

16.

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
COMPANY PETITION NO. 139/2010

Date of decision: 21st October, 2010

AUTO TOOLS INDIA PRIVATE LIMITED....Transferor Company.

WITH

AUTO TOOLS PRIVATE LIMITED ...Transferee Company.

Through Mr. P. Nagesh & Mr. Anand M.
Mishra, Advocates for the petitioner.
Mr. Rajiv Bahl, Advocate for the Official
Liquidator.
Mr. Atma Sah, Asstt. ROC for Regional
Director.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER (ORAL)

1. This is the second motion for sanction of the scheme for amalgamation between Auto Tools India Private Limited, the transferor company and Auto Tools Private Limited, the transferee company.

2. The first motion was allowed by this Court vide order dated 17th March, 2010. The requirement to hold the meeting of the equity shareholders and the creditors was dispensed with as the two equity shareholders and one unsecured creditor of the transferor company have given their consent.

3. Learned counsel for the petitioner states that the appointed date may be changed from 1st April, 2009 to 1st April, 2010. The statement is taken on record and the scheme of amalgamation is accordingly modified. The appointed date will be taken as 1st April, 2010.

4. Learned counsel for the petitioner submits that the transferee company is the holding company of the transferor company. It is further submitted that no meeting of the creditors and shareholders of the transferee company is required in the present case. In this connection, he relies upon judgment of this Court in *Sharat Hardware Industries Private Limited,*

1978 In re (Delhi) 23 and *Mahaamba Investments Limited versus IDI Limited*, 2001 (105) Company Cases 17.

5. As per the audited balance sheet of the transferor company for the year ending 31st March, 2009, the authorized share capital of the transferor company was Rs.50,00,000/- and the subscribed share capital of the transferor company was Rs.44,79,500/-. The transferor company has Reserve and Surplus of Rs.51,11,359/-. In addition, there is a share premium reserve of Rs.23,62,500/-. The transferor company has a shop, which has been valued at Rs.2,47,4,000/- under the heading fixed assets. The current assets and loans are in excess of Rs.1,05,66,170/-. The liabilities shown in the said balance sheet is Rs.6,02,498/-. In addition, Rs.5,00,000/- is the unsecured loan taken from one Mr. Varun Talwar. The said Mr. Varun Talwar has given his no objection, which has been referred to in the order dated 17th March, 2010 sanctioning the first motion and dispensing with the requirement to hold meeting of the equity shareholders and unsecured creditors. In *Sharat Hardware Industries Private Limited* (supra), it has been held as under:-

“.....The assets and liabilities of the petitioner-company will be appropriated under the scheme by the transferee company, the shareholding and other rights of the members of the transferee-company will be unaffected, because no new shares are being issued and there is not going to be any change in the capital structure of the transferee-company.”

6. It is also stated in the scheme for amalgamation Exhibit-F that no shares have to be issued to the shareholders of the transferor company in view of the fact that the transferor company is a subsidiary of the transferee company.

7. Keeping in view the aforesaid facts, I dispense with the requirement to hold meeting of the shareholders and the creditors of the transferee company. The scheme does not affect the rights of the members or creditors of the transferee company. Decision in the case of *Mahaamba Investments Limited* (supra) supports the said view.

8. The petitioners along with the petition have filed affidavits of the Director of the transferor company and the transferee company. Resolutions passed by the Board of Directors of the transferor company and the transferee company approving the scheme have also been placed on record.

9. Pursuant to order dated 7th April, 2010, advertisements were directed to be published in the newspapers 'The Statesman' (English) and 'Veer Arjun' (Hindi) in terms of provisions of Rule 80 of the Company (Court) Rules, 1959. Affidavit of service has been filed on behalf of the petitioners with the newspaper publications. As per the said affidavit, no objections have been received opposing the said petition. The Regional Director (Northern Region) has filed response affidavit stating that the Central Government has no objection to the proposed scheme of amalgamation. The Official Liquidator has also filed response/affidavit stating that they have not received complaints against the proposed scheme of amalgamation from any person/party interested in the scheme. It is further stated that on the basis of information submitted by the petitioner company, the Official Liquidator is of the view that the affairs of the aforesaid transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or public interest.

10. In view of the aforesaid, I allow the present petition and the scheme of amalgamation is approved. The transferor company will be dissolved upon amalgamation.

11. This order will, however, not mean that the petitioner has been granted exemption from payment of stamp duty, if any is payable. Certified copy of this order will be filed with the Registrar of Companies within five weeks.

DASTI.

SANJIV KHANNA, J.

**OCTOBER 21, 2010
VKR**