

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 110 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 81 OF 2015
WELSPUN INFRATECH LIMITED

..... Petitioner / Second Transferor Company
and

COMPANY SCHEME PETITION NO. 111 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 82 OF 2015
WELSPUN PLASTICS PRIVATE LIMITED

.... Petitioner / Third Transferor Company

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

AND

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

AND

In the matter of Scheme of Amalgamation
and Arrangement

BETWEEN

Welspun Enterprises Ltd (“WEL” or “the
First Transferor Company”)

AND

Welspun Infratech Limited (“WITL” or
“Second Transferor Company”)

AND

Welspun Plastics Private Limited (“WPPL”
or “Third Transferor Company”)

AND

Welspun Infra Projects Private Limited
(“WIPPL” or “Fourth Transferor Company”)

AND

Welspun Projects Limited (“WPL” or
“Transferee Company”)

AND

their respective shareholders and
creditors

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioner Companies.

Mr. S. Ramakantha, Official Liquidator present in both the Company Scheme Petitions.

Ms. Purnima Awasthi i/b Mr. A. A. Ansari for Regional Director in both the Company Scheme Petitions.

CORAM: S. J. Kathawalla, J.

DATE: 10th April, 2015

PC:-

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation and Arrangement between Welspun Enterprises Ltd (“WEL” or “ the First Transferor Company”) and Welspun Infratech Limited (“WITL” or “the Second Transferor Company”) and Welspun Plastics Private Limited (“WPPL” or “the Third Transferor Company”) and Welspun Infra Projects Private Limited (“WIPPL” or “the Fourth Transferor Company”) and Welspun Projects Limited (“WPL” or “the Transferee Company”) and their respective Shareholders and Creditors.
3. Learned Advocate for the Petitioners states that Welspun Infratech Limited, the Petitioner/Second Transferor Company is primarily an infrastructure developer arm of Welspun Group and Welspun Plastics Private Limited, the Petitioner/ Third Transferor Company is engaged in trading in plastics and the benefits of the Scheme is that it will consolidate and simplify Group structure by eliminating number of non-operating companies in the Group and will reduce

operating and compliance cost and will achieve operational and management efficiency.

4. The Learned Advocate further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation and Arrangement by passing Board Resolution which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate for the Petitioners further states that, Petitioner companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Summons for Directions.
6. The Learned counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.
7. The Official Liquidator has filed his report on 31st March, 2015 in Company Scheme Petition No 110 of 2015 and Company Scheme Petition No 111 of 2015 stating therein that the affairs of the Petitioner Companies have been conducted in a proper manner and that the Petitioner Companies may be ordered to be dissolved by this Court.
8. The Regional Director has filed an Affidavit on 6th April, 2015 stating therein, save and except as stated in paragraph 6, it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 of the said affidavit it is stated that:

6. That the Deponent further submits that,

- a) The Registered office of First Transferor Company, Fourth Transferor Company and Transferee Company is situated in the State of Gujarat. Hence, the present Scheme of Amalgamation and Arrangement between the Transferor companies and Transferee Company will be subject to the condition of obtaining similar approval from Hon'ble High Court of Gujarat in respect of First Transferor Company, Fourth Transferor Company and Transferee Company.*
- b) It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
- c) Clause 16 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Companies and Transferee Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble Authority. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble Authority. The Petitioner Companies shall be directed to undertake to this effect.*

- 9. As far as the observations in paragraph 6 (a) of the affidavit of the Regional Director is concerned, the petitioners through their counsel submits that Present scheme of Amalgamation and Arrangement would be subject to approval of the High Court of Gujarat and the counsel further submits that the First and Fourth Transferor Companies and the Transferee Company have filed their respective Company Petitions bearing Company Petition Nos. 67 to 69 of 2015, with Hon'ble High court of Gujarat and the same are pending for final disposal.

10. As far as the observations in paragraph 6 (b) of the affidavit of the Regional Director is concerned, the petitioners through their counsel submits that the petitioners is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of amalgamation will be met and answered in accordance with law.
11. As far as the observations in paragraph 6 (c) of the affidavit of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that Clause 16 of the Scheme gives power to the Board of Directors of the Petitioner Companies to amend any part of the Scheme. Learned Advocate for the Petitioner Companies further states the Petitioner Companies have already filed further affidavit dated 3rd February 2015 of Mr. Rajendra Sawant, Authorised Signatory of the Petitioner Companies, in support of Company Summons for Direction Nos.81 and 82 of 2015 inter-alia stating that such power to amend the Scheme is subject to the approval of High Court of Bombay and High Court of Gujarat at Ahmedabad. It is therefore clarified that the power vested under clause 16 of the Scheme will be subject to the approval of the respective High Courts.
12. The Learned Counsel for Regional Director on the instructions of Mr. M Chandanamuthu, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings and submissions given by the counsel of the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.
13. 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.

14. Since all the requisite statutory compliances have been fulfilled, the in Company Scheme Petition No 110 of 2015 and Company Scheme Petition No 111 of 2015 are made absolute in terms of prayer clauses (a) to (c) subject to sanction of the Scheme by the High Court of Gujarat.
15. The Petitioner Companies 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 the Order.
16. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay, with the concerned Registrar of Companies, electronically, along with concerned E-Form INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.
17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
18. Filing and issuance of the drawn up order is dispensed with.
19. All concerned regulatory authorities 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)