

KIL/SH/ST.EX/Reg.30/SS/2019-2020

9th November, 2019

The Secretary
BSE Ltd., Floor 25, P. J. Tower
Dalal Street,
Mumbai – 400001

The Vice-President
National Stock Exchange of India Ltd.
“Exchange Plaza”
Bandra-Kurla Complex, Bandra (E)
Mumbai – 400051

The Secretary
The Calcutta Stock Exchange Ltd.
7, Lyons Range,
Kolkata – 700001

Dear Sirs,

In compliance of clause 30 read with Part A of Schedule III of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 please be informed that the National Company Law Tribunal, Kolkata has sanctioned vide its Order dated 8th November, 2019, the ‘Scheme of Arrangement’ filed by the Company under section 230 and 232 of the Companies Act, 2013 by approving the demerger of the Tyre business of the Company to a separate Company Birla Tyres Ltd with effect from the 1st day of January, 2019.

A copy of the said Order is enclosed for your information and records. You are requested to disseminate the above information on your platform for the benefit of all the stakeholders at large.

Thanking you.

For Kesoram Industries Limited



Kaushik Biswas
Company Secretary

Enclo:

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP (CAA) No.1349/KB/2019

Connected with

CA (CAA) No.665/KB/2019

In the Matter of:

The Companies Act, 2013;

And

In the Matter of:

An application under Sections 230 and 232
of the said Act;

And

In the Matter of :

The Companies (Compromises,
Arrangements and Amalgamations) Rules,
2016

And

In the Matter of:

Kesoram Industries Limited (CIN
L17119WB1919PLC003429), a company
incorporated under the provisions of the
Indian Companies Act, 1913, having its
registered office at Birla Building (8th
floor), 9/1 R N Mukherjee Road, Kolkata
700 001

And

Birla Tyres Limited, (CIN
U25209WB2018PLC228915), a company

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incorporated under the provisions of the Companies Act, 2013, having its registered office at Birla Building (8th floor), 9/1 R N Mukherjee Road, Kolkata 700 001

..... Petitioners.

CORAM: Shri Jinan K.R., Member (Judicial)
Shri Harish Chander Suri, Member (Technical)

For the Petitioners :

1. Mr Ratnanko Banerji, Senior Advocate
2. Mr A.K. Jhunjhunwala, Advocate
3. Mr D N Sharma, Advocate
4. Mr T Khaitan, Advocate
5. Mr. D Basu, Advocate

For the Objectors :

1. Mr. Pradeep Sancheti, Advocate
2. Mr. Sankarsan Sarkar, Advocate
3. Ms. Arnobi Dutta, Advocate

For IHI Corporation (Intervener) :

1. Mr. Sourojit Dasgupta, Advocate
2. Mr. Soumya Nag, Advocate

Mr. ChannaKeshava, Assistant Director, Office of the Regional Director,
Eastern Region, Ministry of Corporate Affairs



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Date of Pronouncement of the Order : 8/11/19

ORDER

Per : Shri Jinan K.R., Member(Judicial)

1. The object of this Petition is to obtain sanction of this Tribunal to the proposed Scheme of Arrangement between Kesoram Industries Limited, "demerged company" and Birla Tyres Limited, "resulting company" and their respective shareholders and creditors, whereby and whereunder it is proposed to demerge the undertaking of the Demerged Company in relation to its tyres business, as defined in the Scheme and transfer and vest the same into the Resulting Company on the terms and conditions as fully stated in the Scheme of Arrangement, a copy whereof is annexed with the Petition and marked "A".

2. It is stated in the Petition that the circumstances which justify and/or necessitate the Scheme of Arrangement are, inter alia, as follows :

(i) The Demerged Company is engaged in 2 (two) distinct lines of business namely :

(a) manufacture and distribution of cement through its "Birla Shakti" branch, collectively referred to as the "Cement Business" and

(b) manufacture and distribution of automotive tyre through its Birla Tyres branch, collectively referred to as the "tyre Business".

