IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.204 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.759 OF 2012

Tate Engineering (India) Private Limited
.... Petitioner/ 1st Transferor Company

AND

COMPANY SCHEME PETITION NO.205 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.760 OF 2012

Perfect Engineering Exports International Private Limited
.... Petitioner/2nd Transferor Company

AND

COMPANY SCHEME PETITION NO.206 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.761 OF 2012

Shashimangal Holdings Private Limited
….Petitioner/Transferee Company

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 Tate Engineering (India) Private Limited (Transferor Company) and Perfect Engineering Exports International Private Limited(Transferor Company) with Shashimangal Holdings Private Limited (Transferee Company)

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner in both the Petitions.
Mr. S. Ramakantha, Official Liquidator, present in CSP No. 204 and 205 of 2012.

Mr. C.J Joy, i/b Mr. H.P. Chaturvedi for Regional Director in all the Company Scheme Petitions.

CORAM: S. J. Kathawalla, J.

DATE: 8th May 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 of Tate Engineering (India) Private Limited (Transferor Company) and Perfect Engineering Exports International Private Limited (Transferor Company) with Shashimangal Holdings Private Limited (Transferee Company).

3. Learned Advocate for the Petitioners state that the Transferor Companies are presently not engaged in any business. The Transferee Company is engaged in the business segment of development of real estate at Pune in Maharashtra.

4. The learned Advocate for the Petitioner Companies states that the proposed scheme of amalgamation of Transferor Companies with the Transferee Company will greatly benefit to all the Companies and is in the interest of the members and creditors of all the Companies and the general public at large. The benefit of the Scheme inter-alia are that it would enable the Transferee Company to carry on and conduct its business more efficiently and advantageously with better economics of scale, more productive and optimum utilization of various resources, strengthen its financial position and ability to raise resources for conducting business, achieve synergies in

business activities, further development and growth of the business, stronger capital base for future expansion/growth and to eliminate unnecessary duplication of costs.

5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed by this Court in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

7. The Learned Counsel appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per the directions of this Court and filed necessary Affidavits of compliance in this behalf. The Petitioner Companies further undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 and Companies Act, 2013, as may be applicable, and the Rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 13th April, 2015 stating therein that save and except as stated in para 6(a), 6(b), 6(c), 6(d), 6(e) ,6(f) and 6(g), it appears that the Scheme is not prejudicial to the interest of the shareholders and the public. In paras 6(a), 6(b), 6(c), 6(d), 6(e) ,6(f) and 6(g), of the said Affidavit, the Regional Director has stated that:-

6. That the Deponent further submits that,:-

a) *As per Clause no. 5 of the scheme, no equity shares will be allotted in respect of shares held by Transferor companies in the capital of Transferee Company except individual shareholders of both the applicant companies. This clause is not specifically providing the share exchange ratio. However, as per the valuation report submitted by the auditor, the transferee company will allot 42 equity shares of Rs. 100/- each for every 1 equity share of Rs. 10/- each of the 1st transferor company, similarly in respect of 2nd transferor company, the transferee company will allot 78 equity share of Rs. 100/- each for every 1 equity share of Rs. 100/- each. Accordingly, the transferee company will allot 3,83,617 number of equity shares to the individual shareholders of 1st transferor company and 2,75,617 number of equity shares to the individual shareholders of the 2nd transferor company. It is, therefore, suggested that the petitioner companies may be directed to amend clause 5 of the scheme suitably to reflect the share exchange ratio as provided by the valuer in his Valuation Report.*

b) *It is further submitted that clause no. 5 of Scheme provides for issue of shares upon scheme becoming effective. The authorized share capital of Transferee Company may not be sufficient to issue further shares as provided in the Valuation Report. In this regard, it is suggested that Transferee Company may, if necessary and to the extent required, increase its Authorized Share Capital to facilitate issue and allotment of Shares under this Scheme. In this connection, the Transferee Company may be directed to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.*

c) *Clause 10 of the Scheme provides for Accounting Treatment in the books of Transferee Company. In this regard, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.*

d) *Clause 4 of the Scheme provides for alteration/amendments to the Memorandum of Association of the Transferee Company by inserting new object clauses in its Memorandum of Association. In this regard, the Transferee Company may be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of the*

Companies Act, 1956 and to file amended copy of Memorandum of Association along with necessary form with Registrar of Companies.

e) *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.*

f) *The Appointed Date as per Clause No. 1.2 of the Scheme is 01/04/2011. As per the provisions of Section 139 of Income Tax Act, the assesse cannot file a regular or revised return of income for any assessment year, one year from the end of the assessment year in which the return becomes due. It is further observed that the Transferor Company had already filed its return for their financial year ending 31/03/2012, 31/03/2013, etc. Under these facts and circumstances of the case, it is not justified for keeping the Appointed Date as 01/04/2011. It is therefore suggested that the Hon'ble High Court may prescribe the following conditions:-*

i) *The issue regarding the liability, if any, of the Petitioner or Transferee Company towards payment of income tax or any other tax that may arise pursuant to the sanction of the scheme, are left open to the Income Tax Department to decide in accordance with law at the appropriate stage without being bound by the Appointed Date of 1st April, 2011 fixed by the Scheme;*

