IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 422 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 347 OF 2015

Konecranes Shared Services India Private Limited

.... Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO. 423 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 348 OF 2015

WMI KONECRANES INDIA LIMITED

.... Petitioner / the Transferee Company

In the matter of the Companies Act, 1956 (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provisions of the Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Amalgamation of Konecranes Shared Services India Private Limited with WMI Konecranes India Limited and their respective Shareholders and Creditors

Called for Hearing

Mr. Hemant Sethi i/b M/s Hemant Sethi & Co., Advocates for the Petitioners in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No. 422 of 2015

Ms. Nisha Valani, i/b Mr. A. A. Ansari for Regional Director in both the Company Scheme Petitions.

CORAM: S.C. Gupte, J.

DATE: 28th August, 2015

1. Heard the learned counsel for the Petitioner Companies. 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 or any corresponding provisions of the Companies Act, 2013 to in of Scheme of Amalgamation of Konecranes Shared Services India Private Limited with WMI Konecranes India Limited and their respective Shareholders and Creditors.

3. Learned Counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 422 of 2015 is presently engaged in the business of Engineering Design Services, IT enabled services and accounting and financial management support services to its group companies and Petitioner in Company Scheme Petition No. 423 of 2015 was to engage in business of manufacturing and installing of industrial cranes for general manufacturing, steel, power and paper & pulp industries in India and providing service solutions for industrial cranes.

4. The rationale of the Scheme of Amalgamation is that the Amalgamation of group companies and businesses are desirable for achieving better results and growth. Post amalgamation it will help Transferee Company in optimal utilization of resources, better administration and reduction in cost. Further, it will also provide the Transferee Company with greater flexibility to pursue strategic objectives and accelerate growth of its business. Better financial

structuring could be ensured if both the Transferor Company and the Transferee Company are amalgamated which could be exploited for the benefit of the amalgamated company. The Scheme shall be beneficial and be in the best interest of the shareholders, creditors and other stakeholders of both the Petitioners Companies. The Scheme shall not be in any manner prejudicial to the interest of concerned members, creditors and stakeholders.

5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Advocate for the Petitioners state that the Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.
7. The learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.
8. The Regional Director has filed an Affidavit dated 24th day of August, 2015 stating therein that save and except as stated in paragraph 6(a), 6(b) and 6(c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

   In paragraph 6(a), paragraph 6(b) and paragraph 6(c) of the said affidavit, it is stated that:

a) *The shares of the Transferor company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by Transferee Company to the shareholders of Transferor Company, the Transferee Company may be directed to comply with the provisions of FEMA/RBI regulations as applicable in this regard.*

b) *Clause 11.4 of the scheme states that the difference between the share capital issued by WMI Konecranes to the shareholders of KSSIPL as per Clause 5 and the existing equity share capital of KSSIPL shall be adjusted against the Reserves. In this regard, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company.*

c) *It is respectfully submitted that the tax implication, if any arising out of Scheme is subject to final decision of Income Tax Authorities. The approval of 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 of the Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company.*

9. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel clarifies that the Transferee Company shall comply with the FEMA/ RBI regulations as may be applicable while issuing shares by the Transferee Company to the shareholders of the Transferor Companies. The said undertaking is accepted.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Companies through

their Counsel undertakes that the Reserve arising out this Scheme shall be credited to Capital Reserve Account of the Transferee Company.

11. As far as the observations raised by the Regional Director in paragraph 6(c) of his Affidavit, the Petitioner Companies through their Counsel submits that the Petitioners are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with applicable income tax provisions.
12. The Counsel for the Regional Director on 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 submissions given by the Petitioner Companies. The said undertakings given by the Petitioners are accepted.
13. The Official Liquidator has filed his report on 24th day of August, 2015 in the Company Scheme Petition No. 422 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.
14. 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 has come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 422 of 2015 and 423 of 2015 filed by the Transferor Company and the Transferee Company respectively are made absolute in terms of prayer clauses (a) and (b) of the respective Petition.
16. 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 issuance of Order.

17. 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 E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.
18. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in the Company Scheme Petition No. 422 of 2015 to pay costs of Rs. 10,000/- each to the Official Liquidator, High Court Company. Costs to be paid within four weeks from the date of the order.
19. Filing and issuance of the drawn up order is dispensed with.
20. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.C. Gupte, J.)