(ii) The nature of risk and competition involved in each of the cement Business and Tyre Business is distinct, necessitating different management approaches and focus. Moreover, the competitive dynamics of these businesses are also different.

(iii) The separation of the Tyre Business, by way of this Scheme from the Demerged Company would lead to significant benefits for both businesses including :

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- (i) Enable a dedicated management focus and to accelerate growth of the Tyre Business and Cement Business unlocking significant value for the shareholders of Kesoram Industries Limited; and
 - (ii) Access to varied sources of funds for the rapid growth of both businesses.
- (iv) With a view to achieve the aforesaid growth potential, the Demerged Company proposes to re-organise and segregate, by way of the Scheme, its business, undertaking and investments in the Tyre Business.
- (v) The Scheme does not have any adverse effect on either the shareholders or the employees or the creditors of the Demerged Company.

3. The Board of Directors of both the Petitioner Companies have, at their respective meetings, by resolutions passed unanimously, approved the Scheme of Arrangement. A certified copy of each of the Board resolutions of the Petitioners are annexed with the Petition and marked "H".

4. It is stated in the Petition that there are no proceedings pending under Sections 210 to 227 of the Companies Act, 2013 and/or Sections 235 to 251 of the Companies Act, 1956 against the Demerged Company and the Resulting Company.

5. It is stated in the Petition that the issuance of shares by the Resulting Company to achieve the mirror image is also supported by the Share entitlement Ratio Report of an independent Chartered Accountant. Under the Scheme, the resulting Company shall, in keeping with the requirement of the Income-tax Act, 1961, record the assets and liabilities pertaining to the Demerged Undertaking at the respective book values as appearing in the books of the Demerged Company. Upon demerger, all the shareholders of the Demerged Company will also become shareholders of the Resulting Company holding shares in the same proportion as the Demerged Company. As such, no valuation is required of the assets and liabilities of the

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Demerged Undertaking being transferred to the Resulting Company nor any valuation report necessary, determining any share exchange ratio.

6. It is stated that another independent Merchant Banker has also confirmed the Share Entitlement Ratio as fair and proper by their fairness opinion thereon.

7. The copy each of the Share Entitlement Ratio Report of the Chartered Accountants and the Fairness Report of the independent Merchant Banker is annexed with the Petition and marked "M" and "N", respectively.

8. It is stated that the respective Auditors of the Demerged Company and the Resulting Company have also confirmed that the accounting treatment contained in the Scheme is in compliance with Accounting Standards prescribed under Companies Act, 2013 and other generally accepted accounting principles. A copy each of the said certificates are enclosed and collectively marked "O".

9. It is stated in the Application that the equity shares of the Demerged Company are listed on the BSE Limited, the National Stock Exchange of India Limited and the Calcutta Stock Exchange Limited. As per the provisions of Regulation 37 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and in terms of the SEBI Circular No. CFD/DIL3/CIR/2017/21 dated 10th March, 2017, the Demerged Company had filed a copy of the Scheme along with requisite documents before the said stock exchanges. The Demerged Company had also submitted Report of its Audit Committee on the Scheme with the said stock exchanges. The Demerged Company had also filed its Complaint Reports before the stock exchanges and has also displayed the Requisite documents on its website as per requirements of SEBI Circular. Subsequent to intimation of the proposed Scheme with the stock exchanges, the Demerged Company has received

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letters from the BSE Limited and the National Stock Exchange of India Limited forwarding the complaint of Birla Tyres Workers Union. The Demerged Company has duly responded to the said stock exchanges of the said complaint. The said stock exchanges have given their observation letters in respect of the Scheme. The copies of the said observation letters of the said stock exchanges are enclosed and collectively marked "P".

10. This Tribunal had passed an order dated 3rd September, 2019 in the Petition bearing CP (CAA) No. 1349/KB/2019, connected with CA(CAA) No. 665/KB/2019, and directed publication to be effected of the hearing of the Petition, issuance of the notices of this Petition to the statutory authorities for their objections, if any.