ii) *In the event of the Petitioner or Transferee company filing revised income tax returns, the validity and permissibility thereof will be decided by the Income Tax Department, and while doing so, the Income Tax Department will not be bound by the Appointed Date of 1st April, 2011 fixed by the Scheme;*

iii) *The Income Tax Department shall not be bound by the Appointed Date of 1st April 2011 fixed under the Scheme while carrying out pending and/or future assessments of the Transferor and Transferee companies whether on the basis of the income tax returns already filed or revised returns, if any, that may be filed, or otherwise, and shall carry out such assessments without being bound by the Appointed Date of 1st April 2011 fixed by the Scheme.*

g) *Clause 12 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 High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies shall be directed to undertake to this effect.*

9. In so far as observations made in paragraph 6(a), (b) and 9(f) of the Affidavit of the Regional Director is concerned, the Petitioners through their Advocates submits that they have filed Affidavit in Rejoinder in Company Scheme Petition 204 to 206 of 2014, wherein the Shareholders holding 100% of the Share Capital of the respective Petitioner Companies have consented to under mentioned Amendment to the Scheme and therefore Petitioner through their Counsel seeks leave to amend the Scheme as under:

i. *By deleting clause 5 of the Scheme and substituting it by the following clause:-*

5.1 "*On and from Effective Date the Transferee Company shall issue and allot shares to the shareholders of 1st Transferor Company in the ratio of 42 equity shares of Rs. 100/- each for every 1 equity share of Rs. 100/- each held in the 1st Transferor Company and 78 equity share of Rs. 100/- each for every 1 equity share of Rs. 100/- each held in the 2nd Transferor Company.*

5.2 The new shares in the Transferee Company to be issued to the members of the Transferor Company shall be subject to the Memorandum and Articles of Association of the Transferee Company and the shares shall rank pari passu in all respects with the existing shares in the Transferee Company.

5.3 No fractional coupons / shares shall be issued by the Transferee Company in respect of fractional share entitlement, if any, to which the shareholders of the Transferor Company may be entitled to, under the

Scheme. In case fractional entitlement is .5 or more, then the same shall be rounded off as one share. However, in case entitlement is less than .5, then the same shall be ignored.

5.4 *Cross holdings, if any shall be cancelled / extinguished.*

ii. By adding the following as Clause 19 to the scheme.

"*Upon sanction of this scheme, the entire Authorised Share Capital of the Transferor Companies shall stand shall automatically stand merged with the Authorised Share Capital of the Transferee Company without any further act or deed on the part of the Transferee Company, including payment of stamp duty and registration fees as the same has already been paid by the Transferor Companies. The Transferee Company shall file necessary forms with the Registrar of Companies. The Authorised Share Capital of the Transferee Company shall automatically stand as follow:-*

200,000 Equity Shares of Rs 100/- each	*2,00,00,000*
TOTAL	***2,00,00,000***

iii. *By changing the Appointed Date from 1st April 2011 to 1st April 2014 as appearing in clause 1.2 of the Scheme.*

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioners further submits that even if after merger of Authorised share capital of the Transferor Companies with Transferee Company there is deficit, the Transferee Company will further increase its authorised share capital and pay requisite stamp duty and Roc fees on such additional capital if required

for issue and allotment of shares to the shareholders of Transferor Companies.

11. As far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Transferee Company through their Counsel undertakes that surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

12. As far as observations made in paragraph 6(d) of the Affidavit of Regional Director is concerned, Transferee Company through their Advocate undertakes to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with Section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association along with necessary form with Registrar of Companies.

13. In so far as observations made in paragraph 6(e) of the Affidavit of Regional Director is concerned, the Transferee Company submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

14. So far as the observations made in paragraph 6(g) of the Affidavit of the Regional Director is concerned, the Counsel appearing for the Petitioner Companies states that Clause 12 of the Scheme authorizes the Board of Directors of the Transferor Companies and Transferee Company to modify any part of the Scheme. The learned Counsel for the Petitioners states that such power to amend the Scheme is subject to the prior approval of the High

Court. It is therefore clarified that the power vested under Clause 12 of the Scheme will be subject to the approval of the High Court.

15. The Counsel for the Regional Director on instructions of Mr. M Chandanamutthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

16. The Counsel for the Regional Director on instructions of Mr. M Chandanamutthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they agree with the proposed amendment to the Scheme. In view thereof leave to amend Scheme as mentioned in paragraph (9) hereinabove are granted. Amendments including all consequential Amendments are granted. Amendment to be carried out within four weeks from date of order.

17. 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.

18. Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions are made absolute in terms of prayer clauses (a) of the respective Petitions.

19. The Petitioner Companies to file a copy of this order and the amended 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.

20. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with concerned E-Form INC 28 in addition to physical copy as per provisions of the Companies Act 1956 / 2013.

21. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Petitioners in Company Scheme Petition No. 204 of 2013 and 205 of 2013 to pay sum of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

22. Filing and issuance of the drawn up order is dispensed with.

23. 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)