IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04..02..2015

Coram

The Hon'ble **Mr.Justice R.MAHADEVAN**

C.P.Nos.391 and 392 of 2014

M/s.Michelin India Private Limited
a Company incorporated under the Companies Act, 1956
Having its Registered Office at
Shyamala Towers
3rd Floor, No.136
Arcot Road, Saligramam
Chennai-600 093.
Tamil Nadu
Represented by its
Company Secretary
Vivek Mishra ...Petitioner in C.P.No.391/2014 / Transferor Company

M/s.Michelin India TamilNadu Tyres Private Limited
a Company incorporated under the Companies Act, 1956
Having its Registered Office at
Shyamala Towers, 3rd Floor, No.136
Arcot Road, Saligramam
Chennai-600 093 Tamil Nadu
Represented by its
Company Secretary
Sudhakar Viswanathan ...Petitioner in C.P.No.392/2014 /Transferee Company

Petitions filed under Sections 391 to 394 of the Companies Act, 1956, to sanction the Scheme of Amalgamation.

For Petitioners : Mr.P.H.Aravindh Pandian
Senior Counsel
for Mr.Harishankar Mani
Mr.M.Gopikrishnan

Additional Central Government
Standing Counsel for Regional Director
Ministry of Company Affairs, Chennai.

Mr.P.Achutha Ramaiah,
Official Liquidator.

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 Company viz., M/s.Michelin India Private Limited, with the Transferee Company viz., M/s.Michelin India TamilNadu Tyres Private Limited, with effect from 1st April 2014. The Scheme of Amalgamation is annexed as Annexure-4 in C.P.No. 391 of 2014 and as Annexure-5 in C.P.No. 392 of 2014.

2. The petitioner in C.P.No.391 of 2014 is the Transferor Company and the petitioner in C.P.No.392 of 2014 is the Transferee Company.

3. According to the petitioner Company in C.P.No.391 of 2014 viz., Transferor Company, it was incorporated under the Companies Act, 1956, on 12.11.2003. A copy of the Memorandum and Articles of Association is marked as Annexure-1. The Authorised Share Capital as on 31.03.2014 is Rs.2,18,00,00,000/- , 21,80,00,000 equity shares of Rs.10 each. Issued, Subscribed and Paid-up Share Capital of the petitioner Company as on

31.03.2014 is Rs.1,14,16,41,600/-, 11,41,64,160 equity shares of Rs.10 each. A copy of the latest financial statement as on 31.03.2014 is marked as Annexure-2. The Board of Directors as its meeting held on 20.10.2014 approved the Scheme of Amalgamation, subject to confirmation by this Court. A copy of the said Board Resolution is marked as Annexure-3. Under the Scheme, the entire undertaking of the Transferor Company would stand transferred to theTransferee Company on and from 01.04.2014. The Scheme of Amalgamation is marked as Annexure-4. Pursuant to this Scheme, the Transferor Company shall issue and allot equity shares of Rs.10/- each, as fully paid-up at par to each shareholder of the Transferor Company in the ratio of 26 equity shares of Rs.10 each fully paid-up of the Transferee Company to be issued for every ten equity shares of Rs.10 each fully paid-up of the Transferor Company, held by the shareholder. The original valuation report is marked as Annexure-5. The Transferor Company has no secured creditors. The Certificate issued by the auditor of the Transferor Company stating that there are no secured creditors is marked as Annexure-6. The number of equity shareholders in the Transferor is two and the said list is marked as Annexure-7. In Company Application No.1101 of 2014, this Court, by order dated 21.11.2014, has dispensed with the convening, holding and conducting meeting of the equity shareholders of the Transferor Company for the purpose of considering, and if thought fit, approving with or without modification, the Scheme of Amalgamation.

4. According to the petitioner Company in C.P.No.392 of 2014/Transferee Company, it was incorporated under the Companies Act, 1956, on 24.04.2009. A copy of the Memorandum and Articles of Association is marked as Annexure-1. The Authorised Share Capital as on 31.03.2014 is Rs.25,00,00,00,000/- , 2,50,00,00,000 equity shares of Rs.10 each. Issued, Subscribed and Paid-up Share Capital of the petitioner Company as on 31.03.2014 is Rs.21,02,28,03,310/-, 2,10,22,80,331 equity shares of Rs.10 each. The Transferee Company has issued 50,70,00,000 equity shares and 15,99,99,999 equity shares of Rs.10 each to its holding company on 22.07.2014 and 23.09.2014. The authorised capital has been increased to 5,00,00,00,000 equity shares of Rs.10 each on 18.06.2014. A copy of respective E-Forms filed with ROC for allotment of such equity shares is annexed as Annexure-2. A copy of the latest financial statement as on 31.03.2014 is marked as Annexure-3. The Board of Directors as its meeting held on 13.10.2014 approved the Scheme of Amalgamation, subject to confirmation by this Court. A copy of the said Board Resolution is marked as Annexure-4. Under the Scheme, the entire undertaking of the Transferor Company would stand transferred to the Transferee Company on and from 01.04.2014. The Scheme of Amalgamation is marked as Annexure-5. Pursuant to this Scheme, the

