

(2023) 11 NCLT CK 0008

National Company Law Tribunal, Mumbai Bench Court - I

Case No: C.A(CAA)/221/MB-I/2023

Seksaria Industries Private Limited
Limited Vs

APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 1, 2023

Acts Referred:

- Companies Act, 2013 - Section 103, 230, 230(5), 232
- Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 - Rule 14

Hon'ble Judges: V.G. Bisht (Retd.) Member (J); Prabhat Kumar, Member (T)

Bench: Division Bench

Advocate: Ahmed Chunawala, Ashwini Gawde

Final Decision: Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. The Joint Company Scheme Application is filed and sought sanction of this Tribunal under section 232 r/w Section 230 of the Companies Act, 2013 for the present Scheme of Arrangement of Seksaria Industries Private Limited ("Demerged Company No. 1") and Seksaria Agritech Private Limited (Resulting Company No. 1") and Ishwarshakti Holdings & Traders Limited (Demerged Company No. 2") with Seksaria Finance Limited ("Resulting Company No. 2") and their respective shareholders ("the Scheme") under sections 230 to 232 of the Companies Act, 2013.

2. The Board of Directors of the Demerged Companies and Resulting Companies in their respective meetings conducted on 2nd November, 2021 and 25th February, 2022 for the Demerged Companies and the Resulting Companies have approved the Scheme.

3. The Appointed Date is 1st April, 2021. The Applicant Company submits that the Board Resolution was passed on 2nd November, 2021 and 25th February, 2022. The Applicant Company is a listed Company and the Approval from BSE was obtained on 17th April, 2023.

4. The rationale for the proposed Scheme is as under:

i.Result In simplification of the group segregation structure of the Sugar and Non sugar business comprising of real estate, optical, confectionaries and finance between the two sets of shareholders to ease out the business operation.

ii.Enable each business being unrelated to pursue respective growth and investment opportunities.

iii.Result in economics in business operations, provide optimal utilization of resources and greater administrative efficiencies.

5. The Business Clause is as follows:

i. The Applicant Company No. 1 is in the business of buying and selling of flats, shops, construction, optical shops.

ii. The Applicant Company No. 2 is in the business of agricultural and allied services.

iii. The Applicant Company No. 3 is in the business of financing Industrial Enterprises and to carry on business as an investment company by investing, acquiring, holding and dealing in shares, securities, movable, immovable properties and also carries business as investment company to invest and acquire, hold, sell and otherwise deal in shares, debentures, stocks, bonds.

iv. The Applicant Company No. 4 is engaged in the business of Finance and Investment.

6. The Authorised Share Capital of the Applicant Company No.1 (Demerged Company No.1), as on the 31st day of March, 2023 is as under:

Particulars	Amount in Rs
<u>Authorized Share Capital</u>	
1,10,000 Equity Shares of Rs. 100/- each	1,10,00,000
TOTAL	1,10,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
98,000 Equity Shares of Rs. 100/- Each fully paid up	98,00,000
TOTAL	98,00,000

As on date there is no change in the capital structure of the Applicant Company No.1.

7. That there are 12 (Twelve) Equity Shareholders in the Applicant Company No.1. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement of Seksaria Industries Private Limited ("Demerged Company No. 1") and Seksaria Agritech Private Limited (Resulting Company No. 1") and Ishwarshakti Holdings & Traders Limited (Demerged Company No. 2") with Seksaria Finance Limited ("Resulting Company No. 2") and their respective shareholders ("the Scheme") is dispensed with, in view of the consent affidavits given by the twelve Equity Shareholders of the Applicant Company No.1.

8. The authorized, issued, subscribed & paid-up share capital of the Second Applicant Company, as on March 31, 2023 is as under:

Particulars	Amount in Rs
<u>Authorized Share Capital</u>	
10,000 Equity shares of Rs.10 each	1,00,000
TOTAL	1,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each	1,00,000
fully paid-up	
TOTAL	1,00,000

As on date there is no change in the capital structure of the Applicant Company No.2/Resulting Company 1.

