

Adj-607 2010

HIGH COURT, BOMBAY

0320940

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

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COMPANY APPLICATION NO. 486 OF 2010
IN
COMPANY SCHEME PETITION NO. 354 OF 2010
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.350 OF 2010.

In the matter of Scheme of Amalgamation
of BKT Moulds Limited
With
Balkrishna Industries Limited.

BKT Moulds Limited. ..Applicant.

Mr. Hemant Sethi, i/b. Hemant Sethi & Co., for Applicant.
Mr. C.J. Joy, for RD.

CORAM : S.J. KATHAWALLA, J.
DATE : 14TH OCTOBER 2010.

P.C.

For the reasons set out in the Affidavit in support of the
Company Application, the Company Application is allowed in terms
of prayer clause (a). Amendments to be carried out within a
period of three weeks from the date of this order.

3. The Company Application is accordingly, disposed of
with no order as to costs.

[S.J. KATHAWALLA, J.]

TRUE COPY


Section Officer
High Court, Appellate Side
Bombay

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 354 OF 2010
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 350 OF 2010

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of

BKT MOULDS LIMITED ("BML" or "Transferor Company")

WITH

BALKRISHNA INDUSTRIES LIMITED ("BIL" or "the Transferee Company")

BKT MOULDS LIMITED, a Company
incorporated under the provisions of the)
Companies Act, 1956 and having its registered)
office at 205, Creative Industrial Estate, 72, N.M.)
Joshi Marg, Mumbai - 400011.)Petitioner Company

Coram: S. J. KATHAWALLA. J.

Date: 27th AUGUST 2010

Mr. Hemant Sethi i/b Hemant Sethi & Co. for the Petitioner.

Dr. T. Pandian Dy. Official Liquidator present .

Mr. C.J Joy i/b Mr. S.K. Mohapatra for Regional Director.

1. Heard learned counsel for the parties.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of BKT Moulds Limited with Balkrishna Industries Limited and their Respective Members. The

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Petitioner Company is 100% subsidiary of Balkrishna Industries Limited, the Transferee Company.

3. Counsel appearing on behalf of the Petitioner has stated that the Petitioner has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner through their counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the rules made there under. Undertaking is accepted.

4. The Regional Director has filed an affidavit stating therein that the scheme does not appear to be prejudicial to the interest of the shareholders and public.

The Official Liquidator has filed a report in the aforesaid Company Scheme Petition stating therein that the affairs of the Transferor Company has been conducted in a proper manner and that the Petitioner/ Transferor Company may be ordered to be dissolved.

6. 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. None of the parties concerned have come forward to oppose the Scheme.

7. Since all the requisite statutory compliances have been fulfilled, the Company Petition No. 354 of 2010 is made absolute in terms of prayer clauses (a) to (d).

8. The Petitioner Company to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of order.

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- 9. The Petitioner to pay costs of Rs. 10,000/- each to the Regional Director and to the Official Liquidator. Costs to be paid within four weeks from today.
- 10. Filing and issuance of the drawn up order is dispensed with.
- 11. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.J. KATHAWALLA J.)



TRUE-COPY
M. D. Narvekar
M. D. NARVEKAR
COMPANY REGISTRAR
HIGH COURT (O.S.)
BOMBAY


TRUE COPY
M. D. Narvekar
Section Officer
High Court, Appellate Side
Bombay



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**SCHEME OF AMALGAMATION
OF
BKT MOULDS LIMITED
WITH
BALKRISHNA INDUSTRIES LIMITED
AND
THEIR RESPECTIVE SHAREHOLDERS**


The Scheme of Amalgamation is presented under Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 for amalgamation of BKT Moulds Limited with Balkrishna Industries Limited and their respective shareholders and is divided into following three parts:

- 
- Part A** Deals with definitions and share capital
- Part B** Deals with amalgamation of BKT Moulds Limited with Balkrishna Industries Limited
- Part C** Deals with General Clauses, Terms and Conditions

PART A – DEFINITIONS AND SHARE CAPITAL

Definitions

In this Scheme, unless inconsistent with the subject or context, the following expressions shall have the following meaning:

- 
- 1.1 “Act” or “the Act” means the Companies Act, 1956 and shall include any statutory modifications, re-enactment or amendments thereof for the time being in force.
- 1.2 “Appointed Date” means the 1st day of June, 2010 or such other date as may be fixed or approved by the High Court or any other appropriate authority.
- 1.3 “Effective Date” means the date on which the certified copy of the Order sanctioning this Scheme of Amalgamation, passed by the High Court or any other appropriate authority, or such other competent authority, as may be applicable, is filed with the Registrar of Companies, Mumbai at Maharashtra by the Transferor Company.

