IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2015

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The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

C.P.Nos.355 to 357 of 2015

Delkor Technik India Private Limited,
a Company incorporated under the Companies Act,1956
having its Registered Office at
No.94/3, T.T.K. Road, Alwarpet,
Chennai-600 018.
Rep. by its Director Ramesh Karur.

.. Petitioner in C.P.No.355 of 2015
/1st Transferor Company

Takraf India Private Limited,
a Company incorporated under the Companies Act,1956
having its Registered Office at
No.94/3, T.T.K. Road, Alwarpet,
Chennai-600 018.
Rep. by its Director R.Rajagopalan.

.. Petitioner in C.P.No.356 of 2015
/2nd Transferor Company

Tenova Metals India Private Limited,
a Company incorporated under the Companies Act,1956
having its Registered Office at
No.94/3, T.T.K. Road, Alwarpet,
Chennai-600 018.
Rep. by its Director Vijay Kumar Joshi

.. Petitioner in C.P.No.357 of 2015
/Transferee Company

Petitions filed under sections 391 to 394 of the Companies Act, 1956, to sanction the scheme of amalgamation of

i) Delkor Technik India Private Limited, - 1st Transferor Company
ii) Takraf India Private Limited, - 2nd Transferor Company

with Tenova Metals India Private Limited - Transferee Company, enclosed as Annexure 5 in the petitions, with effect from 1st April, 2014, so as to be binding on all the shareholders of the Petitioner Companies and to dissolve the Transferor Companies without the process of winding up.

For Petitioners	:	Mr.K.Ramasamy
For Regional Director Ministry of Company Affairs	:	Mr.G.Venkatesan Central Government Counsel
Official Liquidator	:	Mr. Atchutha Ramaiah

COMMON ORDER

These company petitions are preferred under sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the transferor companies with the transferee company with effect from 1st April, 2014. The scheme of amalgamation is annexed as Annexure – 5 in the petitions.

2. The petitioners in C.P.Nos.355 and 356 of 2015 are the transferor companies and the petitioner in C.P.No.357 of 2015 is the transferee company.

3. A perusal of the records shows that the petitioners have complied with the prescribed procedure. The main objects of the respective petitioner companies are set out in their respective Memorandum of Association. A copy of the Memorandum and Articles of Association of the respective petitioner companies, viz., first and second transferor companies and the transferee company are annexed as Annexure – 1 to the respective petitions. Copies of the Audited Balance Sheet as on 31.03.2014 and unaudited balance sheet as on 31.03.2015 of the transferor companies and that of the transferee company as on 31.03.2014 and 31.03.2015 are annexed as Annexures 2 & 3 to the respective petitions.

4. In the first Transferor Company has only one secured creditor and the second Transferor Company has no secured creditor and the Transferee company has two secured creditors and the certificate of the Chartered Accountant to that effect are annexed as Annexure – 8 to the

respective petitions. The consent affidavits from the secured creditors of the first transferor company and that of the transferee company consenting to the scheme of amalgamation are annexed in the typed set of documents produced before this Court today (12.10.2015). The copies of the resolutions dated 03.07.2015 of the Board of Directors of the concerned Transferor Companies and the Transferee company adopting the scheme of amalgamation are enclosed as Annexure-4 to the respective petitions.

5. Each of the transferor companies and the transferee company have two equity shareholders. The list of equity shareholders of the transferor companies and that of the transferee company are annexed as Annexure - 6 to the respective petitions and the concerned consent affidavits from all the equity shareholders to the scheme of amalgamation are annexed as Annexure - 7 to the respective petitions. This Court, in its orders dated 24.07.2015, in C.A.Nos.794, 796 and 797 of 2015, dispensed with the convening, holding and conducting of the meeting of the equity shareholders of the petitioner companies for the purpose of considering and if thought fit, approving with or without

modification, the scheme of amalgamation of the transferor companies with the transferee company. This Court also, in its orders dated 24.07.2015, in C.A.Nos.795 and 798 of 2015, dispensed with the convening, holding and conducting of the meeting of the secured creditors of the first transferor company and transferee company respectively for the purpose of considering and if thought fit, approving with or without modification, the scheme of amalgamation of the transferor companies with the transferee company.

