

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

COMPANY PETITION NO. 12 OF 2015
CONNECTED WITH
COMPANY APPLICATION NO. 17 of 2014
IN
COMPANY PETITION ST. NO. 24497 OF 2014

Nidhye Engineering Company Private Limited... Petitioner/Transferor
Company – 1

AND

COMPANY PETITION NO. 13 OF 2015
CONNECTED WITH
COMPANY APPLICATION NO. 19 of 2014
IN
COMPANY PETITION ST. NO. 24494 OF 2014

Rukmani Gases Private Limited... Petitioner/ Transferor Company – 2

AND

COMPANY PETITION NO. 14 OF 2015
CONNECTED WITH
COMPANY APPLICATION NO. 18 of 2014
IN
COMPANY PETITION ST. NO. 24496 OF 2014

Rukmani Metals and Gaseous Limited...Petitioner/ Transferee Company

AND

In the matter of Companies Act, 1956 (I of 1956) and Act 18 of 2013

AND

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

AND

In the matter of the Scheme of Amalgamation of
Nidhye Engineering Company Private Limited (Transferor Company - 1)

And

Rukmani Gases Private Limited (Transferor Company - 2)

With

Rukmani Metals and Gaseous Limited (Transferee Company)

And
Their respective Shareholders and Creditors

Mr. Anand Jaiswal, Senior Advocate with Mr. G. E. Moharir, Advocate for the Petitioner Companies in all the Petitions.

Mr. R.D. Wakode, Advocate, for Regional Director in all the Petitions,

Mr. M. V. Chakranarayan, Official Liquidator Present for both the Transferor Companies in Company Petition Nos. 12 and 13 of 2015.

CORAM : A.S.CHANDURKAR J.
DATE : JULY 31, 2015

Common Order :

Heard learned Counsels and the parties.

The sanction of this Court is sought under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Nidhye Engineering Company Private Limited (Transferor Company – 1) and Rukmani Gases Private Limited (Transferor Company – 2) with Rukmani Metals and Gaseous Limited (Transferee Company) and their respective Shareholders and Creditors (“the Scheme”), so as to become effective from the ‘Appointed Date’, viz. 1st October, 2014. Further, the Petitioner Companies have sought directions from this Court under Section 394 and other applicable provisions of the Companies Act, 1956 to give effect to matters in connection with the said Scheme of Amalgamation. The Petitioner Companies have also prayed for an order that Transferor Company – 1 and Transferor Company – 2 shall stand dissolved without the process of winding-up upon filing the certified copy of this order with the Registrar of Companies, Maharashtra, Mumbai. Both the Transferor Companies are wholly owned subsidiaries of the Transferee Company.

2. This Court had passed Orders dated 19th December, 2014 (as modified by orders dated 16th February, 2015) in Company Application Nos. 17, 19 & 18 of 2014 in Company Petition St. Nos. 24497, 24494 and 24496 of 2014 under Sections 391 and 394 of the Companies Act, 1956, directing that the meetings of the Equity Shareholders and Secured Creditors of the Petitioner Companies be convened on 30/03/2015, to consider and if necessary to approve, with or without modifications, the Scheme of Amalgamation of the Transferor Companies – 1 & 2 with the Transferee Company.

4. It is seen from the affidavits dated 14th March, 2015 that the publication about the notices to the equity shareholders and secured creditors of the Petitioner Companies were published in the Nagpur Editions of “Times of India” English Daily and “The Maharashtra Times” Marathi Daily Newspapers dated 01/03/2015, with regard to the meetings of the Equity Shareholders and Secured Creditors of the Petitioner Companies to be convened on 30/03/2015.

5. It is seen from the affidavits dated 3rd April, 2015 and the Report of the Chairman dated 3rd April, 2015 in Form Nos. 39 under Rule 78 of the Companies Court Rules, 1959, that the meetings were convened as directed. As per the Report of the Chairman, the Scheme of Amalgamation as proposed was approved unanimously, without modifications in all the meetings.

6. Subsequently, the Petitioner Companies had filed Company Petition Nos. 12, 13 and 14 in Form No. 40 under Rule 79 of the Companies Court Rules, 1959 for confirmation of the Scheme of Amalgamation with Affidavit dated 7th April, 2015. This Court had passed orders dated 17th April, 2015 issuing notices to the Regional Director, Ministry of Corporate

Affairs, Western Region, 100, Everest Building, Marine Lines, Mumbai – 400002 and the Official Liquidator, High Court of Judicature at Bombay, Nagpur Bench, New Secretariat Building, Second Floor, East wing, Opposite V. C. A. Ground, Civil Lines, Nagpur – 440001.