- 1.4 **"High Court"** means the High Court of Judicature at Bombay or any other appropriate authority.
- 1.5 **"BML" or "Transferor Company"** means BKT Moulds Limited, a company incorporated under the Act and having its registered office at 205, Creative Industrial Estate, 72, N.M. Joshi Marg, Mumbai - 400011, Maharashtra.
- 1.6 **"BIL" or "Transferee Company"** means Balkrishna Industries Limited, a company incorporated under the Act and having its registered office at H-3/1, MIDC 'A' Road, Tarapur, District Thane - 401506, Maharashtra.
- 1.7 **"Scheme" or "the Scheme" or "this Scheme"** means this Scheme of Amalgamation of BKT Moulds Limited with Balkrishna Industries Limited and their respective shareholders, in its present form as submitted to the Hon'ble High Court or any other appropriate authority or this Scheme with such modification(s), if any made, as per Clause 14 of the Scheme.
- 1.8 Any references in the Scheme to "upon the Scheme becoming effective" or "effectiveness of the Scheme" shall mean the Effective Date.
- 1.9 All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and other applicable laws, rules, regulations, bye laws, as the case may be, including any statutory modification or re-enactment thereof from time to time.

2 DATE OF TAKING EFFECT AND OPERATIVE DATE

The Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the High Court or made as per Clause 14 of the Scheme, shall be effective from the Appointed Date but shall be operative from the Effective Date.

3 SHARE CAPITAL

3.1 The authorized and issued share capital of Transferee Company as at 31st March 2010 is as under:

Particulars	Rs.
Authorised Capital	
2,50,00,000 Equity Shares of Rs 10/- each	25,00,00,000
Total	25,00,00,000
Issued, Subscribed and Paid-up	
1,93,31,719 Equity Shares of Rs 10/- each	19,33,17,190
Total	19,33,17,190

3.2 The authorized and issued share capital of the Transferor Company as at 31st March 2010 is as under:

Particulars	Rs. in lacs
Authorised Capital	
2,00,000 Equity Shares of Rs. 100/-each	2,00,00,000
Total	2,00,00,000
Issued, Subscribed and Paid-up	
1,50,000 Equity Shares of Rs. 100/- each	1,50,00,000
Total	1,50,00,000

PART B – AMALGAMATION OF TRANSFEROR COMPANY WITH TRANSFEEE COMPANY

4 TRANSFER AND VESTING

4.1 With effect from the opening of business as on the Appointed Date, the entire business and whole of the undertaking of Transferor Company including all its properties and assets (whether movable or immovable, tangible or intangible) of whatsoever nature such as licenses, permits, quotas, approvals, lease, tenancy rights, permissions, incentives, if any, and all other rights, title, interest, contracts, consent, approvals or powers of every kind nature and descriptions whatsoever shall under the provisions of Sections 391 to 394 of the Act and pursuant to the Order of the High Court or any other appropriate authority sanctioning this Scheme and without further act, instrument or deed, but subject to the existing charges affecting the same as on the Effective Date be transferred and/or deemed to be transferred to and vested in the Transferee Company so as to become the properties and assets of the Transferee Company.

4.2 The transfer and vesting as aforesaid shall be subject to the existing charges / hypothecation / mortgages, if any, as may be subsisting and agreed to be created over or in respect of the said assets or any part thereof, provided however, any reference in any security documents or arrangements to which the Transferor Company is party wherein the assets of Transferor Company have been or are offered or agreed to be offered as security for any financial assistance or obligations shall be construed as reference only to the assets pertaining to the Transferor Company and vested in the Transferee Company by virtue of this Scheme to the end and intent that the charges shall not extend or deemed to extend to any assets of the Transferee Company.

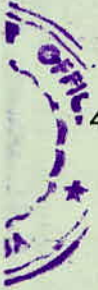
Provided that the Scheme shall not operate to enlarge the security for the said liabilities of the Transferor Company which shall vest in the Transferee Company by virtue of the Scheme and the Transferee Company shall not be obliged to create any further, or additional security thereof after the merger has become effective or otherwise. The transfer / vesting of the assets of the Transferor Company as aforesaid shall be subject to the existing charges / hypothecation / mortgages over or in respect of the assets or any part thereof of the Transferor Company.

4.3 All the moveable assets of the Transferor Company or assets otherwise capable of transfer by manual delivery or by endorsement and delivery, including cash in hand, shall be physically handed over by manual delivery or by endorsement and delivery, to the Transferee Company to the end and intent that the property therein passes to the Transferee Company on such manual delivery or endorsement and delivery, without requiring any deed or instrument of conveyance for the same and shall become the property of the Transferee Company accordingly.