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

7. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. It is stated in the report that as per clause 8 of Part-II of the proposed scheme, the interest of all employees in the service of the Transferor Companies are safeguarded. It is also stated that as per Clause 11 of Part III of the scheme, in consideration for the transfer and vesting of the assets of each of the Transferor companies, the Transferee company shall, without any further

application or deed, issue and allot new equity shares, credited as fully paid up, to the extent indicated below, to the members of the Transferor Companies whose names appear in the Register of Members of the Transferor Companies as on the effective date or to their respective heirs, executors, administrators or other legal representatives or the successors-in-title, as the case may be, "245 fully paid up equity shares of Rs.10/- each of the Transferee Company shall be issued and allotted to the shareholders of the Transferor Company 1 for every 01 equity share of Rs.100 /- each held by them in the Transferor company-1. It is stated in the report of the Chartered Accountant 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 companies were being conducted in a manner prejudicial to the interest of its members or public interest. Further, it is observed from the records maintained by the Transferor Companies at the office of the Registrar of Companies, Tamil Nadu, Chennai that the Transferor Companies have filed all the returns as per the Companies Act, 1956 and no case were pending against the Transferor Companies or any of its Directors/Officers. That the Transferor companies are regular in filing Income Tax / Service Tax / Sales Tax / ESI / PF returns and no case was pending against the Transferor companies and there are no tax arrears or any other statutory dues (Except Sales Tax of the Transferor Company 1) the case is pending for appeal with Tamil Nadu Sales Tax Appellate Tribunal. There are no complaints pending either against the Transferor companies or against its directors. There are no prosecution launched for violation of any of the sections of the Companies Act,1956 either against the Transferor Companies or against its directors. There are no unpaid dividends in terms of Section 205-A of the Companies Act,1956. It is further stated that the business of the Transferor Companies have not been carried on with the intent to defraud the creditors of the Transferor Companies or any other persons or for any fraudulent purpose attracting the provisions of Section 542 of the Companies Act,1956. Neither have any persons or officers or directors of the Transferor Companies misapplied or diverted or retained or become liable or accountable for any money or property of the Transferor Companies nor have been found guilty of any misfeasance or breach of trust in relation to the Transferor companies under the provisions of Section 543 of the Companies Act, 1956. The report of the

Chartered Accountant further states that the affairs of the transferor companies have not been conducted in a manner prejudicial to the interest of its members or creditors 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.

8. I have perused the scheme filed in the company petitions and find it beneficial to the working of the transferee company and is in the interests of the transferor companies. There is no objectionable feature in the scheme of amalgamation detrimental either to the employees of the transferor companies or to 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 the Companies Act, 1956. All the statutory provisions are complied with.

9. Consequently, there shall be an order approving the scheme of amalgamation of the transferor companies, viz., Delkor Technik India Private Limited (1st Transferor Company) and Takraf India Private Limited

(2nd Transferor Company) with Tenova Metals India Private Limited (Transferee Company), as provided in Annexure - 5 in these Company Petitions, with effect from 1st April, 2014, as the procedure laid down under Sections 391 to 394 of the Companies Act are duly complied with. The petitions are allowed.

10. Taking note of the report by the Chartered Accountants as enclosed by the Official Liquidator, in terms of the order passed by this Court, the transferor companies shall stand dissolved without winding up.

11. The learned Central Government Counsel is entitled to a fee of Rs.15,000/- from the transferee company.

12.10.2015

rrg/mra

Note:Issue order copy on 15.10.2015

PUSHPA SATHYANARAYANA,J.

Rrg/Mra

C.P.Nos.355 to 357 of 2015

12.10.2015