IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 868 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 230 OF 2014

Celltech India Private Limited … Transferor Company / Petitioner Company

COMPANY SCHEME PETITION NO. 869 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 231 OF 2014

Star Engineers (India) Private Limited … Transferee Company / Petitioner Company

In the matter of the Companies Act, 1956

And

In the matter of section 391 & 394 of the Companies Act, 1956

And

In the matter of Scheme of Amalgamation of Celltech India Private Limited, the Transferor Company with Star Engineers (India) Private Limited, the Transferee Company

Called for Hearing

Mr. Rahul Risbud a/w. Ms. Shruti Kelji, for the Petitioners.

Regional Director present in both the Company Scheme Petitions.
Mr. S. Ramakantha, Official Liquidator in Company Scheme Petition No. 868 of 2014.

Coram : S. C. Gupte, J.
Date : 12th June, 2015

P.C:-

1. Heard Advocate for the parties. No objectors have come before the Court to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Celltech India Private Limited, the Transferor Company with Star Engineers (India) Private Limited, the Transferee Company.

3. Learned Advocate for the Petitioner Companies state that the Transferor Company is engaged in the business of manufacturing of engineering and industrial products and Transferee Company is engaged in the business of manufacturing of engineering parts and components.

4. The proposed scheme of amalgamation of the Transferor Company with Transferee company will have the benefit that the other assets including current assets of the Transferor Company which was under-utilized, shall be properly, gainfully and efficiently utilized which would augment the asset base and thereby resulting in the optimal utilization of the resources and greater revenue inflow and to consolidate entity shall provide strategic and competitive advantage to

achieve its desired object and further the Transferor Company with the Transferee Company is in line with current global trends to achieve size, scale, integration and greater financial strength and flexibility and also consolidate entity is likely to achieve higher long term financial returns than could be achieved individually by the Transferor Company and will bring administrative and operational rationalization, organizational efficiencies and rationalization in economies of scale and more optimal utilization of various resources and the managerial expertise of Transferor Company would be combined giving additional thrust to the Transferee Company and it will increase operational efficiency and integrate marketing functions and it would contribute towards enhancement of shareholders' value of the Transferee Company and also will enable streamlining the activities of the respective companies and will also reduce managerial overlaps, which are necessarily involved in running multiple entities.

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

6. The Learned Advocate for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the Order passed in Company Summons for Directions.

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

their 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.

8. The Official Liquidator has filed his report on 23rd April, 2015 in Company Scheme Petition No. 868 of 2014 stating therein that the affairs of the Transferor Company have been conducted in a manner prejudicial to the interest of its shareholders and accordingly the scheme, as proposed, deserves to be rejected. The objection of the Official Liquidator is that the Transferor Company has not followed due process of law in writing off an unsecured loan amounting to Rs.20,10,506/- which resulted in the balance sheet and profit and loss account of the Company not giving a true and fair view of the affairs of the Transferor Company. It is submitted by the Petitioner that the loan of M/s. Dongwoo Electronics Pvt. Ltd. was not written off by the Company but that the Company Dongwoo Electronics Pvt. Ltd. was struck off the register by the Registrar of Companies. An extract of master data of Dongwoo Electronics Pvt. Ltd. is submitted by the Petitioner with its affidavit dated 29 May 2015. The Company cannot, in the premsies, be said to have conducted its affairs in the prejudicial manner to the interest of its shareholders as submitted by the Official Liquidator.

9. The Regional Director has filed an Affidavit on 15th April, 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:-

(a) Clause 18 of the Scheme provides for amendment to the object clause of Memorandum and Articles of Association of

Transferee Company. In this connection, the Transferee Company may be directed to comply with provisions of section 13 and 15 of the Companies Act, 2013 and to file amended copy of Memorandum of Association alongwith Form No. 21 with the Registrar of Companies.

(b) 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."

10. As far as the observations made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Petitioners undertake that the Transferee Company will comply with the provisions of Section 13 and 15 of the Companies Act, 2013 and will also file amended copy of Memorandum of Association alongwith Form No. 21 with Registrar of Companies.

11. As far as the observations made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies are 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 Companies. The said undertakings given by the Petitioner Companies are 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. 868 of 2014 is made absolute in terms of prayer clause (a), (b) and (d) and Company Scheme Petition No. 869 of 2014 is made absolute in terms of prayer clause (a) and (c).

15. The Petitioner Companies are 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 Companies are 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 whichever is applicable.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition No. 868 of 2014 and 869 of 2014 and to the Official Liquidator, High Court, Bombay in Company Scheme Petition No. 868 of 2014. 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.

(S. C. Gupte, J.)