

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 706 OF 2017
AND
CSP NO 707 OF 2017

In The Matter Of The Companies Act, 2013;

And

In the Matter Of Sections 230 to 232 of the Companies Act,
2013;

And

In the matter of Scheme of Arrangement between Duro Shox
Private Limited ('the Demerged Company') with Duro
Technical Systems Private Limited ('the Resulting Company')
and their respective Shareholders.

Duro Shox Private Limited Petitioner Company/Demerged Company

AND

Duro Technical Systems Private Limited Petitioner Company/ Resulting Company

Judgment/Order delivered on 28th September, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy** Hon'ble, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. Ramesh Gholap, Assistant Director in the office of Regional
Director

Per: **B.S.V. Prakash Kumar, Member (J)**

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition or to the amendments made to the Scheme of Arrangement of Duro Shox Private Limited ("Demerged Company") with Duro Technical Systems Private Limited ("Resulting Company") and their respective Shareholders.

2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement of Duro Shox Private Limited ("Demerged Company") with Duro Technical Systems Private Limited ("Resulting Company") and their respective Shareholders.
3. The learned Counsel for the Petitioners submit that Demerged Company is engaged in the business of manufacturing shock absorbers and other automotive and engineering components and Resulting Company is incorporated with the objective of engaging in the business of generation and supply of power.
4. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Applications and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Applications.
6. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under. The said undertaking is accepted.
7. The Regional Director has filed his Report dated 25th September, 2017, stating therein that save and except as stated in paragraph IV (1) to (6), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:
 1. *The tax implications if any arising out of the Scheme is subject to the final decision of Income tax Authorities. The approval of the Scheme by this Hon'ble Tribunal may not deter the Income tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the Scheme. The decision of the income tax authority is binding on the petitioner company.*
 2. *It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 15.06.2017 for*

comments. The office of the Directorate also has issued reminder dated 21.08.2017.

3. Petitioner in clause 5.2 of the Scheme inter alia mentioned that Prior to the Effective Date and allotment of the New Shares pursuant to this Scheme, if necessary, the Resulting Company shall, to the extent required, increase the Authorised Share Capital of the Resulting Company by creation of at least such number and value of New Shares, as may be necessary to satisfy its obligation under the Scheme and as may be desirable, expedient and necessary in that behalf and the Memorandum and Articles of Association of the Resulting Company shall stand amended accordingly. In this regard, the Transferee Company undertakes to comply with the provisions of the Companies Act, 2013 read with rules for increasing in authorised capital.

4. Petitioner in clause 5 of the scheme inter alia mentioned that upon this Scheme becoming operative, the resulting company shall issue and allot 1 fully paid up Optionally Convertible Non-Cumulative Redeemable Shares of Rs 10/- each for every 1 fully paid-up equity shares of Rs. 10/- each held by the equity shareholders of the Demerged Company. But according to clause 3.2 of the Scheme the Resulting Company don't have Optionally Convertible Non-Cumulative Redeemable Share Capital.

In this regards, the resulting company has to classify their share capital

5. Petitioner in clause 5 of the Scheme inter alia has mentioned that the Resulting Company' paid up share capital is five lakhs and it proposes to 1 fully paid-up Optionally Convertible Non-Cumulative Redeemable Shares of Rs. 10/- each for every 1 fully paid up equity shares of Rs. 10/- each held by the equity shareholders of the Demerged Company

Deponent prays that the Hon'ble Tribunal may pass order to comply with section 61 read with section 13, section 64 and other applicable sections of the companies Act, 2013 for increasing Authorised Share Capital

6. Petitioner in clause 1.6 (iii) has inter alia mentioned that any question that may arise as to whether a specific asset or liability pertains or not to the demerged undertaking or arising out of the activities or operations of the demerged company shall be decided mutually by the Board of Directors of the Petitioner Companies.

In this regard, demerged company and resulting company have to undertake to take prior approval of the Hon'ble Tribunal

8. In so far as observations made in paragraph IV (1) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
9. In so far as observations made in paragraph IV (2) of the Report of Regional Director is concerned, the Petitioner Companies have complied with the requirements of sending notices to the Income tax authorities.
10. In so far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to increase the authorised share capital of the Resulting Company in order to issue preference shares to the shareholders of the Demerged Company pursuant to Scheme becoming effective.
11. In so far as observations made in paragraph IV (4) of the Report of Regional Director is concerned, the Petitioner Companies undertake to classify the share capital in order to issue Optionally Convertible Non-Cumulative Redeemable Preference Shares pursuant to the Scheme.
12. In so far as observations made in paragraph IV (5) of the Report of Regional Director is concerned, the Petitioner Companies state that the shareholders of Petitioner Companies have already approved the Scheme in their meetings convened as per the directions of the Hon'ble Tribunal. Further Para 5.6 of the Scheme provides that

"The approval of this Scheme by the shareholders of the Demerged Company and the Resulting Company under sections 230 to 232 of the Act shall be deemed to have the approval under sections 13, 14, 42 and 62 of the Companies Act, 2013 and other applicable provisions of the Act and any other consents and approvals required in this regard"

Hence the Petitioner Company submits that the requirement of complying with section 61 read with section 13, section 64 and other applicable sections of the companies Act, 2013 for increasing Authorised Share Capital is not applicable

13. In so far as observations made in paragraph IV (6) of the Report of Regional Director is concerned, the Petitioner Companies has already submitted divisional balance sheet with the office of the Regional Director. The assets and liabilities mentioned in the said divisional balance sheet shall be transferred to the resulting company pursuant to the Scheme by virtue of this order.

14. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. The Registrar of Companies, Pune's Report has filed his Report dated 17th July, 2017 wherein the RoC has mentioned that there are no complaints, prosecution and scrutiny and matter may be decided on merits.
16. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 706 of 2017 and Company Scheme Petition No. 707 of 2017 filed by the Petitioner Companies are accordingly made absolute.
18. Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
19. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.
20. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of receipt of Order.
21. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
22. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)