11. In compliance with the order dated 3rd September, 2019, passed in CP (CAA) NO. 1349/KB/2019, connected with CA(CAA) No. 665/KB/2019, the Petitioner Companies have filed affidavit of service duly affirmed on 11th September, 2019 evidencing publication of notice in the newspapers and service upon the Central Government and Statutory Authorities.

12. The Regional Director, Eastern Region, Ministry of Corporate Affairs vide its affidavit affirmed on 17th October, 2019 has given the observations of the Central Government.

13. The Petitioners have filed reply affidavit affirmed on 30th October, 2019.

14. The Regional Director, Eastern Region, Ministry of Corporate Affairs vide its affidavit affirmed on 4th November, 2019 has given the observations of the Central Government as under :



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2.(a) It is submitted that the Registrar of Companies, West Bengal by letter dated 17-10-2019 reported that Kesoram Industries Limited is under Inspection follow up action and inquiry is undergoing for the last three years. Further, there are many cases/prosecutions are pending before the Ld. CJM, Alipore and Ld. CMM, Bankshall Court against the demerged company Kesoram Industries Limited.

(Copy of the said report of the Registrar of Companies, West Bengal marked as Annexure-I is annexed herewith for perusal and ready reference)

2.(b) In regard to Para 2(a) of the earlier affidavit, the Petitioner company by Para 3 of the rejoinder submitted that Clause 8.9 of the Scheme of Arrangement provides for issue of GDRs of Birla Tyres Limited(Resulting company) to the GDR holders of Kesoram Industries Limited(Demerged Company) in accordance with the share entitlement ratio. The said issuance of GDRs will be made in accordance with the relevant rules and regulations prescribed for the issuance of the GDRs. The Petitioner companies undertaken to obtain any approval or consents from the applicable statutory authorities as may be necessary in the course of the issuance of the GDRs in accordance with the Scheme. Hon'ble Tribunal may peruse the same and issue order as deem fit and proper.

2. (c) In regard to Para 2(c) of the earlier affidavit, the Petitioner Company by Para 2 (c) of the rejoinder submitted that the Resulting Company undertakes to increase its authorize share capital and file relevant forms and documents along with applicable fees with Ministry of Corporate Affairs suitably to enable it to issue and allot shares to the members of the Demerged company after the sanction by this Hon'ble Tribunal before the Scheme becomes effective. In view of the above, Hon'ble Tribunal may peruse the same and issue order as deem fit and proper.

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2.(d) In regard to para 2(d) of the earlier affidavit, the Petitioner Company by Para 2(d) of the rejoinder submitted that in letter dated 20-01-2019 of Birla Tyres Workers Union, the Union merely expressed its apprehension that the demerger is not in the interest of the employees and shareholders. No grounds for the alleged apprehension is disclosed. Such apprehension in any event is unfounded. Paragraph 6 of the Scheme of Arrangement provides for engagement of all the employees of the Demerged Company in relation to the Demerged undertaking by the resulting company on the same terms and conditions on which they are engaged by the Demerged Company without any interruption of service as a result of transfer of the Demerged Undertaking of the Resulting company. The service of such employees shall be taken into account for the purposes of all benefits to which such employees may be eligible including for the purpose of payment of any retrenchment compensation, gratuity and other terminal benefits and the accumulated bonus, if any, standing to the credit of the employees in the existing provident fund, Gratuity Fund and Superannuation Fund of which they are members will be transferred to such provident Gratuity Fund and Superannuation funds nominated by the Resulting company and/or such new funds as may be established and/or caused to be recognized by the appropriate authorities. Thus the Scheme does not prejudicially affect the interest of the employees of the Demerged Undertaking of the Demerged Company. It appears that in the foregoing submission the Applicant has mistakenly stated "as a result of transfer of the Demerged Undertaking of the Resulting Company" instead of "as a result of transfer of the Demerged Undertaking of the Demerged Company". Hon'ble Tribunal may peruse the same and issue order as deem fit and proper."