9. That there are 3 (Three) Equity Shareholders in the Applicant Company No.2. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement is dispensed with in view of the consent affidavits given by the three Equity Shareholders of the Applicant Company No.2, which are annexed as 'Exhibit J-1 to J-3' to the Company Scheme Application.

10. The authorized, issued, subscribed & paid-up share capital of the Third Applicant Company, as on March 31, 2023 is as under:

Particulars	Amount in Rs
<u>Authorized Share Capital</u>	
20,00,000 Equity shares of Rs. 10 each	2,00,00,000
TOTAL	2,00,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
14,40,000 Equity Shares of Rs. 10/- each fully paid-up	1,44,00,000
TOTAL	1,44,00,000

As on date there is no change in the capital structure of the Applicant Company No.3/Demerged Company 2.

11. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.3 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement of the Petitioner Companies shall be convened & held as may be decided by the Chairman.

12. The authorized, issued, subscribed & paid-up share capital of the Fourth Applicant Company, as on March 31, 2023 is as under:

Particulars	Amount in Rs
<u>Authorized Share Capital</u>	
50,000 Equity Shares of Rs. 10/- each	5,00,000
TOTAL	5,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
50,000 Equity Shares of Rs. 10/- each	5,00,000
TOTAL	5,00,000

As on date of filing this application, there is no change in the authorized, issued, subscribed & paid-up share capital of the Fourth Applicant Company.

13. That there are 07 (Seven) Equity Shareholders in the Applicant Company No.4. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.4 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement of the Applicant Companies is dispensed with in view of the consent affidavits given by the seven Equity

Shareholders of the Applicant Company No.4.

14. At least 30 (Thirty) clear days before the said meeting of the Equity Shareholders of all the Applicant Company No. 3 to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed form of proxy, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery or email to each of the Equity Shareholders of all the Applicant Company No. 3 at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company No.3 or can be obtained free of charge at the registered office of the Applicant Company as aforesaid. The Applicant Company No.3 shall publish the notice convening the meeting of Equity Shareholders in 'Business Standard' in English and 'Navshakti' in Marathi having circulation in the State of Maharashtra in which the registered office of the company is situated.

15. The Applicant Companies submits that there are no Secured Creditors in the Applicant Companies.

16. That there are 44 (Forty Four) Unsecured creditors having an outstanding balance of Rs.9,40,20,688/- (Rupees Nine Crore Forty Lakhs Twenty Thousand Six Hundred And Sixty only) in the First Applicant Company. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement of Applicant Companies and their respective shareholders ("the Scheme") is dispensed with in view of the consent affidavits given by the 100% Unsecured Creditors of the Applicant Company No.1.

17. That there are 02 (Two) unsecured creditors having an outstanding balance of Rs.36,800/- (Rupees Thirty Six Thousand Eight Hundred only) in the Second Applicant Company. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement of and their respective shareholders ("the Scheme") is dispensed with in view of the consent affidavits given both the Unsecured Creditors of the Applicant Company No.2.

18. That there are 05 (Five) unsecured creditors having an outstanding balance of Rs.1,14,35,570/- (Rupees One Crore Fourteen Lakh Thirty Five Thousand Five Hundred and Seventy only) in the Third Applicant Company. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.3 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement and their respective shareholders ("the Scheme") is dispensed

with in view of the consent affidavits given by the 100% Unsecured Creditors of the Applicant Company No.3.

19. That there is 01 (One) unsecured creditors having an outstanding balance of Rs.11,800/- (Rupees Eleven Thousand Eight Hundred only) in the Third Applicant Company. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.4 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement between Applicant Companies and their respective shareholders ("the Scheme") is dispensed with in view of the consent affidavit given by the Creditor of the Applicant Company No.4.

