IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2015

Coram

The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

C.P.No.276 of 2015

SSF Plastpro Limited
(name changed from NYPRO Forbes Products Limited)
a Company incorporated under the
Companies Act, 1956,
having its registered office at
Sub Division Plot No.52,
Sipcot Industrial Complex,
Hosur, Tamil Nadu - 635 126
represented by Mr.KVR Subramanian
Authorised signatory ... Petitioner/Transferor Company

Petition filed under sections 391 to 394 of the Companies Act, 1956 to sanction the scheme of amalgamation of SSF Plastpro Limited (Transferor Company) with SSF Plastics India Private Limited (Transferee Company) and their respective shareholders as per Annexure-8 in the Petition, with effect from 01.04.2014 or such other date as determined in terms of the Scheme so as to be binding on all the shareholders of the petitioner company, and to dissolve the petitioner company without winding up.

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For Petitioner : Mr.K.Ramasamy
Mr.G.Venkatesan
Central Government Counsel
for Regional Director
Ministry of Company Affairs,
Chennai.

Mr.A.P.Babu, Company Prosecutor
for
Official Liquidator

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O R D E R

This company petition is preferred under sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of SSF Plastpro Limited (Transferor Company) with SSF Plastics India Private Limited (Transferee Company) and their respective shareholders, with effect from 01.04.2014 so as to be binding on all the shareholders of the petitioner company and to dissolve the petitioner company without winding up. The scheme of amalgamation is annexed as Annexure – 8 to the typed set of papers.

2. The registered office of the petitioner/ transferor company is situated at Hosur within the jurisdiction of this High Court. The registered office of the transferee company is situated at Village Katha, Pargana, Dharampur, Near Baddi, Tehsil Nalagarh, Solan, Himachal Pradesh, India. The transferor company is engaged in the business of manufacturing/dealing in Nylon, Plastic and similar goods of all types. The transferee company is engaged in the business of all kinds of plastic packaging. The main objects of the transferor company and that of the transferee company are set out in their Memorandum of Association.Certified copies of the Memorandum and Articles of Association of the petitioner company/transferor company and that of the transferee company are marked as Annexures -1 and 4 respectively. Certified copies of the Audited

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Balance Sheet of the petitioner company/transferor company and that of the transferee company as on 31st March 2014, are marked as Annexures-2 and 5 respectively. The unaudited Balance Sheet of the petitioner company/transferor company and that of the transferee company are annexed as Annexures - 3 and 6 respectively. The copy of the resolutions dated 12.03.2015 of the Board of Directors of the transferor company and the transferee company are enclosed as Annexure-7 to the petition. Chartered Accountant's certificate certifying that there are no secured creditors in the transferor company is annexed as Annexure-11 to the petition. It is stated in the petition that as far as unsecured creditors of the petitioner company are concerned, they will not be adversely affected by the proposed scheme as the assets of the transferee company, post merger, will be far more than its liabilities and as such sufficient to discharge the liabilities. Further the scheme does not envisage alteration of the rights of the unsecured creditors.

3. There are seven equity shareholders in the petitioner/transferor company. The list of equity shareholders of the petitioner company is annexed as Annexure-9 and the consent affidavits from the equity shareholders of the petitioner company/transferor company to the scheme of amalgamation is annexed as Annexure-10. This Court, vide its order dated 30.04.2015, in C.A.No.534 of

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2015 dispensed with the convening, holding and conducting the meeting of the equity shareholders of the petitioner company/transferor company for the purpose of considering and if thought fit, approving with or without modification, the scheme of amalgamation of the transferor company with the transferee company.

4.On notice, the Regional Director, Ministry of Company Affairs has filed his report stating no objection to the scheme being sanctioned.