4.4 In respect of movable assets, other than those specified in Clause 4.3 above, the same shall, without further act, instrument or deed, be transferred and/or deemed to be transferred to and vested in the Transferee Company pursuant to the provisions of Section 394 of the Act and the Transferor Company shall give notice in such form as it deems fit to such persons, that pursuant to the Order of the High Court, the said assets would be paid or made good to or held on account of, the Transferee Company, and the rights of the

Transferor Company will vest with the Transferee Company upon this Scheme becoming effective.

4.5 The liabilities shall also, without any further act, instrument or deed be transferred to and vested in and assumed by and/or deemed to be transferred to and vested in and assumed by the Transferee Company pursuant to the provisions of Sections 391 to 394 of the Act, so as to become the liabilities of the Transferee Company and further that it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such liabilities have arisen, in order to give effect to the provisions of this Clause.



4.6 The Transferee Company may at any time after the coming into effect of the Scheme in accordance with the provisions of the Scheme, if so required, under any law or otherwise, execute Deeds of Confirmation, in favour of the secured creditors of the Transferor Company or in favour of any other party to any contract or arrangement to which the Transferor Company is party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall under the provisions of the Scheme be deemed to be authorised to execute any such writings on behalf of the Transferor Company and to implement or carry out all such formalities or compliance referred to above on the part of the Transferor Company to be carried out or performed.



5 CONSIDERATION

5.1 As the Transferor Company is a wholly owned subsidiary company of the Transferee Company, no shares will be issued pursuant to this Scheme.

6 ACCOUNTING TREATMENT IN THE BOOKS OF THE TRANSFEE COMPANY

Upon the Scheme becoming effective, the Transferee Company shall account for the amalgamation in its books of accounts as under:

6.1 The assets and liabilities appearing in the books of accounts of the Transferor Company shall be recorded by the Transferee Company at their respective fair values.

- 6.2 Inter-company balances, if any, will stand cancelled.
- 6.3 Inter-company investments, if any, shall stand cancelled.
- 6.4 The difference, being the value of assets over the value of liabilities transferred to the Transferee Company pursuant to this Scheme, shall be credited to the Capital Reserve Account, in case of there being a surplus. In case of a deficit, the same shall be debited to Goodwill Account.
- 6.5 In case of any differences in accounting policy between the Transferor Company and the Transferee Company, the accounting policies followed by the Transferee Company will prevail and the difference till the Appointed Date will be quantified and adjusted in the Capital Reserve Account, to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistent accounting policy.

7 CONDUCT OF BUSINESS TILL EFFECTIVE DATE

With effect from the Appointed Date and upto and including the Effective Date:

- 7.1 The Transferor Company shall be deemed to have been carrying on and shall carry on their business and activities and shall be deemed to have held and stood possessed of and shall hold and stand possessed of all their properties and assets pertaining to the business and undertaking of the Transferor Company for and on account of and in trust for the Transferee Company. The Transferor Company hereby undertakes to hold its said assets with utmost prudence until the Effective Date.
- 7.2 The Transferor Company shall carry on its business and activities with reasonable diligence, business prudence and shall not, except in the ordinary course of business or without prior written consent of the Transferee Company alienate, charge, mortgage, encumber or otherwise deal with or dispose of the Transferor Company or part thereof.
- 7.3 All the profits or income accruing or arising to the Transferor Company or expenditure or losses arising or incurred or suffered by the Transferor Company pertaining to the business and undertaking of the Transferor Company shall for all purposes be treated and be

deemed to be and accrue as the income or profits or losses or expenditure as the case may be of the Transferee Company.

7.4 The Transferor Company shall not vary the terms and conditions of employment of any of the employees except in the ordinary course of business or without the prior consent of the Transferee Company or pursuant to any pre-existing obligation undertaken by the Transferor Company as the case may be, prior to the Effective Date.

7.5 The Transferee Company shall be entitled, pending the sanction of the Scheme, to apply to the Central/State Government, and all other agencies, departments and authorities concerned as are necessary under any law or rules, for such consents, approvals and sanctions, which the Transferee Company may require pursuant to this Scheme.



8 EMPLOYEES

8.1 On the Scheme becoming effective, the employees, if any, of the Transferor Company shall become the employees of the Transferee Company, without any break or interruption in their services, on same terms and conditions on which they are engaged as on the Effective Date. The Transferee Company further agrees that for the purpose of payment of any retirement benefit/ compensation, such immediate uninterrupted past services with the Transferor Company shall also be taken into account. The Transferee Company undertakes to continue to abide by the terms of agreement/ settlement entered into by the Transferor Company with employees' union/ employee or associations of the Transferor Company.

8.2 The accounts/ funds of the employees, whose services are transferred under Clause 8.1 above, relating to superannuation, provident fund and gratuity fund shall be identified, determined and transferred to the respective Trusts/ Funds of the Transferee Company and such employees shall be deemed to have become members of such Trusts/ Funds of the Transferee Company.

