

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO 33 of OF 2017

IN

HIGH COURT COMPANY SCHEME PETITION NO 238 OF 2016

Spectra Motors JD Private Limited ...First Resulting Company/Petitioner Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO 34 OF 2017

IN

HIGH COURT COMPANY SCHEME PETITION NO 239 OF 2016

Spectra Motors Western Private Limited ...Second Resulting Company/Petitioner
Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO 35 of 2017

IN

HIGH COURT COMPANY SCHEME PETITION NO. 240 of 2016

Spectra Motors Limited ...Demerged Company/Petitioner Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 (corresponding
sections 230 to 231 of the Companies Act
2013);

AND

In the matter of Scheme of Arrangement
between Spectra Motors Limited ('the
Demerged Company') and Spectra Motors
JD Private Limited ('the First Resulting
Company') and Spectra Motors Western
Private Limited ('the Second Resulting
Company') and their respective
Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Companies in all
three Petitions.

Mr. Ramesh Gholap, Assistant Director for Regional Director in all three Petitions.

Coram: SH. B.S.V. Prakash Kumar, Member (Judicial)

SH. V. Nallasenapathy, Member (Technical)

Date : June 7, 2017

MINUTES OF ORDER

1. Heard the learned Advocate for the Petitioner Companies. No objection has come before the Tribunal to oppose the Petition and none of the Petitioner Companies have contravened any averments made in the Petitions.
2. The sanction of the Tribunal, is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement between Spectra Motors Limited and Spectra Motors JD Private Limited and Spectra Motors Western Private Limited and their respective Shareholders.
3. Learned Advocate for the Petitioner Companies states that the Petitioner Companies are engaged in the business of purchase and sale of Automobiles. Further, the Petitioner Company, Spectra Motors Limited is also engaged in providing various other services related to automobiles and has the dealership of Maruti.
4. Learned Advocate for the Petitioner Companies further states that the proposed Scheme of Arrangement envisages for demerger of Demerged Undertaking 1 and Demerged Undertaking 2 (as defined in the Scheme) of Spectra Motors Limited into Spectra Motors JD Private Limited and Spectra Motors Western Private Limited respectively, in pursuance of the Family Arrangement between the family members of the promoters of the Demerged Company.
5. The Petitioner Companies have approved the said Scheme of Arrangement by passing necessary Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 120 of 2016, 121 of 2016 and 122 of 2016.
7. The Learned Advocate appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of Hon'ble High Court of Judicature at Bombay and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Advocate undertakes to comply with all statutory

requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under, whichever is applicable. The said undertaking given by the Petitioner Companies is accepted.

8. Pursuant to transfer of the Company Scheme Petition to this Hon'ble Tribunal, the Regional Director has filed his report on 20th day of March, 2017 and states that subject to qualifications/remarks contained at Para IV (a) to (c) mentioned in the report, the Scheme deserves to be rejected.

In paragraph IV, of the said affidavit, it is stated that:-

- (a) *As per definitions clause 1.6 and 1.7 of the scheme "Demerged Undertaking" means the entire undertaking, activates operations and business carried on or proposed to be commenced by M/S Spectra Motors Limited and the showroom/workshop (details of the scheme is elaboratory covered under above mentioned clause) demerger the demerged company demerges one or few of its business to a resulting company and some business remains with demerged undertaking. In the instant case the entire business of the demerged company is divided in to two halves (there is a vertical split of assets and liabilities and distribution of the same between two groups) this has resulted in a situation that the demerged company will not have any assets and liabilities in other words no business. This is nothing but a death knell to the corporate entity by M/S Spectra Motors Limited. (the demerged entity). As the scheme does not provide for Remaining business of demerged Company M/S Spectra Motors Limited (SML) the scheme is defective, not in accordance with law and deserves to be rejected.*
- (b) *Further under the guise of scheme/arrangement the companies to the scheme have not filled duly adopted financial statements for the financial year 2015-16 which is due as on date.*
- (c) *As per clause 20 and 21.1 and 21.2 of the scheme "effect of non-receipt of approval/sanctions" by Hon'ble High Court before 31.12.2016 of such other date as the board of directors of SML and/or SMJPL and/or SMWPL may determine , the scheme shall become null and void and be of no effect.*

9. As far as the observations made in paragraph IV(a) of the affidavit of Regional Director is concerned: The Regional Director MCA, Mumbai having raised the objection stating that this scheme should not be allowed for total hiving off demerging company undertaking in between the resulting companies is not permissible because such hiving will take away the status of going concern, the

petitioner counsel has explained that under section 232, it has been clearly envisaged that whole or part of the undertaking of any company can be divided and transferred to two or more companies, therefore the objection raised by the Regional Director MCA, Mumbai is not supported by any law, henceforth this Scheme is to be allowed.

On hearing the submissions of either side, it appears to us that, as per section 232 (1) (b) of the Act, the scheme is permissible even when the whole of the undertaking is hived and transferred to two or more resulting companies, therefore, this Bench, having seen the objection raised by the Regional Director is not supported by any provision of law, hereby allowed the company to proceed with the demerger proposed

10. As far as the observations made in paragraph IV(b) of the affidavit of Regional Director is concerned, the Petitioner Companies through their Advocate states that the Demerged Company has already submitted duly executed copy of the audited financial statement for the year ended March, 31, 2016 to the Regional Director vide letter dated December 5, 2016. Further the Counsel for the Petitioners submit that Audited Financial Statements of the First Resulting Company and the Second Resulting Company have also been filed and the copies of the financial statements and letter dated December 5, 2016 submitted to the Regional Director have been filed with the Hon'ble Tribunal by a rejoinder dated 30th March, 2017, on 5th April, 2017.
11. As far as the observations made in paragraph IV(c) of the affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Board of Directors of Petitioner Companies have extended the above date to December 31, 2017 vide Board Resolution dated December 20, 2016 a copy whereof annexed and marked as Annexure C1, C2 and C3 respectively to the rejoinder dated 30th March, 2017 has been filed with Hon'ble Tribunal on 5th April, 2017.
12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
13. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 33 of 2017 , 34 of 2017 and 35 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
14. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, along with e-Form INC-28 on MCA portal, in addition to the physical copy, within 30 days from the date of issuance of such order by the Registry.

15. The Petitioner Companies are directed 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, within 60 days from the date of receipt of the order.
16. The Petitioner Companies to pay costs of Rs. 25,000/- (Rupees Twenty Five Thousand only) each to the Regional Director, Western Region, Mumbai, within four weeks from the date of the receipt of the order.
17. All authorities concerned to act on a copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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