IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Company Scheme Petition No. 119 of 2015
Connected with
Company Summons for Direction No.769 of 2014

M/S. APL ENGINEERING SERVICES PRIVATE LIMITED

….Petitioner/Transferor Company

In the matter of Companies Act 1956
And
In the matter of Section 391 and 394 of the Companies Act, 1956
And
In the matter of Scheme of Amalgamation of APL Engineering Services Private Limited With Amines and Plasticizers Limited and their respective Shareholders and Creditors.

Called for hearing

Mr. Satyan S. Israni, Advocate for the Petitioner /Transferor Company.

Mr. S. Ramakaatha Official Liquidator, present in CSP No. 119 of 2015.

Mrs. Purnima Awasthi i/b A.A. Ansari for Regional Director in the above mentioned Petition.

CORAM: S. C. Gupte, J.
DATE: 3rd July, 2015

PC:

1. Heard Learned Counsel for the Petitioner. 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 the Court is sought in the matter of Scheme of Amalgamation of M/S. APL ENGINEERING SERVICES PRIVATE LIMITED with M/S. AMINES AND PLASTICIZERS LIMITED and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. Learned Counsel for the Petitioner Company states that Transferor Company is engaged in business of Engineering Industry and other related activities. The proposed Scheme of Amalgamation will have the benefit of business synergy and consolidation of these companies with a stronger asset base. The shareholders of the Transferee Company would enjoy a much larger asset base and other resultant benefits of the combined entity. The proposed amalgamation would

enable pooling of physical, financial and human resources of these Companies for the most beneficial utilization of these factors in the combined entity. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resources and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses. The said Scheme of Amalgamation will contribute in fulfilling and furthering the objects of these Companies. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario. The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies. The said Scheme of Amalgamation will have beneficial impact on all the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned. The Transferor Company and

Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The learned Advocate for the Petitioner/Transferor Company further states that, Petitioner Company have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition have been filed with the order passed in respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

5. The learned Counsel appearing on behalf of the Petitioner have stated that the Petitioner/Transferor Company have complied with all requirements as per directions of this Court and have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Company undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 and the Rules made there under. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 21/05/2015 in Company Scheme Petition No.119 of 2015 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

7. The Regional Director has filed an affidavit on 17th June, 2015 stating therein that the Scheme does not appear to be prejudicial to the interest of the shareholders and the public. In paragraphs 6(a) to 6(e) of the Affidavit, the Regional Director has stated that:-

a) The Registered office of the Transferee Company is situated in the state of Assam. Hence, the present Scheme of Amalgamation between the Transferor Company and Transferee Company will be subject to the condition of obtaining similar approval from Hon'ble High Court of Gauhati in respect of Transferee Company.

b) Clause 3.9(f) of the Scheme states that, any surplus arising out of Amalgamation shall be credited to the Capital Reserve/General reserve in the books of the Transferee

Company. In this regard, it is submitted that the Surplus, if any arising out of the Scheme shall be credited to Capital Reserve account of Transferee Company and the Deficit , if any arising shall be debited to goodwill Account of the Transferee Company.

c) *Clause 3.9(g) of the Scheme states that accounting policies of the Transferor company will be harmonized with that of the Transferee company following the amalgamation. 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.*

d) *It is observed that the Transferor company is consistently making loses from the past few years. Whether the carrying forward of loss u/s 72A of the Income Tax Act, 1991, is permissible or not is a matter within the jurisdiction of Income Tax Authority and that issue will be a future event which is to be decided by Income Tax authorities. In this regard , it is respectfully submitted the tax implication, if any, arising out of*

Scheme is subject to final decision of Income Tax Authorities. The approval of 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 Transferor Company and Transferee Company.

e) Clause 3.12 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorised 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.

8. So far as the observation in the Paragraph 6(a) of the Affidavit of Regional Director is concerned, the Counsel on behalf of the Petitioner Companies undertakes that the present scheme of Amalgamation between the Transferor Company and Transferee Company will be

subject to the condition of obtaining similar approval from Hon’ble High Court of Gauhati in respect of Transferee Company.

9. So far as the observation in the paragraph 6(b) of the Affidavit of Regional Director is concerned, the Counsel on behalf of the Petitioner Company undertakes that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

10. So far as the observation in the paragraph 6(c) of the Affidavit of Regional Director is concerned, the Counsel on behalf of the Petitioner Company undertakes 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.

11. So far as the observation in the paragraph 6(d) of the Affidavit of Regional Director is concerned, the Counsel on behalf of the Petitioner

Company undertakes that the tax implication , if any , arising out of Scheme is subject to final decision of Income Tax Authorities.

12. So far as the observation in the paragraph 6(e) of the Affidavit of Regional Director is concerned, the Counsel on behalf of the Petitioner companies seeks leave of the Court to carry out necessary amendment in Clause 3.8 (b) as mentioned in the Additional Affidavit dated 15th April, 2015 as follows:

"…..Approval of this Scheme by the Shareholders and/or Creditors of the Transferor and the Transferee Companies, as the case may be, and sanction by the High Court under section 391 and 394 of the Companies Act, 1956, shall be sufficient compliance with the provisions of sections 100 to 104 of the Companies Act, 1956, rule 85 of the Companies (Court) Rules, 1959, and other applicable provisions, if any, relating to the reduction of share capital on cancellation of cross holding.".

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. None of the parties concerned has come forward to oppose the Scheme in the Court.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos.119 of 2015 is made absolute filed by Transferor Company in terms of prayers (a) to (i).

15. The Petitioner Company 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. Petitioner is directed to file a copy of this order alongwith a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form INC-28 in addition to the physical copy, within 60 days from the date of issuance of the order by the Registry as per the provisions of the Companies Act, 1956.

17. The Petitioner to pay costs of Rs.10,000/-to the Regional Director, Western Region, Mumbai and Petitioner in Company Scheme Petition No.119 of 2015 to pay cost of Rs.10,000/- 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 authorities to act on a copy of this order alongwith the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S.C. GUPTE, J)