

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 379 OF 2015
WITH
COMPANY SUMMONS FOR DIRECTION NO. 351 OF 2015

Visteon Engineering Center (India) Private Limited

...Petitioner/the Transferor Company

In the matter of the Companies Act
of 1956.

AND

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

AND

In the matter of the Scheme of
Amalgamation of:
Visteon Engineering Center (India)
Private Limited.

WITH

Visteon Technical And Services
Centre Private Limited

AND

their Respective Shareholders.

Called for Hearing

Mr. Ashish Parwani, i/b Rajani, Singhania & Partners, Advocate for
the Petitioner Company

Mr. N.R Prajapati, i/b A.A Ansari for Regional Director

Mr. S.Ramakantha, Official Liquidator Present

CORAM: S. C. GUPTE, J
DATE: 30th September, 2015

PC:

1. Heard learned counsel for parties. None appears before the Court to oppose the Scheme and nor any party has controverted any averments made in the Company Scheme Petition.
2. The sanction of the Court is sought under Sections 391 to 394 of Companies Act, 1956 to a Scheme of Amalgamation of Visteon Engineering Center (India) Private Limited (Petitioner Company) with Visteon Technical and Services Centre Private Limited (Transferee Company).
3. The learned Advocate for the Petitioner Company states that the registered office of the Transferee Company is in Chennai, Tamil Nadu. The Hon'ble Madras High Court has already sanctioned the Scheme of Amalgamation filed by the Transferee Company.
4. The learned Advocate for the Petitioner Company states that the Petitioner Company mainly carries on the business of providing engineering designing and developing support services using Computer Aided Design/ Computer Aided Manufacturing of auto parts to various Visteon group entities, and the Transferee Company is engaged in the business of

rendering embedded software, software development, back office support and IT enabled services.

5. The learned Advocate for Petitioner Company further states that the entire business and undertaking of the Petitioner Company shall stand transferred to and vested in or deemed to have been transferred to or vested, as a going concern, in the Transferee Company. The proposed amalgamation would *inter-alia* streamline and consolidate and further facilitate efficient services and quality delivery to the final customer as on amalgamation, the businesses would be performed under one entity.
6. The Petitioner Company has approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the Company Scheme Petition.
7. The Learned Advocate for the Petitioner states that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Company Summons for Direction.
8. The Learned Advocate appearing on behalf of the Petitioner 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 Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

9. The Petitioner Company had filed a Company Application being Company Application (L) No. 645 of 2015 for the amendment of Appointed Date in the Scheme of Amalgamation from 1st day of April, 2014 to 1st day of April, 2015 and the Hon'ble Court has granted the Petitioner Company leave to amend by an Order dated 11th September, 2015. The Petitioner Company has carried out the amendments in the Company Scheme Petition in accordance with the aforesaid Order.
10. Learned Advocate for the Petitioner further states that, the Transferee Company will similarly seek permission from the Hon'ble Madras High Court for such change/amendment in the Appointed Date in the Scheme and shall file necessary application/affidavit or any other form of documents required to be filed with the Hon'ble Madras High Court, to seek their permission for change in Appointed Date.
11. The Regional Director has filed his affidavit dated 23rd July, 2015 stating therein that save and except as stated in paragraphs 6 (a), (b) and (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of

shareholders and public. In paragraphs 6 (a) to (c) of the said Regional Director has stated that

"6 That the Deponent further submits that,

- (a) *That the Registered Office of the Transferee Company is situated in the State of Tamilnadu. Hence the Transferee Company has to file similar petition before the Hon'ble High Court of Madras for approving the said scheme.*
- (b) *As Provides in clause 10.4 of the scheme, the Transferee Company shall comply with the provisions of RBI Regulations including FEMA so far as allotment of shares to foreign body corporate by the Transferee Company.*
- (c) *That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company"*

12. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph 6(a) of his Affidavit is concerned in relation to the registered office of the Transferee Company i.e. Visteon Technical And Services Centre Private Limited, the counsel for Petitioner Company states that the Transferee Company had filed a Company Petition No. 175 of 2015 before the Hon'ble High Court of Madras for approving the Scheme of Amalgamation and the Hon'ble Court has sanctioned the Scheme of Amalgamation on 31st July, 2015.

13. So far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned in relation to clause 10.4 of the Scheme of Amalgamation which deals with allotment of shares to foreign body corporate by the Transferee Company, the Transferee Company confirms that any such allotment of shares by the Transferee Company to any foreign body corporate shall be according to the applicable provisions of Foreign Exchange Management Act, 1999 and rules and regulations made thereunder.
14. So far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(c) of his Affidavit is concerned in relation to any tax issue arising out of the Scheme of Amalgamation, the Petitioner Company submits that the Scheme of Amalgamation shall be subject to final decision of Income Tax Authority and the approval of the same by this Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Company/Transferee Company after giving effect to the amalgamation. However, the Transferee Company shall have liberty to exercise all its legal rights under applicable laws including, under Income Tax Act, 1961 and/or under equity in the event the Petitioner Company/Transferee Company is not satisfied with the order/adjudication done by the Income Tax Authority (ies) in the aforesaid matter.

15. The Official Liquidator has filed his affidavit on 26th August, 2015 wherein he has stated that the affairs of the Petitioner Company have been conducted in a proper manner. Therefore, Petitioner Company may kindly be ordered to be dissolved by this Hon'ble Court."
16. The Learned Counsel for 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 and submissions made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.
17. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.379 of 2015 filed by the Transferor Company are made absolute in terms of prayer clauses (a) to (f).
19. The Petitioner Company to lodge a copy of this order and the Scheme of Amalgamation duly authenticated by the Company Registrar, High Court, 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 this Order.

20. The Petitioner Company is directed to file/lodge a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.
21. The Petitioner to pay costs of Rs. 10,000/- to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
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 the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.C. GUPTE, J.)