

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

COMPANY PETITION NO. 59/ALD/2017
Connected with
COMPANY APPLICATION NO. 43/ALD/2017

In the matter of Companies Act, 2013

AND

In the matter of Section 230- 232 and other applicable provisions of the Companies Act, 2013 and Rule framed thereunder as in force from time to time.

AND

1. AUXIN ENGINEERING LIMITED

A private company incorporated under the Companies Act, 1956; Having its registered office at Express Trade Towers 2, UB, Tower 3, B – 36, Sector 132, Noida, Uttar Pradesh, India.

.....Applicant Co. No.1/Transferor Company

AND

2. UPHILL FARMS PRIVATE LIMITED

A private company incorporated under the Companies Act, 2013. Having its registered office at Express Trade Towers 2, UB, Tower 3, B – 36, Sector 132, Noida, Uttar Pradesh, India.

**.....Applicant Company No.2/Demerged Company/
Transferee Company**

AND

3. OASIS GRASSLAND PRIVATE LIMITED

A private company incorporated under the Companies Act, 2013 Having its registered office at Express Trade Towers 2, UB, Tower 3, B – 36, Sector 132, Noida, Uttar Pradesh, India.

.....Applicant Company No. 3/ Resulting Company

Judgement delivered on 15 .09.2017

Coram : Shri H.P. Chaturvedi, Member (J)

For the Petitioners : Shri Rahul Agarwal, Advocate

For the Central Government : Shri M.K Bagri, Official Liquidator



Order

(PER Mr. H.P. CHATURVEDI, MEMBER JUDICIAL)

The Petitioner Companies files Joint application under Section 230- 232 of the Companies Act, 2013 read with National Company Law Tribunal Rules, 2016 along with the Companies (Compromise, Arrangements and Amalgamations Rules), 2016, praying for approval and sanction of the proposed Scheme of Arrangement for the Amalgamation of ***AUXIN ENGINEERING LIMITED*** (Petitioner No.1) ***UPHILL FARMS PRIVATE LIMITED*** (Petitioner No.2) and ***OASIS GRASSLAND PRIVATE LIMITED*** (Petitioner No.3).

The Petitioner Company further submits that the Board of Directors of the Petitioner Companies in its meeting held on March 24, 2017 has already approved the proposed Company Scheme.

The main object, salient features as well as rationale of the proposed Scheme of amalgamation is described as under:

i. The demerger of Project Division Undertaking is likely to enable the business activities to be pursued and carried on with greater focus and attention through two separate entities each having its own independent administrative set-up. This will ensure required depth and focus on each of the businesses and adoption of strategies necessary for the growth of the respective businesses.

ii. The Board of Directors of the Companies believe that each of the said businesses are distinct and diverse in



their growth trajectories, risk profile, maturity stage, and requirement of funds and thereby require entirely different approaches. The proposed scheme of arrangement will enable the management to achieve the desired objectives and address diverse needs of the said businesses to be able to unlock greater value for the stakeholders of all the Companies in future;

iii. It will also help in simplification and rationalization of the holdings structure and reduction in corporate shareholding tiers/

iv. The proposed business reorganisation will also provide the independence to the management in decision making regarding the use of the cash flows, capital expenditure and other reinvestment in respective businesses;

v. Achieve greater efficiencies in operations through carve out of the Project Division Undertaking of Uphill under a separate entity which has more flexibility in terms of organizing the internal management of the business and provide optimal exploitation, monetization and development of such business but with simplified compliance requirements under the applicable laws; and

vi. The activities of each of the business undertakings will be carried on more economically, conveniently and advantageously post restructuring and the same will



have beneficial results for the said companies, their shareholders, stakeholders and all concerned

vii. That the amalgamation of Petitioner Company No.1 with Petitioner Company No.1 with Petitioner Company No.22 and the Demerger of the Project Division Undertaking of Petitioner Company No.3/Resulting Company would be in the best interest of the shareholders, creditors and employees of the Transferor Company, Transferee Company and Resulting Company.

viii. That pursuant to this Scheme of Arrangement, all the shareholders of the Transferor Company will get shares in the Transferee Company and there would be no change in the economic interest for any of the shareholders of the Transferor Company pre and post implementation of the Scheme. Valuation Report given by J.N. Sharma, Chartered Accountant on the share exchange ratio which has already been annexed as **Annexure-17** to Company Application No. 43/ALD/2017.



