IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 75 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 250 OF 2014.

Max-Grip Gaskets Private Limited … Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 76 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 251 OF 2014.

Mega Engineering Private Limited … Petitioner / Transferee Company

IN THE MATTER of Companies Act, 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 the Companies act, 2013 as may be notified);

AND

IN THE MATTER of the Scheme of Amalgamation of
Max-Grip Gaskets Private Limited
with
Mega Engineering Private Limited.

Called for hearing:-

Mr. Yogesh Adhia, advocate for the Petitioner in both the Petitions.

Mrs. S.V. Bharucha i/b Shri. A. A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P No. 75 of 2015.

CORAM: S. C. GUPTE J.

DATE : 3rd July 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 Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 and read with Section 100 to 105 of the Companies Act, 1956, to the Scheme of Amalgamation between Max-Grip Gaskets Private Limited with Mega Engineering Private Limited, and their respective shareholders.

3. The learned counsel for the Petitioner Companies states that the Transferor Company is presently carrying on business of manufacturing of wide range of fasteners that caters to all the important fastening requirements of the core industries. The Transferee Company is presently carrying on business of manufacturing chemicals and machineries.

4. The learned counsel for the Petitioner Companies further states that the Scheme of Amalgamation will result into following benefits namely, enable both the Companies to consolidate their business operations and provide significant impetus to their growth enabling the amalgamated entity to reach at higher orbit, result in enhancing the scale of operations and reduction in and / or optimization in overheads costs, administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of various resources and also benefiting from economies of scale result in improved shareholder value benefiting all

shareholders / investors of all the companies, result in enhanced leveraging capability of the combined entity which in turn will allow the combined entity to undertake future expansion strategies and to tap bigger opportunities in the market with considerable lower risk / return ratio because of the larger base of the combined entity. consolidate the managerial expertise of the companies involved thereby giving additional strength to the operations and management of the amalgamated Company, enabling the amalgamated entity to cater to much wider client base all over India spread over larger geographical area.

5. The Petitioner Companies have approved the said Composite Scheme of Amalgamation by passing the Board Resolution which annexed to the respective Company Scheme Petitions.

6. The learned Counsel for the Petitioners states that the Petitioner Companies 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 orders passed in respective Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that they have complied with all the requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake 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.

8. The Official Liquidator has filed his report on 15th June 2015 in Company Scheme Petition No. 75 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.

9. The Regional Director has filed his Affidavit on 12th May 2015, *inter alia,* stating therein that save and except as stated in paragraphs 6 (a) and (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) and (b) of the said Affidavit, the Regional Director has stated that :

a) Clause no. 12.1.8 of the scheme states that Excess of assets over liabilities recorded shall be credited by the Transferee company to an account to be styled as "Amalgamation Reserve Account" and the said account shall be considered as a free reserve and shall form part of the net worth of the Transferee company. In this regards, it is submitted that surplus/ reserve is arising on transfer of capital assets from Transferor Company to Transferee Company and hence that part of the reserve cannot be construed as free reserve and cannot form part of the net worth of the Transferee company.

b) The Income Tax Department vide its letter dated 18/03/2015 has informed that the Transferor company is having outstanding demand and it has to be paid on priority. Copy of the said letter is annexed herewith as Exhibit 'D'. In this regard, the deponent respectfully submits that the tax implication, if any, arising out of the Scheme is subject to final decision of 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 given effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company.*

10. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its Learned Counsel undertakes that reserve arising on transfer of capital assets from Transfer Company to Transferee Company shall not be treated as free reserve and shall not form part of the net worth of the Transferee Company.

11. In so far as observation made in paragraph 6(b) of the Affidavit of the Regional Director, Petitioner Companies undertake that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law. The Petitioner Companies also undertake to pay the outstanding demand of the Income Tax Authorities in accordance with law.

12. It is clarified that the approval of the Scheme by this Court shall not deter the Income Tax Authority to scrutinize the returns filed by the Transferee Company after giving effect to the scheme.

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 undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Companies are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petitions are made absolute in terms of prayer clauses (a) and (c).

16. The Petitioner Companies are directed to lodge a copy of this order and the Scheme 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 the order.

17. The Petitioner Companies are directed to file a copy of this order along with a copy of the amended Scheme 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.

18. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition No. 75 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

19. Filing and issuance of the drawn up order is dispensed with.

(S. C. Gupte J.)