

---

**(2016) 04 DEL CK 0057**  
**In the Delhi High Court**  
**Case No : CO.PET. 583 of 2015.**

|                                     |    |            |
|-------------------------------------|----|------------|
| Surya Laboratories Private Limited  |    | APPELLANT  |
|                                     | Vs |            |
| Valens Technologies Private Limited |    | RESPONDENT |

---

**Date of Decision :** 05-04-2016

**Acts Referred:**

Companies Act, 1956 — Section 391, 394

**Citation :** (2016) 230 DLT 98

**Hon'ble Judges :** Rajiv Shakdher, J.

**Bench :** Single Bench

**Advocate :** Saurabh Kedia and Gursat Singh and Aparna Mudiam, AROC, for the Appellant; Rajiv Behl, Advocate, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

Rajiv Shakdher, J. - This is a second motion petition filed jointly by Surya Laboratories Private Limited (i.e. petitioner no. 1/demerged company) and Valens Technologies Private Limited (i.e. petitioner no. 2/resulting company) under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of arrangement (hereafter referred to as the scheme).

1.1 To be noted, the scheme is configured in a manner whereby, a business undertaking (hereafter referred to as the transferred undertaking) of the demerged company will merge with the resulting company.

1.3 The demerged company and resulting company, as referred to above, will hereafter be collectively referred to as the petitioners.

1.4 The registered office of the petitioners are located within the territorial jurisdiction of this court.

1.5 The details with respect to incorporation and the petitioners" authorised, issued, subscribed and paid up capital are set out in paragraph nos. 1.1.1, 1.1.2,

2.1 and 2.2 of the scheme.

1.6 The demerged company was incorporated on 15.11.1988, in consonance with the provisions of the Act, under the name and style: Surya Laboratories Private Limited.

1.7 The resulting company, was incorporated on 31.03.2014 under the name and style: Valens Trading Private Limited. Thereafter, with effect from 22.04.2015, the name of the resulting company was changed to its present name, viz, Valens Technologies Private Limited.

2. The copies of Memorandum and Articles of Association have been filed by the petitioners. The audited balance-sheet, as on 31.03.2014, of the demerged company is also on record. This court, in CA(M) No.100/2015, vide order dated 03.08.2015, recorded the fact, that as the resulting company has been incorporated recently, therefore, its accounts have not been prepared.

3. Copies of Board of Directors" (BOD) resolutions of even date i.e. 24.04.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

4. The petitioners have averred that the demerger will result in the improvement of the financial position of the petitioners via restructuring, thus, leading to strengthening of business operations of the petitioners.

5. Furthermore, the petitioners have averred that there are no proceedings pending against them, under Sections 235 to 251 of the Act or the corresponding provisions of the Companies Act, 2013, to the extent notified.

6. To recapitulate, the petitioners had in the earlier round filed an application (i.e. the first motion), being: CA(M) No.100/2015, as indicated above, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of the shareholders and creditors (secured and unsecured) of the petitioners. This court vide order dated 03.08.2015, having regard to the fact that all the shareholders of the petitioners and all the creditors (i.e. secured and unsecured) of the demerged company had given their consent to the scheme, dispensed with the requirement of convening meetings, as prayed.

7. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 19.08.2015. Notice was accepted on behalf of the Regional Director (RD). Furthermore, citations were ordered to be published.

8. Accordingly, citations were published on 25.09.2015, in the Delhi Editions of Business Standard (English) and Business Standard (Hindi).

8.1 An affidavit dated 05.12.2015 demonstrating service of the petition on the RD and the ROC and establishing publication of notice of hearing along with the newspaper extracts, was filed by the petitioners.

8.2 Further, the petitioners filed an affidavit dated 13.01.2016, wherein it is averred that subsequent to the publication of notice, the petitioners, have not received any objections/complaints from any third party qua the scheme.