The salient features of the Scheme are as under:

- i.** That the Scheme proposes the Amalgamation of Auxin Engineering Limited with Uphill Farms Private Limited, and
- ii.** The Demerger of the "Project Division Undertaking" of Uphill Farms Private Limited into Oasis Grassland Private Limited.

iii. That the **Appointed Date** under the Scheme is the commencement of the business hours on **01.04.2017**.

iv. That the share exchange ratio proposed in the Scheme of Arrangement for Amalgamation of Transferor Company with Transferee Company has been set out at Clause [2.6] of the Scheme, which reads as under:

"1 (one) Equity share of the face value of Rs.10. /-each in the Transferee Company credited as fully paid-up for every 1 (one) Equity share of the face value of Rs.10/- each held in the Transferor Company ("Share Exchange Ratio")

v. That the share exchange ratio proposed in the Scheme of Arrangement for Demerger of Project Division Undertaking of Demerged Company into Resulting Company has been set out at Clause [3.11] of the Scheme, which reads as under:

"1 (One) Equity share of the face value of Rs.10/- each in the Resulting Company credited as fully paid-up, for every 1(One) Equity Share of the face value of Rs.10/- each held in the Demerged Company ("Share Exchange Ratio")

vi. That the Scheme provides that the Transferee Company shall account for the transfer and vesting of the Assets and Liabilities of Transferor Company as specified in clause 2.8 of the Scheme.

vii. That the Scheme provides that the Demerged Company and Resulting Company shall account for the transfer and vesting of the Project Division Undertaking of Demerged Company into Resulting Company as specified in clause 3.12.2 and 3.12.1 of the Scheme respectively.



From a perusal of the petition discloses that initially the Petitioner Companies have filed a Company Application No.43/ALD/2017 before

this Tribunal for seeking dispensing with the holding of meeting of the Equity Shareholders and Unsecured Creditors of Petitioner Company No.1/Transferor Company, for dispensing with the meeting of the Equity Shareholders (Nil Secured and Unsecured Creditors) of Petitioner Company No.2/Demerged Company/Transferee Company and further for dispensing with the holding of meeting of the Equity Shareholders and Unsecured Creditors of Petitioner Company No.3/Resulting Company. The court vide its order dated 12th May, 2017 allowed the above mentioned prayers by dispensing with such meeting.

This Tribunal further directed to issue notice to Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Official Liquidator and the Income Tax Department. The Petitioner Companies were also directed vide said order to make a paper publication of the Notice of the Company Petition in English and Hindi newspapers.

In Compliance thereof, the authorised representative of the Petitioner Company No.1/Transferor Company, Petitioner Company No.2/Transferee Company, Petitioner Company No.3/Resulting Company filed the affidavit of service confirming that notices were duly published in the English 'Business Standard' and in the Hindi 'Business Standard' Delhi/NCR edition. The Petitioners has also served notices of the present Company Petition upon the Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, U.P. at Kanpur and Income Tax officer (Faridabad).

In response to the notice. The Registrar of Companies in its report stated that there is no prosecution is filed against both the companies, nor proceeding under section 235 to 251 of the Act is pending.



[Handwritten signature]

The Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, having received such report from Registrar of Companies (Kanpur) has filed his representation Affidavit wherein it's stated that he has no objection to present scheme nor any adverse objection is made by him. Office of Regional Director is inclined to accept the report of Registrar of Companies for the proposed scheme subject to observation made in para 5, 8, 9 of his (RD's) report.

Para 5, 8, 9 of his report are as under:

Para 5 : As per Clause 3.11.1 of the scheme it has been inter-alia stated that "upon effectiveness of the Scheme and in consideration f for the Demerger of the Project Division Undertaking of Demerged Company into Resulting Company, Resulting Company shall, without any further act or deed, issue and allot to each member of Demerger Company whose name is recorded in the register of members as on Record Date (or to their respective heirs, executors, administrators or other legal representatives or the successor-in-title, as the case may be), the following equity shares:

"1 (one) Equity Share of the face value of Rs.10/- each in the Resulting Company credited as fully paid-up, for every 1 (one) Equity Share of the face value of Rs.10/- each held in the Demerged Company ("Share Exchange Ratio").

The Deponent is to say that the petitioner companies may be directed to comply with the provisions of Companies Act, 2013 and filing of relevant forms with Registrar of Companies as may be applicable.

Para 8: That the deponent is to say that the petitioner companies may be directed to give an undertaking in relation to the compliance of payment of stamp duty as may be applicable consequent upon the transfer of assets due to the Amalgamation/Demerger of undertaking/assets.

Para 9: That the Deponent is to say that the petitioner companies may be directed to place on before Hon'ble tribunal, the list of demerged assets.



The Official Liquidator, Allahabad also filed his report on 18.07.2017 wherein he has mentioned the detailed particulars of Authorized, Issued, Subscribed and Paid up Capital of Transferor Company, Demerged Company/Transferee Company and Resulting Company as on 31.03.2016 in his report.