5. The Official Liquidator has also filed his report along with the report of the Chartered accountants. It is reported by the Chartered Accountants that the petitioner/transferor company has not accepted deposits from the public and hence, the question of commenting on compliance of the directions of the Reserve Bank of India relating to deposits does not arise. It is also reported that there is no Sales Tax pending against the transferor company, however, Income Tax Case Appeal is pending against Assistant Commissioner of Income Tax Corporate Circle 4(2), Chennai, for the financial year 2012-2013. The report of the Chartered Accountant further stated that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to public interest and they do not come across any act of misfeasance by the Directors attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated

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that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountants and there are no materials to indicate that the affairs of the transferor company were being conducted in a manner prejudicial to the interest of its members or public interest.

6.However, in the recent decision of the Hon'ble Apex Court in ***2015 (190) Comp Cas 105 (SC) (Department of Income Tax v. Vodafone Essar Gujarat Ltd., and another)***, a scheme of arrangement was proposed by the company which provided for transfer of passive infrastructure assets of the transferor companies to the transferee company without consideration as the transfer was within companies belonging to one group. The Hon'ble Supreme Court sanctioned the scheme despite objections from the Income Tax Department and observed that the Income Tax Department was entitled to take out appropriate proceedings for recovery of any tax statutorily due from the transferor or transferee company or any other person liable for payment of such tax due.

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7.The learned counsel for the petitioner submitted that even though the registered office of the transferee company is situated in the State of Himachal Pradesh, the approval of the scheme by the High Court of Himachal Pradesh is not necessary as the transferor company is wholly owned subsidiary of the transferee company. In support of his contention, the learned counsel placed reliance on the

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judgment of this Court reported in ***(2006 129 Comp Cas 789 (Mad)***, in the case of ***Santhanalakshmi Investments P. Ltd., In re.,*** wherein it is held that since the transferor company was a wholly owned subsidiary of the transferee company, a single application at the instance of the transferor company would be sufficient. The learned counsel also placed reliance on the unreported order of this Court made in ***C.A.No.27 of 2014 (M/s.FLSmidth Private Limited ... Applicant/Transferee company***). The above C.A.No.27 of 2014 was filed by the transferee company, seeking to dispense with the filing of the company petition for considering the scheme of amalgamation. In that case, the Transferor Company has its registered office within the jurisdiction of the Bombay Court and the Transferee Company has its registered office within the jurisdiction of this Court. The said application was closed by recording the fact that there is no necessity for filing a separate petition by the transferee company, if the transferor company is a wholly owned subsidiary of the transferee company. Hence, the contention raised by the learned counsel for the petitioner is accepted and the approval of the scheme by the High Court of Himachal Pradesh is not necessary.

9.Hence, I am of the view that the petitioner has complied with the prescribed procedure and the scheme is beneficial to the working of the transferee company and is in the interests of the transferor company. The scheme does

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not involve any reorganization of share capital of the transferee company. There is no objectionable feature in the scheme of amalgamation detrimental either to the employees of the transferor company or of the transferee company. The said scheme is not violative of any statutory provisions. The scheme is fair, just, sound and is not against any public policy or pubic interest. No proceedings are pending under Sections 235 to 251 of the Companies Act, 1956. All the statutory provisions are complied with.

10.Hence, there shall be an order approving the scheme of amalgamation of SSF Plastpro Limited (name changed from NYPRO Forbes Products Limited) (petitioner/transferor company) with SSF Plastics India Private Limited (transferee company) with effect from 1st April 2014 as provided in Annexure-8 in the Company Petition, as the procedure laid down under Sections 391 to 394 of the Companies Act are duly complied with. The company petition is allowed.

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11. Taking note of the report of the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, the transferor company. viz., SSF Plastpro Limited (name changed from NYPRO Forbes Products Limited) shall stand dissolved without winding up.

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12. The learned Central Government Counsel is entitled to a fee of Rs.5,000/- (Rupees five thousand only) from the transferee company.

sd/.P.S.N.J

25.09.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/14.10.2015 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

HIGH COURT OF JUDICATURE MADRAS
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