IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 660 OF 2014

CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.431 OF 2014

Solcast Precision Private Limited

….The Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO.661 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.432 OF 2014

Pune Precicast Private Limited
… The Petitioner/Transferor Company

In the matter of Companies Act, 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 Solcast Precision Private Limited and Pune Precicast Private Limited with Linit Exports Private Limited and their Respective Shareholders and Creditors.

Called for Hearing

Mr. Nayan Rawal with Mr. Sachin Mhaske i/b Nayan Rawal, Advocate for the Petitioners in both Petitions.

Mr. S. RanaKantha, Official Liquidator present in both the Company Scheme Petitions.

Mr. C. J. Joy with A R Varma for Regional Director in both Petition.

Coram: S.J. Kathawalla, J.

Date : 23rd January, 2015

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 Petition.

2. The Sanction of this Court is sought to the Scheme of Amalgamation of Solcast Precision Private Limited and Pune Precicast Private Limited with Linit Exports Private Limited and their Respective Shareholders and Creditors under Section 391-394 of Companies Act, 1956.

3. Learned Counsel for the Petitioner states that the Petitioner/ Transferor Company is carrying on business of manufacturing and producing machine components, metal components and Transferor Company is in the business of manufacturers, buyers, sellers of all types and varieties of precision cast metal components by lost wax and the Transferee company is carrying on business of exporters, importers of manmade and engineering, automotive components machineries, ferrous & non-ferrous metal, including iron & steel items and other related products. The proposed Scheme of Amalgamation will have benefit that enable all the companies to consolidate their business operations and provide significant impetus to their growth and greater leverage in operations planning and process optimization and reduction of overheads and other expenses facilitate administrative convenience and ensure optimum utilization of available services and resources, which will lead to the benefits of the economies of scale and it will lead to more efficient utilization of capital and resources.

4. The Learned counsel appearing on behalf of the petitioner companies submits that by an order passed by this court on 20th June, 2014 in Company Summons for Direction No. 431 of 2014 and 432 of 2014, filing of Company Scheme Petition in relation to the proposed Scheme by the Transferee Company, Linit Exports Private Limited was dispensed with, as the Petitioner companies are 100% wholly owned subsidiaries of the Transferee Company and no new share are required to be issued to the member of the petitioner companies and also in view of Judgment passed by this Hon’ble Court in Mahaamba Investement Limited Versus IDI Limited (2001) 105 Company Cases (Page No. 16 to 18).

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

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

7. The Learned Counsel appearing on behalf of the Petitioner Company has stated that the Petitioner Company has complied with all requirements as per directions of this Court and that the Petitioner Company has 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 there under, whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 15th January, 2015 in Company Scheme Petitions No. 660 of 2014 and 661 of 2014 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 14th January, 2015 stating therein that save and except as stated in paragraph 6 (a) to (c), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph 6 (a) to (c) of the Affidavit, the Regional Director has stated as under:

That the Deponent further submits that: -

a. *With respect to clause 14 of the scheme, it is submitted that the reserve if any arising out of the scheme be transferred* *to Capital Reserve Account of Transferee Company. Similarly, deficit if any arising the same may be transferred to Goodwill Account of Transferee Company.*

b. *Clause 14.3 of the 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 the 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.*

c. *That the Deponent further submits that tax issues, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities and approval of the Scheme by this Hon'ble 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.*

10. In so far as observation in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Transferor Companies through Counsel undertakes that the reserve if any arising out of the scheme, shall be transferred to Capital Reserve Account of Transferee Company and deficit if any arising out of the same shall be transferred to Goodwill Account of Transferee Company.

11. So far as the observation in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertakes that in addition to compliance of Accounting Standard- 14, the Transferee Company shall pass such accounting entries which are necessary in connection with this Scheme to comply with any other applicable Accounting Standards.

12. In so far as observations made in paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the Petitioner companies are bound to comply with all applicable provisions of Income Tax act, 1961 and all tax issues arising out of scheme will be met and answered in accordance with law.

13. The Learned Counsel for Regional Director on instructions of Mr. 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 submission and undertakings given by the Advocate for the Petitioner Companies. All above undertakings are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No.660 of 2014 and 661 of 2014 are made absolute in terms of prayer clauses (a) of the respective Petitions.

16. The Petitioner Companies 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.

17. The Petitioners are directed to file 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 provision of the Companies Act, 1956/2013 whichever is applicable.

18. The Petitioner Companies in both the Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Official Liquidator, High Court, Bombay. 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 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.)