

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 691 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 651 OF 2015**

Jay Railway Projects Private Limited ...Petitioner Company

In the matter of the Companies Act, 1956 (1 of 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 provision of Companies act, 2013 as may be notified);

AND

In the matter of Scheme of Amalgamation of Jay Railway Projects Private Limited with KEC International Limited and their respective Shareholders and Creditors

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan and Mr. Ameya Lambhate, Advocates for the Petitioner.

Mr. Udayan A. Shah, i/b. A. A. Ansari for the Regional Director.

Mr. S. Ramakantha, Official Liquidator present.

Coram : K. R. Shriram, J.

Date : 11th December, 2015

P.C:-

1. Heard learned counsel for parties. The Learned Advocate for the Petitioner Company stated that Transferor Company has received objections from unsecured creditors viz. M/s Epsilon Electronic Equipments & Components Private Limited and M/s Global Devices. Learned Advocate for Petitioner Company and that Global Devices has filed objection to the proposed Scheme of Amalgamation being OTS No. 47 of 2015 and a copy of the same sent to the Advocate of the Petitioner Company. Learned Advocate for the Petitioner Company further stated that the claim of M/s Epsilon Electronic Equipments & Components Private Limited has been settled and the said unsecured creditor has given a written no objection to the proposed Scheme of Amalgamation. Further, M/s Global Devices have given written no objection to the proposed Scheme of Amalgamation.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Jay Railway Projects Private Limited with KEC International Limited and their respective Shareholders and Creditors.
3. Learned Advocate for the Petitioner Company states that the Transferor Company engaged in the business of railway signaling automation systems and technology and operates in the areas of design, execution, supply, installation, commissioning and maintenance of safety-related rail signaling and control systems and Transferee Company is engaged in the business of infrastructure EPC with presence in Power Transmission & Distribution (T&D), Cables, Railways and Water.

4. The proposed scheme of amalgamation of the Petitioner Company with Transferee company will have the benefit of consolidation of business operations which would lead as turnkey solution provider in the railway infrastructure EPC space and resources be pooled which result into efficient utilization of resources and create a stronger base for future growth and greater efficiency in cash management of the amalgamated entity with financial resources and managerial, technical and marketing expertise of the Transferee Company it would bring in greater economies in scale of operations and will help in reducing expenditure considerably and in bringing operational synergy in terms of procurement benefits, common license and reduction of administration work etc., for the Transferee Company and this would result into the combined assets, man-power and cash flows of both the companies and further enhance capabilities and resources at its disposal, the Combined entity will have greater flexibility to market and meet consumer needs more effectively.
5. The Learned Advocate for the Petitioner Company states that the Petitioner Company is a wholly owned subsidiary of Transferee Company viz. KEC International Limited and no new shares are being issued and there will be no change in capital structure of the Transferee Company and the Scheme does not affect the rights of the members and interest of the creditors of both the Companies and does not involve any re-organization of the paid up Share Capital of the Transferee Company and in view of the judgement of this Hon'ble Court in Mahaamba Investment Limited vs. IDI Limited (2001) Company Cases 105 filing of a separate Company Summons for Direction and Company Scheme Petition for sanction of the Scheme by KEC International Limited, Transferee Company was dispensed with vide order dated 31st July, 2015 passed in Company Summons for Direction No. 651 of 2015.

6. The Petitioner Company and Transferee Company have approved the Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.
7. The Learned Advocate for the Petitioner further states that the Petitioner Company have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the Order passed in Company Summons for Direction.
8. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company through its Advocate undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.
9. The Official Liquidator has filed his report on 26th November, 2015 in Company Scheme Petition No. 691 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.
10. The Regional Director has filed an Affidavit on 27th October, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 reads as under:

“6. 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.”

11. As far as the observations made in paragraph 6 of the Affidavit of the Regional Director is concerned, the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.
12. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company is accepted.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 691 of 2015 is made absolute in terms of prayer clause (a), (b) and (d).
15. The Petitioner Company is directed 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 the order.
16. The Petitioner Company is further directed to file a copy of this order along with a copy of the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copies as per relevant provisions of the Companies Act, 1956/2013 as applicable.

17. 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 the date of the Order.
18. Filing and issuance of the drawn up order is dispensed with.
19. 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.)

C E R T I F I C A T E

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

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