IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 345 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 154 OF 2015

Bohler High Performance Metals Private Limited …Petitioner / Transferor Company

In the matter of:

The Companies Act, 1956;

AND

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

In the matter of:
The Scheme of Amalgamation of Bohler High Performance Metals Private Limited with Bohler Uddeholm India Limited and their respective shareholders.

CALLED FOR HEARING:

Mr. Molla Hasan i/b AZB & Partners, Advocates for Petitioner.

Mr. S. Ramakantha, Official Liquidator present.

Ms. Nisha Valani i/b K. L. Kamboj for the Regional Director.

CORAM: S. C. Gupte J.

DATE: 17th July, 2015

P.C.:

1. Heard learned 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 Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Bohler High Performance Metals Private Limited with Bohler Uddeholm India Limited and their respective shareholders.

3. The Learned Counsel for the Petitioner Company states that the Petitioner Company is engaged in the business of business of importing and stocking of ferrous and non ferrous steel, cutting the based on size requirements of customers and sale of such steel. The Transferee Company is engaged in the business of importing and stocking of ferrous and non ferrous steel, cutting them based on size requirements of customers and sale of such steel and also in providing heat treatment services.

4. The Learned Counsel for the Petitioner Company states that the Petitioner Company and the Transferee Company are group companies. A consolidation of the Petitioner Company and the Transferee Company by way of amalgamation would therefore lead to a more efficient utilization of capital and create a consolidated base for future growth of the amalgamated entity. The proposed amalgamation will result in administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of various resources. It will prevent cost duplication that can erode financial efficiencies and the resultant operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure to all creditors including the creditors of the Petitioner Company,

facilitate resource mobilization and achieve better cash flows. The synergies created by the amalgamation would increase operational efficiency and integrate business functions. The proposed amalgamation will reduce managerial overlaps, which are necessarily involved in running multiple entities.

5. Learned Counsel for the Petitioner Company further states that the Board of Directors of the Petitioner Company and the Transferee Company have passed respective resolutions for approval of the Scheme of Amalgamation which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. The Learned Counsel for the Petitioner Company further states that the Petitioner Company has complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the order passed in the Company Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioner Company has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all the statutory requirements, if any, as required under the Companies Act, 1956/ 2013 and the rules made thereunder whichever is applicable. The undertaking is accepted.

8. The Official Liquidator has filed his report on 14th July, 2015 in Company Scheme Petition No. 345 of 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed an affidavit on 8th July, 2015 stating therein that save and except what is stated in paragraphs 6 (a) to (e) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In

paragraphs 6 (a) to (e) of the said Affidavit, the Regional Director has stated that:-

"*6. That the deponent further submits that:-*

(a) The Registered office of the Transferee Company is situated in the State of Tamil Nadu. Hence, present Scheme of Amalgamation between the Transferor company and Transferee Company will be subject to the condition of obtaining similar approval from Hon'ble High Court of Madras in respect of Transferee Company.

(b) The Shares of Transferor company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company has to comply with the provisions of FEMA/RBI as applicable in this regard.

(c) Clause 17.1.5 of Scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to compliance of Accounting Standard -14, Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(d) 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 High 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 Transferor Company and Transferee Company.

(e) Clause 19 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company 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 Company may be directed to undertake to this effect."

10. So far as the observation made by the Regional Director in paragraph 6(a) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel states that the Transferee Company has filed necessary application/ petition before the Hon'ble High Court of Madras seeking approval to the Scheme. The Petitioner Company through its Counsel further undertakes that the present Scheme will be subject to the condition of obtaining similar approval from Hon'ble High Court of Madras in respect of the Transferee Company

11. So far as the observation made by the Regional Director in paragraph 6(b) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company will comply with the provisions of FEMA/RBI as applicable in this regard.

12. So far as the observation made by the Regional Director in paragraph 6(c) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that in addition to the compliance of Accounting Standard -14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme and to comply with other applicable Accounting Standard such as AS-5 etc.

13. So far as the observation made by the Regional Director in paragraph 6(d) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Petitioner Company is bound to comply with all the 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 observation made by the Regional Director in paragraph 6(e) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Board of Directors of the Transferor Company and Transferee Company will not exercise the liberty to modify or amend the Scheme without obtaining prior approval from the Hon'ble High Court.

15. The Learned Counsel of Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Learned Counsel appearing for the Petitioner Company. The undertakings given by the Petitioner Company above are accepted.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 345 of 2015 filed by the Petitioner Company is made absolute in terms of the prayer made under clauses (a) to (c).

18. The Petitioner Company to file 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.

19. The Petitioner Company is directed to file a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form 21 or INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/ 2013, which ever is applicable.

20. The Petitioner Company to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai and Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

22. 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. C. Gupte J.)