr. Rajeev K. Goel, Advocate
for the petitioners**

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391(2) & 394 read with Sections 100 to 104 of the Companies Act, 1956 by the petitioner/ resulting company no. 2 seeking sanction of the Scheme of Arrangement between Chandpur Enterprises Limited (hereinafter referred to as the demerged company) and Emdees Foods Limited (hereinafter referred to as the resulting company no. 1) and VKM Industries Limited (hereinafter referred to as the petitioner/resulting company no. 2).

2. The registered office of the petitioner/resulting company no. 2 is situated at New Delhi, within the jurisdiction of this Court. However, the registered offices of the demerged company and the resulting company no. 1 are situated at Uttar Pradesh, outside the jurisdiction of this Court. Learned counsel for the petitioner submitted that separate application has been filed by the demerged company and the resulting company no.1 in the Allahabad High Court for sanction of the Scheme of Amalgamation in their respect.

3. The petitioner/resulting company no. 2 was originally incorporated under the Companies Act, 1956 on 9th March, 2012 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of VKM Industries Private Limited. The company changed its name to VKM Industries Limited and obtained the fresh certificate of incorporation on 22nd April, 2013.

4. The present authorized share capital of the petitioner/resulting company no. 2 is Rs.1,50,00,000/- divided into 15,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.33,00,300/- divided into 3,30,030 equity shares of Rs.10/- each.

5. A copy of the Memorandum and Articles of Association of the petitioner/resulting company no. 2 has been filed on record with the application, being CA(M) 135/2015, earlier filed by the petitioner. The audited balance sheet, as on 31st March, 2014, of the petitioner/resulting company no. 2, along with the report of the auditors, had 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 affidavit. It has been submitted by the petitioner that the demerged company has three distinct businesses/divisions viz. Paper Division, Food Division, and Steel Division. It has been further submitted that in order to explore the potential of these businesses to the fullest and to provide focused leadership and management attention, it is intended to demerge Food Division and Steel Division of the demerged company into the resulting companies nos. 1 & 2 respectively. It is claimed that the proposed demerger will provide scope for independent expansion of various businesses. It will strengthen, consolidate and stabilize the business of these companies and will facilitate further expansion and growth of their business.

7. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the resulting

companies nos. 1 & 2 shall issue and allot equity shares to the shareholders of the demerged company in the following ratio:-

“24 equity shares of Rs.10/- each of the resulting company no.1, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the demerged company.”

“147 equity shares of Rs.10/- each of the resulting company no.2, credited as fully paid up, for every 1000 equity shares of Rs.10/- each held in the demerged company.”

8. 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/resulting company no. 2.

9. The Board of Directors of the petitioner/resulting company no. 2 in their meeting held on 20th January, 2015 have unanimously approved the proposed Scheme of Arrangement. A copy of the Resolution passed at the meeting of the Board of Directors of the petitioner/resulting company no. 2 has been placed on record.

10. The petitioner/resulting company no. 2 had earlier filed CA (M) No. 135/2015 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 11th September, 2015, this court allowed the application and dispensed with

the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the petitioner/resulting company no. 2, there being no secured creditor of the petitioner company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

11. The petitioner/resulting company no. 2 has thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 28th September, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in 'Business Standard' (English) and (Hindi) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 27th October, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

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 8th February, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation subject to compliance of provisions of section 117(3) and

179(3) of the Companies Act, 2013 by the petitioner/resulting company no. 2. The Regional Director in para 7 of his report has submitted that the Board of Directors of the resulting company no. 2 have approved the proposed Scheme in their Board meeting held on 15.01.2015. Accordingly, in terms of provisions of Section 117(3) read with 179(3) of the Companies Act, 2013, the company is required to file such resolution (e-form MGT-14) with the ROC within 30 days of passing the resolution whereas the company has not yet filed the said resolution thereby prima facie violated the provisions of Section 117(3) of the Companies Act, 2013.

13. In response to the aforesaid observation, the petitioner/resulting company no. 2 in the affidavit dated 4th July, 2016 of Mr. Kshitiz Mittal, Director of the petitioner company, has submitted that the petitioner company has moved an application to the Central Government, Ministry of Corporate Affairs, New Delhi seeking condonation of delay in filing e-form MGT-14 and undertakes to file the same immediately on receipt of the requisite approval from the Central Government. It has been further submitted that the petitioner/resulting company no. 2 is not the subject matter of dissolution and will remain in existence even after the sanction of the Scheme. Therefore, if the company fails to file the e-Form MGT-14, the ROC may initiate appropriate proceedings against the petitioner company for non filing of e-Form MGT-14. The undertaking given by the

petitioner/resulting company no. 2 to file e-Form MGT-14 on receipt of approval from the Central Government is accepted. In case of any default by the company, the ROC would be at liberty to take appropriate action, as permissible in law, against the petitioner company.

14. No objection has been received to the Scheme of Arrangement from any other party. The petitioner/resulting company no. 2, in the affidavit dated 2nd February, 2016 of Mr. Kshitiz Mittal, Director of the petitioner/resulting company no. 2, has submitted that neither the petitioner company nor its counsel have received any objection pursuant to the citations published in the newspapers on 27th October, 2015.

15. Considering the approval accorded by the equity shareholders and creditors of the petitioner/resulting company no. 2 to the proposed Scheme of Arrangement and the affidavit filed by the Regional Director, Northern Region, not raising any objection to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, subject to sanction of the Scheme from the court of competent jurisdiction in respect of the demerged company and resulting company no. 1, sanction is hereby granted to the Scheme of Arrangement under Sections 391 and 394 of the Companies Act, 1956. The petitioner/resulting company no. 2 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. The sanction of the Scheme will be effective from the appointed date of arrangement, i.e. 1st April, 2014.

16. Learned counsel for the Official Liquidator prays that costs of at least Rs.50,000/- should be paid by the petitioner keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to him. As already directed vide order dated 02.08.2016, the petitioner shall deposit a sum of Rs.50,000/- by way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

17. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 29, 2016