

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMPANY SCHEME PETITION NO. 507 OF 2015  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 394 OF 2015**

In the matter of Application under Sec 391 & 394 of  
the Companies Act, 1 of 1956

And

In the matter of Amalgamation of Guardian Steels  
Private Limited, the Transferor Company

WITH

Guardian Castings Private Limited, the Transferee  
Company and their shareholders

Guardian Steels Private Limited                      ...Petitioner Company/Transferor Company

**AND**

**COMPANY SCHEME PETITION NO 508 OF 2015  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 395 OF 2015**

In the matter of Application under Sec 391 & 394  
of the Companies Act, 1 of 1956

And

In the matter of Amalgamation of Guardian Steels  
Private Limited, the Transferor Company

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Company and their shareholders

Guardian Castings Private Limited                      ...Petitioner Company/Transferee Company

**Called for Hearing**

Ms. Ridhika Luthria i/b M/s. Khimani & Associates, Advocates for the Petitioner Companies in both the Petitions

Mr. Anil D. Yadav i/b A. A. Ansari for the Regional Director

Mr. S. Ramakantha, Official Liquidator

Coram: K.R. Shriram, J

Date: 18<sup>th</sup> December, 2015

**MINUTES OF THE ORDER**

**PC:**

- 1) Heard the learned Counsel for Parties. No objector has come before the Court to oppose the Scheme and nor any party has contravened any averments made in the Petition.
- 2) The sanction of this Hon'ble Court is sought under sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Guardian Steels Private Limited into Guardian Castings Private Limited. The Learned Advocate of the Petitioner Companies states that both the Transferor Company and the Transferee Company are engaged in the business of manufacturing and dealing in iron & steel products. The proposed Scheme of Amalgamation will combine the activities and operations of both the Petitioner Companies into a single company and would provide synergistic linkages besides economics in cost by combining the total business, functions and the related activities and operations and thus, contribute to the

profitability of the Transferee Company and further strengthening its market position.

- 3) The Learned Advocate for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
- 4) The Learned Advocate appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the requirements as per the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 1956 and rules made thereunder. The undertaking is accepted.
- 5) The Regional Director has filed his Affidavit stating therein that save and except as stated in paragraphs 6(a), 6(b) and 6(c) of the affidavit, it appears that the scheme is not prejudicial to the interest of the shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:

*a) Clause 13.5 of the Scheme provides for adjustment for differences in Accounting Policy between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to compliance*

*of Accounting Standard-14, the 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.*

*b) Clause 13.6 of the Scheme states that any surplus/deficit arising out of Amalgamation shall be adjusted in the General Reserve of the Transferee Company. In this regard, it is submitted that the Surplus, if any arising out of the Scheme shall be credited to the Capital Reserve Account of the Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.*

*c) It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of the 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.*

6) As far as the objection of the Regional Director in paragraph 6(a) of the his Affidavit is concerned, the Petitioner Companies through its advocate undertake that in addition to the accounting treatment under Accounting Standard – 14 given in the Scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme with other applicable Accounting Standards such as AS-5 etc.

7) As far as the objection of the Regional Director in paragraph 6(b) of his

Affidavit is concerned, the Petitioner Companies through its advocate undertake that Surplus, if any arising out of the Scheme shall be credited to the Capital Reserve Account of the Transferee Company and Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

- 8) As far as the objection by the Regional Director in paragraph 6(c) of his Affidavit is concerned, the Petitioner Companies through its advocate submit that the Petitioner is bound to comply with all the applicable provisions of the Income Tax Act and all the tax issues arising out of the Scheme will be met and answered in accordance with the law.
- 9) The Learned Counsel for the Regional Director on the instructions of Mr. M. Chandana Muthu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied by with the undertakings and submissions made by the Petitioner Companies. In view thereof, the said undertakings are accepted.
- 10) The Official Liquidator has filed his report on 16<sup>th</sup> November, 2015 in Company Scheme Petition No. 507 of 2015, inter alia 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.
- 11) 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.
- 12) Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions i.e. Company Scheme Petition No. 507 Of 2015

filed by the Transferor Company and Company Scheme Petition No. 508 Of 2015 filed by the Transferee Company are made absolute in terms of prayer clause (a) and (b) of the respective Company Scheme Petitions.

- 13) The Transferor Company to lodge a copy of this order and Scheme, duly authenticated by the Company Registrar, High Court (O.S), Bombay, with the 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.
- 14) The Transferee Company is directed to lodge a copy of the order along with Scheme with the concerned Registrar of Companies, electronically, along with the E-Form INC-28 in addition to physical copy as per the provisions of the Companies Act, 1956/ 2013.
- 15) The Petitioners in both Company Scheme Petitions are directed to pay cost of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Company is directed to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay towards his costs, Costs to be paid within four weeks from the date of this order.
- 16) Filing and issuance of the drawn up order is dispensed with.
- 17) 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.

(K. R. Shriram, J)

## CERTIFICATE

I certify that this order is uploaded is a true and correct copy of original signed order.

Uploaded by: Mr. Shankar Gawde, Stenographer