9. Pursuant thereto, the RD filed its affidavit under Section 394 A of the Act. In the affidavit, the RD relied upon the general circular bearing no.53/2011 dated 26.07.2011 and, circular bearing no. 1/2014, dated 15.04.2014. Based on the aforementioned circulars, as per the affidavit of the RD, communication was sent to the Registrar of Companies, Delhi and Haryana (in short the ROC), and the Income Tax Department seeking their response to the scheme. However, no observation/comment/reply of the Income Tax department, it appears, has been received in the matter.

9.1 The RD, evidently, has received information from the ROC vide communication dated 28.12.2015, which is indicative of the fact that the petitioners have not filed the BOD resolutions (E-Form MGT 14), whereby the scheme has been approved, with the office of the ROC. Hence, prima facie, the petitioners have violated the provisions of Section 117(3) of the Companies Act, 2013.

9.2 In response to the concern raised by the RD, the petitioners filed an affidavit dated 13.01.2016, wherein, it clearly averred that, the petitioners have filed the BOD resolutions (E-Form MGT 14) with the office of the ROC on 13.01.2016 with additional fees.

9.3 Therefore, in my view, having regard to the above, the concern of the RD stands duly addressed.

9.4 Since, this is a case of demerger, as far as the OL is concerned, it would have no role to play in this case. Mr. Behl, the learned counsel for the OL affirms this position.

10. To be noted, the scheme in clause 3.2 (ix) (a) provides that all employees of the demerged company engaged in the transferred undertaking in service shall become the employees of the resulting company from the effective date on the same terms and conditions at which these employees are engaged in the transferred undertaking of the demerged company.

11. As per clause 4.1 of the scheme, upon coming into effect of this scheme, the shareholders of the resulting company shall be issued equity shares of the face value of Rs.10/- each towards part of value of the net assets (all assets transferred pursuant to the scheme as reduced by the book value of liabilities taken over) in the demerged company in the ratio of their shareholding as on the effective date.

11.1 Furthermore, as per clause 4.1 of the scheme, it is, inter alia, provided that the new equity shares of the resulting company shall be issued and allotted in accordance with what is stated above i.e. clause 4.1(ii) of the scheme shall rank pari passu in all respects with the existing equity shares of the resulting company.

12. Accordingly, in view of the approval accorded to the scheme by the shareholders of the petitioners and creditors (i.e. secured and unsecured) of the demerged company and, given the fact, that the concern raised by the RD has been duly met, as indicated above, in my opinion, there appears to be no impediment in the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioners will, however, comply with all statutory requirements, as mandated in law.

12.1 A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

13. It is further directed that the petitioners will comply with all the provisions of the scheme and, in particular, those which are referred to herein above.

14. In any event, notwithstanding what is stated by the petitioners, the resulting company will file an undertaking with this court, within two weeks from today, stating therein, that it will take over and defray all liabilities of the transferred undertaking of the demerged company. It is also made clear, that the concerned Statutory Authority will be entitled to proceed against the resulting company qua any liability which it would have fastened on to the demerged company qua the transferred undertaking for the relevant period, and that, which may arise on account of the scheme being sanctioned.

14.1 Notwithstanding the above, if there is any deficiency found or, any violation committed of any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of any action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

15. In terms of the provisions of Section 391 and 394 of the Act, and in consonance with clause 3.1 of the scheme, the business and all the properties, assets, rights, titles, benefits and interest of the demerged company in the transferred undertaking in its entirety will stand transferred to and/or vest in the resulting company without any further act or deed. Similarly, in terms of clause 3.2 (vi) (a) of the scheme, all debts, liabilities and obligations of the demerged company qua the transferred undertaking shall stand transferred to the resulting company without any further act or deed.

15.1 It is made clear, that this order will not be construed as an order granting exemption from: payment of stamp duty or, taxes or, other penalties/charges, if any, payable, as per the relevant provisions of law.

16. Consequently, the petition is allowed and disposed of in the aforesaid terms.