Further as per para 18 of the OL's report it is submitted that OL has no objection to the dissolution of the transferor Company without winding up pursuant to provisions of Section 230-232 of the Companies Act, 2013 and rules made there under. It is mentioned in his report under the provisions of section 230-232 of the Companies Act, 2013, his office is required to scrutinize the Books of Accounts and other documents for the submission of his report, pursuant thereto the Transferor Company, Transferee Company and Resultant Company authorized Representative/Company Secretary Smt. Swasti Tripathi has produced Books of Accounts and statutory records. After scrutiny Official Liquidator has reported that affairs of the Transferor Company as such have not been conducted in manner prejudicial to the interest of their member or to public at large.

In reply to the comments/observation made by, the Regional Director, N.R as made in his affidavit, Mr. Praveen Kumar, Authorized signatory of Petitioner Companies filed an Affidavit stating that with reference to para No.5 of the affidavit of Ld. RD, it is submitted that the petitioner companies undertake to comply with provisions of Companies Act, 2013 and shall file relevant forms with Registrar of Companies as applicable. Further with reference to para 8 of the affidavit of RD, he has submitted that the petitioner companies undertake to comply with the



provisions of Indian Stamp Act as may be applicable on the transfer of assets on amalgamation/demerger under the Scheme of Arrangement.

With reference to Paragraph No.9 of the affidavit of the RD, he has submitted that the schedule of Assets to be transferred on Amalgamation and demerger is enclosed as Annexure -1 and Annexure -2 of his affidavit.

We duly considered the above stated averments made in the Company Petition and perused the documents annexed therewith and further perused carefully the RD (N.R.) affidavit and Report of ROC and O.L filed in the present case. We examined the merits of present Petition and proposed scheme in the light of Judicial Trend as settled that *the Court must examine the scheme on its own merits and is not bound to treat the scheme as fait accompli. It is well-settled that in exercising its discretion in according sanction, the court will consider, first, whether the statutory provisions have been complied with; secondly, whether the classes were fairly represented by those who attended the meeting and whether the statutory majority were acting bona fide, and, thirdly, whether the scheme is such as a man of business would reasonably approve. Bearing in mind these principles, the scheme may be examined.*¹

An arrangement for reconstruction or amalgamation of a company is essentially in the nature of a contract. What should be the terms and conditions of the contract has to be left for consideration by the concerned parties from a business point of view in a commercial sense. The adequacy of consideration for making the agreement is also for them to decide. The Courts will not make bargains for the parties. Except

¹ Bank Of Baroda Ltd. vs Mahindra Ugin Steel Co. Ltd.(1976)46Comp. Cas 227(Guj)



in a case of fraud or prejudice to public interest, if the proposed terms of the arrangement are acceptable to the concerned parties, for considering grant of sanction of the Scheme under Section 391 of the Act, the Court will not interfere with it.²

Further the Court has to consider circumstances before giving its approval. Some of the outstanding circumstances are:

- a. The proposal for the Scheme was made in good faith;
- b. The Scheme is fair and reasonable;
- c. The Scheme will yield to smooth and satisfactory working;
- d. The Scheme does not offend public or commercial morality;
- e. The Scheme is not detrimental to the interests of the creditors or members or public interest.

By following the above stated legal Principle, we duly considered the contents of the present Company Petition along with documents annexed therewith. We are of the view that the proposed scheme does not seem to be contrary to the public policy, nor prejudicial to the interests of shareholders and detrimental to public at large. From the material available on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of Law.



In addition to above all the Statutory compliance either seems to be complied with or have been further undertaken to be complied with by Petitioner Companies as per its Affidavit. Therefore, the present Company Scheme Petition filed by the Petitioners is made absolute in terms of its Prayer Clause. Accordingly, the Company Scheme of Arrangement

² Apex Investments Pvt. Ltd. vs Promain Ltd. 47 (1992) DLT 456

annexed to Company Petition is hereby approved, to be acted upon by the Petitioner Companies as per the terms and condition of the Scheme.

While approving the present scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or other charges, if any, and payment in accordance with law or in respect to any , compliance with any other requirement which may be specifically required under any law.

That Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and the Transferor Companies on such certified copy being so delivered shall deemed to be dissolved. The Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on file kept by him in relation to the Transferee Company and files relating to the Petitioner Companies shall be consolidated accordingly.

Further a cost of Rs.25,000/- is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), Regional Director (N.R.) as the case may be towards Legal Expenses incurred which is payable by the Petitioner companies within four weeks from the receipt of an authentic copy of this order.



The counsel of the company to furnish a copy of draft order of sanction of the Scheme in the prescribed format under Companies Compromises, Arrangement and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication by the Registry of this Tribunal.

All Concerned Regulatory Authorities to act on a copy of this order annexed with the Company Scheme duly authenticated by the Asst. Registrar, National Company Law Tribunal, Allahabad Bench.

Dated: 15.09.2017

_____ *Sd* _____
H.P. Chaturvedi, (Member Judicial)

