IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEMEPETITION NO 591 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.530 OF 2015
FAG Roller Bearings Private Limited…Petitioner/Transferor Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

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

AND

In the matter of Scheme of Amalgamation of FAG Roller Bearings Private Limited with FAG Bearings India Limited and their Respective Shareholders and Creditors

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co, Advocate for the Petitioner

Mr.Chirag J Shah, i/b Shri. A. A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator, present.

CORAM: S. C. GUPTE, J
DATE: 9TH OCTOBER, 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 Petition.

2. The sanction of the Court is sought under Sections 391 to 394 to the Companies Act, 1956, to a Scheme of Amalgamation of FAG Roller Bearings Private Limited with FAG Bearings India Limited and their Respective Shareholders and Creditors.
3. The Learned Counsel for the PetitionerCompany states that Petitioner/Transferor Company is engaged in the business of Special Machines Building activities for bearings. The Transferee Company, FAG Bearings India Limited is presently engaged in the business of manufacturing and supply of wide range of bearings to Industrial & Automotive Customers.
4. The Learned Counsel for the Petitioner Company states that the scheme would result into benefits namely, better focus and concentration on the growth efforts of Bearings business; Simplified corporate structure; Post the amalgamation of Petitioner Company with Transferee Company, Petitioner Company will stand dissolved. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax filings, company law requirements, etc and therefore reduction in administrative costs; Enable cost saving and optimum utilization of valuable resources which will enhance the management focus thereby leading to higher operational efficiency; Petitioner Company is engaged in special machines building for bearings manufacturing by group companies (mainly for Transferee Company) and housed within the premise of Transferee Company's Plant in Maneja in Vadodara.
5. The Petitioner Company approved the said Scheme by passing the Board Resolution which is annexed to the Company Scheme Petition.

6. The Learned Counsel for the Petitioner further states that since the Petitioner/Transferor Company is wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by the Transferee Company, FAG Bearings India Limited and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by FAG Bearings India Limited, the Transferee Company was dispensed with, by an order dated 3rd July, 2015 passed in CSD NO. 530 of 2015.
7. The Learned Counsel for the Petitioner Company states that the Petitioner Company has complied with all directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Company Summons for Directions.
8. The Learned Counsel for the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, 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. The said undertaking is accepted.

9. The Regional Director has filed an Affidavit on 28th September, 2015 in the above Petition stating therein that save and except as stated in paragraphs 6(a) to 6(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 6(c) of the said Affidavit, the Regional Director has stated that:-

6. "That the Deponent further submits that:-

(a) *Clause 10.7 of the Scheme states that the main Objects as well as relevant incidental objects of the Memorandum of Association of the Transferor Company shall form part of the Memorandum of Association of the Transferee Company. In this regard the Transferee company may be directed to comply with provisions of section 13(1) & (6) read with Section 15 of the Companies Act,2013 corresponding to section 40 read with section 18 of Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of companies.*

(b) *It is respectfully submitted that the tax issue, 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 return filed by the Transferee Company after giving effect to the Scheme The decision of the lncome Tax Authority is binding on the Transferor Company and Transferee Company.*

(c) *Clause 15 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 Transferor Company and Transferee Company may be directed to undertake to this effect.*

10. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to Section 40 read with Section 18 of

Companies Act, 1956 and shall file amended copy of Memorandum of Association with necessary form with Registrar of Companies.

11. As far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferor and Transferee Company are bound to comply with all the applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.
12. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Company through their Counsel clarifies that any modification to the Scheme in terms of Clause 15 of the Scheme shall be done only after obtaining leave of this Hon'ble Court.
13. 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 undertaking given by the Petitioner Company. Allabove undertakings given by the Petitioner Company areaccepted.
14. The Official Liquidator has filed his report on 6th October 2015 stating therein that the Affairs of the Petitioner/ Transferor Company havebeen conducted in a proper manner and that the Petitioner/ Transferor Company may be ordered to be dissolved by this Hon'ble Court.
15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 591of 2015, filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.
17. The Petitioner Company is directed 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.
18. Petitioner Company and Transferee Company 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 the physical copy as per the relevant provisions of Companies Act, 1956/2013 Act, whichever is applicable.
19. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks, from date of the Order.
20. Filing and issuance of the drawn up order is dispensed with.
21. 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.)

CERTIFICATE

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

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