

Co.Pet. 17/2014
BEFORE
THE HON'BLE MR JUSTICE HRISHIKESH ROY

1. Heard Mr. J Roy, alongwith Mr. Raghav Mathur & Puneet Singh Bindra learned Counsel for the Petitioner Companies. Also heard Mr .S.C. Keyal, Ld. Assistant Solicitor General.

2. This is a petition under Section 100 to 104 read with Sections 391 to 394 of the Companies Act 1956 filed by the petitioner companies i.e. Greenply Industries Limited (Demerged Company or Transferor Company) & Greenlam Industries Limited (Resulting Company or Transferee Company) for sanction of the Composite Scheme of Arrangement between the Petitioner Companies and their respective members and creditors for demerger of decorative business (the Demerged Undertaking) of the Greenply Industries Limited to Greenlam Industries Limited together with assets and liabilities relating to such undertaking.

3. By the order of this Court dated 16.07.2014 and on perusal of the petition for confirmation of the Composite Scheme of Arrangement in Form No.40, this petition was fixed for hearing on 04.09.2014 and notices were ordered to be advertised in The Assam Tribune and The Amar Asom, Guwahati, not less than fourteen days before the date fixed for hearing and also on the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, and the Registrar of Companies, Shillong not less than 28 clear days before the date fixed for hearing, as required under Sections 391 to 394 of the Companies Act read with Form No.6 in the Companies (Court) Rules.

4. Mr. J. Roy, the learned Counsel appearing for the Petitioner Companies states that all the aforesaid directions have been faithfully complied with and the notices have been served on all the parties, including the Regional Director and Registrar of Companies and the same has been duly published in the newspapers, The Assam Tribune and The Amar Asom.

5. Mr. S.C Keyal, the learned Counsel appearing for the Regional Director-states that the Central Government observes the following:

(a) The details of assets and liabilities and the values of the demerged undertaking i.e. Decorative Business of the demerged company proposed to be transferred to the resulting company have not been mentioned in the Scheme. However the Petitioner No.1 company has furnished the details alongwith the letter dated 25/08/14. Therefore, the same should be made a part of the Scheme.

(b) Greenlam will be allowed to issue and allot equity shares only after increase of its Authorised Share Capital and after compliance with the relevant provisions of the Companies Act, 2013 and filing of requisite forms and payment of requisite fee to the office of Registrar of Companies. The Petitioner companies may be directed to amend the clause 8.13 of the Part 3 of the Scheme to insert the sentence subject to compliance of the requirement of relevant provisions of the Companies Act 2013 in the last line of the said para of the Scheme.

(c) The clause 9 of the part 3 of the Scheme speaks about the accounting treatment to be made in the books of the Petitioner companies respectively on the approval of the Scheme. Further, para 9.2 (b) states that The difference between Net worth of the Demerged Undertaking and the paid up share capital of Demerged Undertaking as issued in pursuance of this Scheme, netted by existing share capital cancelled in terms of this Scheme, shall be treated as Free Reserves as on the Appointed Date. This accounting treatment is not correct since the gain, if arising out of such arrangement, is not out of operational activities of the company and thus can not be treated as Free Reserve. The nature of such gain is Ca

pital Profit. Therefore, the said para should be modified so that the para reads Capital Reserve in place of Free Reserves and similarly clause 9.2 (c)(iii) of the scheme should be amended by stating Capital Reserve in place of General Reserve.

(d) The para 4.5 of para 3 of the Scheme provides that:

subject to the para above, if any creditor has any charge, security interest, lien, statutory lien or statutory charge on any of the assets or properties of Demerged Undertaking of Greenply, such creditor shall continue to enjoy and hold such charge, lien or security interest upon the properties of Demerged Undertaking in Greenlam

As this para speaks about the transfer of the secured creditors of the demerged undertaking of the demerged company to the resulting company, the charge in relation thereto cannot be shifted to e-records of the resulting company as there is no such facility in the MCA 21 system to transfer the charge documents (e-forms) of one company to another company. Therefore, this court may kindly direct the demerged company to satisfy existing charge of Demerged Undertaking by filing form no. CHG 4 in the office of Registrar of Companies and Resulting Company be directed to create new charge by filing form no. CHG 1 before the scheme is approved.

6. The learned counsel for the Petitioner Companies states that the Petitioner companies do not contest the observations in points 2(a), 2(b), 2(c) and 2(d) in the affidavit made by the Regional Director and will comply with the same in letter and spirit.

7. However, with respect to the observation in (d), Mr. J. Roy submits that the Petitioners shall take all requisite steps upon the coming into effect of the Scheme to file the requisite forms i.e. CHG 4, CHG 1 and any other form, if any, with respect to the creation / modification / satisfaction of charges, as the case may be, in favour of the various creditors of the Demerged Company and Resulting Company respectively in terms of the applicable provisions of the Companies Act, 2013. Till such time the above mentioned forms are filed with the Registrar of Companies, the creditors of the Demerged Company shall continue to hold their respective charge over the Demerged Undertaking. This fact has also been mentioned by the Petitioners in clause 4.5 of the Scheme.

8. This court has considered the observations and the submissions of the Regional director and the counsel for the Petitioners.

9. In view of the above observations and undertaking given, the submissions of the Petitioner companies are accepted. Therefore it is considered expedient that the prayer for approval/sanction of the Composite Scheme of Arrangement be granted. Accordingly there will be an order in terms of prayer no. (d) of the Petition for sanction of the Composite Scheme of Arrangement.

10. Let the Registrar General draw up necessary orders in Form No.42 under the Companies (Court) Rules, 1959.

11. The case is disposed of with the above orders.