7. The Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai had submitted affidavit dated 17th June, 2015 stating that save and except as stated in paragraphs 6 (a) & (b) of said affidavit, the Scheme was not prejudicial to the interest of the shareholders and public and in the light of the aforesaid, this Court may pass such orders as deemed fit and proper. In paragraphs 6 (a) & (b) of the said Affidavit, the Regional Director has stated that:

“6 (a) Clause 8.2 of the Scheme provides for adjustment of differences in Accounting Policies between the Transferor Companies and Transferee Company. 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 Standards such as AS – 5, etc.

(b) The deponent has further submitted 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 giving effect to this scheme. The decision of the Income Tax authorities is binding on the Petitioner Companies.”

8. The Learned Senior Counsel for the Petitioner Companies has stated that the Petitioner Companies have filed affidavits dated 4th July, 2015 as regards the aforesaid objections of the Regional Director, Western Region, Mumbai, in paragraphs 6 (a) & (b) of his affidavit dated 17th June, 2015. In the said affidavits, the Petitioner Companies have stated as follows:

“(a) As stipulated by the Regional Director, Western Region, Ministry of Corporate Affairs in Clause 6 (a) of his report, upon the Scheme of

Amalgamation becoming effective, 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 Standards such as AS – 5, etc.

(b) As stipulated by the Regional Director, Western Region, Ministry of Corporate Affairs in Clause 6 (b) of his report, the tax implication, if any; arising out of the Scheme of Amalgamation shall be subject to final decision of Income Tax Authorities. The approval of the Scheme of Amalgamation by this Hon'ble Court will not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to this Scheme of Amalgamation. The decision of the Income Tax authorities shall be binding on Petitioner Companies.”

The submissions made by the Petitioner Companies in their respective affidavits dated 4th July, 2015 are accepted.

9. The Official Liquidator, High Court of Judicature at Bombay, Nagpur Bench, Nagpur had submitted reports on the affairs of Nidhye Engineering Company Private Limited, Transferor Company – 1 and Rukmani Gases Private Limited, Transferor Company – 2, which are proposed to be dissolved without the process of winding up post their amalgamation with Rukmani Metals and Gaseous Limited, Transferee Company. The Official Liquidator has stated in his reports that the affairs of the Transferor Companies – 1 and 2 have not been conducted in a manner prejudicial to the interest of its members/creditors or to the public interest and the matter may be decided on merits.

10. This Court had passed orders on 3rd July, 2015, fixing the date of hearing of the Company Petitions and directing the Petitioner Companies to publish the notices of hearing not less than 10 days before the date fixed for hearing which was 31/07/2015. Accordingly, the Petitioner Companies have published the notices of hearing of the Petitions in the Nagpur Editions of the

‘Times of India’ English and the ‘Maharashtra Times’ Marathi Daily Newspapers and Petitioner Companies have filed affidavits of compliance dated 21st July, 2015 in the Court.

11. There are no objections to the Scheme save and except, as stated in paragraphs 7 and 8 hereinabove, which have been duly addressed by the Petitioner Companies. Neither any objector has come before the Court to oppose the Scheme nor has any party controverted any averments made in the Petitions. 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.

12. The Learned Senior Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all the requirements as per the directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, under the Companies Act, 1956 and the Rules made thereunder. The said undertaking is accepted.

13. Since all the requisite statutory compliances have been fulfilled, all the Company Petitions i.e. Company Petition No. 12 of 2015 filed by the Transferor Company – 1, Company Petition No. 13 of 2015 filed by the Transferor Company – 2 and Company Petition No. 14 of 2015 filed by the Transferee Company are made absolute in terms of prayer clauses (i) to (iii) of the respective Company Petitions.

14. The Transferor Companies to lodge a copy of this order and the Scheme authenticated by this Court, 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 this order.

15. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the Registrar of Companies, Mumbai electronically along with E-Form INC-28, in addition to physical copies.

16. The Petitioner Companies in all the Company Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai towards his costs. The Petitioner Companies in Company Petition Nos. 12 and 13 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court of Judicature at Bombay, Nagpur Bench, Nagpur towards his costs. Costs to be paid within six weeks from the date of the order.

17. All concerned authorities to act on authenticated copy of this order along with the Scheme of Amalgamation. Petitions are disposed of accordingly.

JUDGE