

(2012) 11 DEL CK 0257

In the Delhi High Court

Case No : Company Petition No. 334 of 2012

Bhaskar Refractories and SW Pipes Private Limited

APPELLANT

Vs

B.N.B.S. Cements and Products Private Limited

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2012) 11 DEL CK 0257

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Mukesh Sukhija, for the Appellant; K.S. Pradhan, Deputy Registrar of Companies for the Regional Director and Mr. Rajiv Bahl, Advocate for the Official Liquidator, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This joint Petition has been filed under sections 391(2) & 394 of the Companies Act, 1956 by the Petitioner Demerged Company and Resultant Company seeking sanction of the Scheme of Arrangement of Demerger of Estate Division of BHASKAR REFRACTORIES AND SW PIPES PRIVATE LIMITED (Demerged Company); into B.N.B.S. CEMENTS AND PRODUCTS PRIVATE LIMITED (Resultant Company). The registered offices of the Petitioner Demerged Company and Resultant Company are situated at New Delhi, within the jurisdiction of this Court.

2. Details with regard to the date of incorporation of Demerged Company and Resultant Company, their authorized, issued, subscribed and paid up capital have been given in the Petition.

3. Copies of the Memorandum and Articles of Association as well as the latest audited Accounts as at 31st March, 2011 of the Petitioner Demerged Company and Resultant Company have also been enclosed with the Petition.

4. Copies of the Resolutions passed by the Board of Directors of the Petitioner

Companies approving the Scheme of Arrangement have also been placed on record.

5. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

6. So far as Share Exchange ratio is concerned, the Scheme provides that upon amalgamation of the "Demerged Company into the "Resultant Company" pursuant to the Scheme of Arrangement, the following would be the share Exchange Ratio:

790 (Seven Hundred Ninety) Equity shares of the face value of Rs. 100/- for every 100 (One Hundred) equity shares of Rs. 100 each held, for the proportionate capital employed in the Estate Division of the Demerged Company.

7. The Petitioner Companies had earlier filed CA (M) No. 110 seeking directions of this Court for dispensation/convening of meetings. Vide order dated July 4, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders, Secured Creditors and Un-secured Creditors of the Demerged Company and the Resultant Company.

8. The Petitioner Demerged Company and the Resultant Company have thereafter filed the present Petition seeking sanction of the Scheme of Arrangement. Vide order dated July 20, 2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in the "Business Standard (English, Delhi Edition) and "Business Standard" (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspaper on October 26, 2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

9. In response to the notices issued in the Petition, Mr. Rakesh Chandra, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 1st November, 2012. Relying on Clause 8 (a) of the Scheme of Arrangement, he has stated that, upon sanction of the Scheme of Arrangement, all the employees of the Demerged Company shall become the employees of the Resultant Company without any break or interruption in their services upon sanctioning of the Scheme of Arrangement by the Hon"ble Court. He has vide para 4 of his affidavit submitted as follows:

4. That the deponent further craves leave to submit that the individual assets and liabilities and the values thereof pertaining to "Estate Undertaking" of the Demerged Company Viz. M/s. Bhaskar Refractories & SW Pipes Pvt. Ltd. proposed to be transferred to the Resulting Company Viz. M/B N B S Cements Products Pvt Ltd. are not mentioned in the Scheme. Since Shareholders and Creditors of the Companies have approved the Scheme of Arrangement as such,

it should have been part of the Scheme of Arrangement so that the details of the individual assets and liabilities and the values thereof pertaining to De-merged Undertaking are known to the Shareholders & Creditors of both the Transferor & Transferee Company.

10. In response to the observations of the Ld. RD the Petitioner Companies have filed an affidavit vide stating as follows:

3. That with regard to the above observations, the deponent submits as follows:

(i) That the present Scheme of Arrangement involves the Holding Company and the Subsidiary Company i.e. the Estate Division of the M/s. Bhaskar Refractories and SW Pipes Private Limited-Demerged Company (being the holding company of Resultant Company) is demerging into M/s. B N B S Cements And Products Private Limited- the Resultant Company (being wholly owned subsidiary of the De-merged Company). Also both the Companies are controlled by the members of the same family.

(ii) The copy of the Scheme of Arrangement was provided to all the shareholders and the creditors of the De-merged Company and the Resultant Company and was approved by them.

(iii) That the Scheme of Arrangement is to take effect from 1st day of April 2011 and complete balance sheet of the Demerged Company as at 31st March 2011 was approved by the shareholders of Demerged Company and filed along with the First Motion Application filed with this Hon"ble Court.

(i) That the Ld. Regional Director vide their letter bearing no. 6/145/T-1/2011/3179 dated 8th August 2012 directed the petitioner Companies to submit the details of the Estate Division and the Petitioner Companies vide their reply dated 8th October 2012 duly submitted the details as directed by the Ld. RD. The copy of the letter issued by Ld. RD and the reply submitted by the Petitioner Companies are enclosed herewith and marked as Annexure: A (Colly)

(ii) However the balance sheet of the Estate Division of the Demerged Entity as at 31st March 2011 is enclosed herewith for ready reference and marked as Annexure: B

11. In view of the submissions made hereinabove the observations made by the Ld. RD do not survive.

12. No objection has been received to the Scheme of Arrangement from any other party. The respective directors for the Petitioner Companies, has filed an affidavit dated 3rd November, 2012, confirming that neither the Petitioner Companies nor the counsel for the petitioner Companies has received any objection pursuant to citations published in the newspapers.

13. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, Northern Region to the proposed Scheme of Arrangement, there appears to be

no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the Scheme of Arrangement under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, and in terms of the Scheme, the whole of the assets, rights and powers of the Estate Division of Demerged Company be transferred to and vest in the Resultant Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Estate Division of Demerged Company be transferred to the Resultant Company without any further act or deed. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

14. Learned Counsel for the Petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs. One lac in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted. The Petition is allowed in the above terms.

Order Dasti.