15. The Petitioners have submitted affidavit affirmed on 4th November, 2019 stating that the provisions of Competition Act, 2002 are not applicable

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to the demerger of Tyre Division of Kesoram Industries Limited, being the demerged Undertaking of Kesoram Industries Limited to Birla Tyres Limited, which is the subject matter of the Petition.

16. This Tribunal vide Order dated 5th November, 2019 has observed as under :

"Ld. Counsel for the petitioners appears. Ld. Asstt. Director from the Office of the RD(ER), representing the Central Government, appears. Ld. Counsel for the Intervener appears. Ld. Counsel for the objectors appears.

Ld. Asstt. Director, representing the RD(ER), submits that there are certain allegations against the demerger company. ROC, WB has observed committing certain violation of the provisions of the Companies Act, 2013, on the side of the demerger company and prosecution is under process. This application is filed for approval of Scheme of Arrangement. Approval of the Scheme would not prejudice any proceedings pending or to be initiated as against the demerged company. Accordingly, it appears to us that the above said objection is not satisfactory enough to disapprove the Scheme under consideration. However, we are recording the objection of the Asstt. Director.

Ld. Counsel, appearing for the objectors, objected the approval of the Scheme on the ground that claim of the objectors who are allegedly creditors of the applicant company, has not been included in the Scheme. It is submitted on the side of the applicant that the claim of the objectors is disputed and arbitration proceeding is pending before the Arbitrator. Subject to disposal of arbitration proceeding, the claim can be considered by the respective companies involved in the Scheme. We are recording the objections of the following objectors :

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- 1) Mintech Global Private Limited(MGPL)
- 2) Sri Lakshminarayana Minerals(SLNM)
- 3) Lakshminarayana Minerals(LNM)
- 4) Tarang Enterprises.

The Ld. Sr. Counsel for the applicants submits that their claims, if allowed in their favour, shall be considered by the resulting company. The said submission is recorded. This order to be part of the Scheme."

17. Heard the arguments of Ld. Counsel appearing for the Petitioner Companies, the Ld. Counsel appearing for the Objectors and the Assistant Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs and after going through the documents available on record, the following orders in terms of prayers made by the Petitioner Companies are passed by this Tribunal :

ORDER

(a) The Scheme of Arrangement, being Annexure "A" to the Petition, is sanctioned by this Tribunal so as to be binding with effect from the 1st day of January, 2019 on Kesoram Industries Limited and Birla Tyres Limited and their shareholders and creditors and all concerned ;

(b) All the properties, rights, interests and powers of Kesoram Industries Limited pertaining to the Demerged Undertaking (as defined in the Scheme), are transferred to and vest without further act or deed in Birla Tyres Limited and accordingly, the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in Birla Tyres Limited for all the estates and interests of

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Kesoram Industries Limited therein, but subject nevertheless to all charges now affecting the same ;

(c) All the debts, liabilities, duties and obligations of Kesoram Industries Limited pertaining to the Demerged Undertaking, are transferred without further act or deed to Birla Tyres Limited and accordingly, the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of Birla Tyres Limited ;

(d) All legal proceedings and/or suits and/or appeals now pending by or against Kesoram Industries Limited pertaining to the Demerged Undertaking, be continued by or against Birla Tyres Limited ;

(e) Leave is granted to the Petitioners to file the Schedule of Assets of the Demerged Undertaking of Kesoram Industries Limited within three weeks from the date of this Order ;

(f) Kesoram Industries Limited and Birla Tyres Limited, respectively, do, within 30 days after the date of receipt of the certified copy of this Order, cause a certified copy thereof to be filed with the Registrar of Companies, West Bengal ;

(g) Any person interested shall be at liberty to apply to this Tribunal in the above matter for such directions as may be necessary.

18. The Company Petition No CP (CAA) No. 1349/KB/2019, connected with CA (CAA) No. 665/ KB/2019, is disposed of.

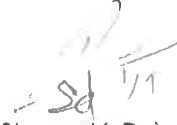
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19. Urgent Photostat copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.



(Harish Chander Suri)
Member(Technical)



(Jinan K.R.)
Member(Judicial)

Signed on this, the 18th day of November, 2019