

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME PETITION NO. 61 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 890 OF 2016

In the matter of the Companies Act, 2013 (18 of 2013);

And

In the matter of Sections 230 to 232 read with Section 66 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between Yogesh Agencies and Investments Private Limited ('the Demerged Company') with Astra Coated Fabrics Private Limited ('the Resulting Company') and their respective shareholders and creditors.

ASTRA COATED FABRICS PRIVATE)
LIMITED, a company incorporated under the)
 Companies Act, 2013 having its registered)
 office at B-202, Anand, Tirupati Apartments,)
 Bhulabhai Desai Road, Mumbai - 400026.)

...Petitioner Company.

Called for Admission of Petition:

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co., Advocate
 for the Petitioner

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V. Nallasenapathy
 Hon'ble Member (T)

Date: 24th January, 2017.

MINUTES OF THE ORDER

1. Petition Admitted.
2. Petition fixed for hearing and final disposal on 8th March, 2017.
3. Learned Counsel for the Petitioner states that in pursuance of order of the Hon'ble High Court, Bombay dated 27th October, 2016 passed in the Company Summons For Direction No. 890 of 2016, for the convening and holding of the meeting of the Equity shareholders was dispensed with in view of consent given by both the Equity Shareholders. There were no Secured Creditors in the Petitioner Company, hence the question of convening and holding meeting of Secured creditors did not arise. The meeting of the sole Unsecured Creditor was also dispensed with upon an undertaking given by the Petitioner Company to issue an individual notice of the date of hearing of the Petition by Registered Post A.D. upon its sole Unsecured Creditor and also to publish the same in two local newspapers. At least 14 clear days before the date fixed for hearing, Petitioner to issue an individual notice of hearing of Petition by Registered Post A.D. upon its sole Unsecured Creditor. The reduction of share capital of the Petitioner Company is an integral part of the Scheme and the same does not involve either diminution of liability in respect of share capital or payment to any shareholder of any paid up share capital and the Scheme does not envisage any compromise or arrangement with any of the creditors of the Petitioner Company and the Petitioner Company had given an undertaking to pass Special Resolution u/s 100 of the Companies Act, 1956 and the same is annexed as Exhibit 'I' to the Petition and in view of above procedure prescribed under section 101 (2) of the Companies Act, 1956 was dispensed with.
4. The Learned Counsel for the Petitioner Company further submits that the Company Petition is filed in consonance with section 230 to 232 read with Section 66 of the Companies Act, 2013 and Section 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 along with the Order passed in Company Summons for Direction by the Bombay High Court.

5. At least 30 clear days before the date fixed for hearing, Petitioner to serve the notice of hearing of Petition upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013. If no response is received by the concerned Tribunal from Regional Director within 30 days it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
6. At least 30 clear days before the date fixed for hearing, Petitioner to serve the notice of hearing of Petition upon the concerned Registrar of Companies. If no response is received by the concerned Tribunal from Registrar of Companies within 30 days it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
7. At least 30 clear days before the date fixed for hearing, Petitioner to serve the notice of hearing of Petition on the concerned Income Tax Authority within whose jurisdiction the Petitioner Company's assessment are made, with a direction that the Income Tax Authority may submit their comments/views/remarks on the tax aspects of the Scheme to the concerned Regional Director within 15 days from the receipt of the notice of the hearing of the Petition, in terms of General Circular No.1/2014,F.No.2/2014 dated 15th January, 2014 issued by Ministry of Corporate Affairs, Government Of India.
8. At least 10 clear days before the date fixed for hearing, Petitioner to publish the notice of hearing of Petition in two local news papers viz. "Free Press Journal", in English language and translation thereof in "Navashakti", in Marathi language, both having circulation in Mumbai as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
9. At least 14 clear days before the date fixed for hearing, Petitioner to issue an individual notice of hearing of Petition by Registered Post A.D. upon its sole Unsecured Creditor
10. Publication of Notice of hearing of the Petition in the Maharashtra Government Gazette is dispensed with.

11. Petitioner to file in the Registry an Affidavit of Service before 7 days from the date of Final Hearing of the Petition.

Sd/-

B.S.V. Prakash Kumar Member (Judicial)

Sd/-

V. Nallasenapathy Member (Technical)