20. The Applicant Company No. 3 undertakes to:

i. Issue notice convening meeting of the Equity Shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

ii. issue statement containing all the particulars as per Section 230 of the Companies Act, 2013;

iii. Issue form of proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and

iv. advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21. That Shri Sushil Kumar Agarwal, Retd. IRS, Mob:- 8437545158, Email: sushilkumar1957@yahoo.com, shall be the Chairperson of the meeting of Equity Shareholders of the Applicant Company No. 3 and failing him, Mr. Deepak Kumar Bubna, Audit Committee Member shall be the alternate Chairperson of the said meeting. The Applicant Company No.1 is directed to pay remuneration of Rs.1.50 Lakh plus GST, if applicable to the Chairman. The Scrutinizer for the meeting of the Applicant Company No. 3 shall be Mr. Milan Mehta, Company Secretary. The Applicant Company No.1 is directed to pay remuneration of Rs.0.50 Lakh plus GST, if applicable to the Scrutinizer.

22. The Chairperson appointed for the aforesaid Equity Shareholders of the Applicant Company No. 3 to issue the notices of the meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

23. The quorum for the aforesaid meeting of the Equity Shareholders of the Applicant Company No. 3 shall be as prescribed under Section 103 of the Companies Act, 2013.

24. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, is filed with all the Applicant Company No.3 at their respective Registered Office not later than, 48 hours before the aforesaid Equity Shareholders meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

25. The value and number of the shares of each member shall be in accordance with the books/ register of all the Applicant Company No. 3 or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

26. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

27. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within thirty days of the conclusion of the meeting, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

28. The Consideration is as follows:

i. Upon the Scheme becoming effective and upon the demerger of the Demerged Undertaking No. 1 into Resulting Company No. 1 in terms of this Scheme, Resulting Company No. 1 shall, without any further application or deed, issue and allot shares to the shareholders of Demerged Company No.1 whose name appears in the register of members of Demerged Company No. 1 as on the Record Date 1 as may be stipulated by the Board of Directors of Demerged Company No.1 or to such of their heirs, executors, administrators or the successors in title, as the case may be as may be recognized by the Board of Directors, in the following proportion viz:

10(Ten) fully paid up Equity Shares of Rs.10/-each of Resulting Company No. 1 shall be issued and allotted as fully paid up for every 1 (one) Equity Share of Rs.100/- each fully paid up held in Demerged Company No. 1.

ii. Upon the Scheme becoming effective and upon the demerger of the Demerged Undertaking No. 2 into, Resulting Company No. 2 in terms of this Scheme, Resulting Company No. 2 shall, without any further application or deed, issue and allot shares to the shareholders of Demerged Company No.2 whose name appears in the register of

members of Demerged Company No. 2 as on the Record Date 2 as may be stipulated by the Board of Directors of Demerged Company No.2 or to such of their heirs, executors, administrators or the successors in title, as the case may be as may be recognized by the Board of Directors, in the following proportion viz:

7 (Seven) fully paid up Equity Shares of Rs.10 each of Resulting Company No. 2 shall be issued and allotted as fully paid up for every 1 (One) Equity Shares of Rs.10 each fully paid up held in Demerged Company No. 2

29. That the Applicant Companies are directed to serve notices along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the-

a. Central Government through the office of Regional Director, Western Region, Mumbai;

b. Jurisdictional Registrar of Companies;

c. Jurisdictional Income Tax Authority within whose jurisdiction; the Applicant Company's assessment are made; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3 rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai - 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];

d. Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law;

e. National Stock Exchange;

f. Bombay Stock Exchange,

g. Securities Exchange Board of India

h. Reserve Bank of India;

i. Any other Sectoral/Regulatory Authorities relevant to the Petitioner Companies or their business.

30. The Notice shall be served through by Registered Post-AD, Speed Post and email along with copy of Scheme and state that "If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme". It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

31. The Applicant Companies will submit –

- i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.
- ii. List of pending IBC cases, if any, along with all other litigation;
- iii. pending against the Applicant Companies having material impact on the proposed Scheme.
- iv. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

32. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

33. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

34. The Appointed Date is 1st April, 2021.