9 LEGAL PROCEEDINGS

9.1 If any suit, appeal or other proceeding of whatever nature by or against the Transferor Company is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said

suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company, as the case may be, in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company as if this Scheme had not been made.

- 9.2 In case of any litigation, suits, recovery proceedings which are to be initiated or may be initiated against the Transferor Company, the Transferee Company shall be made party thereto and any payment and expenses made thereto shall be the liability of the Transferee Company.

10 CONTRACTS, DEEDS, ETC.

- 10.1 Subject to the other provisions of this Scheme, all contracts, deeds, bonds, insurance, Letters of Intent, undertakings, arrangements, policies, agreements and other instruments, if any, of whatsoever nature pertaining to the Transferor Company to which the Transferor Company is party and subsisting or having effect on the Effective Date, shall be in full force and effect against or in favour of the Transferee Company, as the case may be, and may be enforced by or against the Transferee Company as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party thereto.

- 10.2 The Transferee Company shall enter into and/or issue and/or execute deeds, writings or confirmations or enter into any tripartite arrangements, confirmations or novations, to which the Transferor Company will, if necessary, also be party in order to give formal effect to the provisions of this Scheme, if so required or becomes necessary. The Transferee Company shall be deemed to be authorised to execute any such deeds, writings or confirmations on behalf of the Transferor Company and to implement or carry out all formalities required on the part of the Transferor Company to give effect to the provisions of this Scheme.

11 SAVING OF CONCLUDED TRANSACTIONS

The transfer of properties and liabilities under Clause 4 above and the continuance of proceedings by or against the Transferor Company under Clause 9 above shall not affect any transaction or proceedings already concluded by the Transferor Company on and after the Appointed Date till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the

Transferor Company in respect thereto as done and executed on behalf of the Transferee Company.

12 DISSOLUTION OF THE TRANSFEROR COMPANY

On the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound-up.

PART C – GENERAL

13 APPLICATION TO HIGH COURT

The Transferor Company shall with all reasonable dispatch make all necessary applications under Sections 391 to 394 of the Act and other applicable provisions of the Act to the High Court for seeking approval of the Scheme.

14 MODIFICATION OR AMENDMENTS TO THE SCHEME

The Transferor Company and the Transferee Company by their respective Boards of Directors (‘the Board, which term shall include Committee thereof), may assent to/make and/or consent to any modifications/amendments to the Scheme or to any conditions or limitations that the High Court and/or any other Authority under law may deem fit to direct or impose, or which may otherwise be considered necessary, desirable or appropriate as a result of subsequent events or otherwise by them (i.e. the Board). The Transferor Company and the Transferee Company by their respective Board are authorised to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whatsoever for carrying the Scheme into effect, whether by reason of any directive or Order of any other authorities or otherwise howsoever, arising out of or under or by virtue of the Scheme and/or any matter concerned or connected therewith.

15 CONDITIONALITY OF THE SCHEME

This Scheme is and shall be conditional upon and subject to:

- 15.1 The Scheme being approved by the requisite majorities in number and value of such classes of persons including the respective members of the Transferor Company as may be directed by the High Court.

15.2 The sanction of the High Court or any other authority under Sections 391 to 394 of the Act and to the necessary Order under Section 394 of the said Act being obtained and the same being filed with the Registrar of Companies, Mumbai, Maharashtra.

16 EFFECT OF NON-RECEIPT OF APPROVALS

In the event of any of the said sanctions and approvals referred to in the preceding Clause not being obtained and/ or the Scheme not being sanctioned by the High Court or such other competent authority and / or the Order not being passed as aforesaid before March 31, 2011 or within such further period or periods as may be agreed upon between the Transferor Company and the Transferee Company by their Boards of Directors (and which the Boards of Directors of the Company are hereby empowered and authorised to agree to and extend the Scheme from time to time without any limitation) this Scheme shall stand revoked, cancelled and be of no effect, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any rights and/ or liabilities which might have arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law.

17 COSTS, CHARGES & EXPENSES

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed) of the Transferor Company and the Transferee Company arising out of or incurred in connection with and implementing this Scheme and matters incidental thereto shall be borne by the Transferee Company.

**CERTIFIED TRUE COPY
For HEMANT SETHI & CO.**
Hemant Sethi
ADVOCATES

TRUE-COPY
M. D. Narvekar
M. D. NARVEKAR
COMPANY REGISTRAR
HIGH COURT (O.S.)
BOMBAY

IN THE HIGH COURT OF JUDICATURE
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shareholders
BKT MOULDS LIMITED.... Applicant Company



AUTHENTICATED COPY OF ORDER DATED
14TH DAY OF OCTOBER AND MODIFIED
SCHEME OF AMALGAMATION

M/S HEMANT SETHI & Co.
Advocates for the Applicant

20-10-2010
20-10-2010
29-10-2010
30-10-2010
D. Hemant Sethi