Transferee Company shall issue and allot equity shares of Rs.10/- each, as fully paid-up at par to each shareholder of the Transferor Company in the ratio of 26 equity shares of Rs.10 each fully paid-up of the Transferee Company to be issued for every ten equity shares of Rs.10 each fully paid-up of the Transferor Company, held by the shareholder. The original valuation report is marked as Annexure-6. The Transferee Company has no secured creditors. The Certificate issued by the auditor of the Transferee Company stating that there are no secured creditors is marked as Annexure-7. The number of equity shareholders in the Transferee Company is two and the said list is marked as Annexure-8. In Company Application No.1102 of 2014, this Court, by order dated 21.11.2014, has dispensed with the convening, holding and conducting meeting of the equity shareholders of the petitioner Company for the purpose of considering, and if thought fit, approving with or without modification, the Scheme of Amalgamation.

5. The assets of the Transferor Company and the Transferee Company are more than sufficient to meet the liabilities of both Companies and the said Scheme will not adversely affect the rights of any of the creditors of the petitioner Company. The proposed Scheme of Amalgamation is beneficial to both Transferor and the Transferee Company.

6. A perusal of the records show that the petitioners have complied with the prescribed procedure. In the Transferor Company viz., petitioner in C.P.No. 391 of 2014 and the Transferee Company viz., petitioner in C.P.No. 392 of 2014, there are no secured creditors and the Chartered Accountant Certificates certifying to that effect have been filed as Annexure Nos.6 and 7 in the respective petitions.

7. The copy of the Resolution, dated 20.10.2014, of the Board of Directors of the Transferor and the Transferee Company respectively adopting the Scheme of Amalgamation is enclosed as Annexure Nos.3 and 4 in the respective petitions.

8. The consent affidavits from the equity shareholders to the Scheme of Amalgamation for approving the Scheme of Amalgamation is marked as Annexure Nos. 8 and 9 in the respective petitions.

9. By order, dated 21.11.2014, in C.A.Nos. 1101 and 1102 of 2014 in the case of the Transferor Company and the Transferee Company respectively, this Court, dispensed with the convening, holding and conducting of the meeting of the equity shareholders 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.

10. On notice, the Regional Director, Ministry of Company Affairs, has filed his report raising the following objection:-

> "6.It is repectfully submitted that as per para 15 of the Scheme, upon sanctioning of the Scheme, the name of the Transferee Company shall be deemed to have been changed to “Michelin India Private Limited” i.e., the name of the Transferor Company. However, as per General Circular No.45/2011, dated 8.7.2011 (Annexure “A”) of Ministry of Corporate Affairs on Name Availability Guidelines, 2011, a proposed name is considered to be undesirable if it is identical with or too nearly resembling with name of the company in existence and names already approved by the Registrar of Companies. The Transferee Company shall follow the Procedures and Rules laid down for such change of name”.

11. Referring to the above objection, learned Senior Counsel for the petitioners, for the proposition that only after sanctioning of the Scheme, the Scheme of Amalgamation provides for change of name, therefore, the question of existence of the Transferor Company does not arise, has relied on an unreported judgment of this Court in ***C.P.Nos. 54 to 56 of 2014,*** wherein, this Court by order dated 17.03.2014, in paragraph No.5 has held

as follows:-

> "5.On notice, the Regional Director, Ministry of Corporate Affairs has filed his report. In this case, the transferee company takes over the name of the first transferor company, for which, there appears to be a technical objection raised by the Regional Director, Ministry of Corporate Affairs. Since a comprehensive order is being passed for amalgamation of both the transferor companies with the transferee company and only after sanctioning of the scheme, the scheme of amalgamation provides for change of name as per paragraph 14.1 of the scheme, the question of existence of the first transferor company does not arise. The objection that it will be against the guidelines of the Ministry of Corporate Affairs also does not arise, as the transferee company alone will be in existence after amalgamation of the two transferor companies with the transferee company."

Relying on the above decision, learned Senior Counsel for the petitioners would submit that the objection of the Regional Director that it will be against the Circular of the Ministry of Corporate Affairs does not arise for consideration, as the Transferee Company alone will be in existence after amalgamation of the Transferor Company with the Transferee Company.

12. Nextly, learned Senior Counsel for the petitioners, for the proposition that Section 391 of the Companies Act invests the Court with wide powers to approve or sanction a Scheme of Amalgamation and in

doing so, if there are any other things for effectuation, require a special procedure to be followed, then the Court has power to sanction it, while sanctioning the Scheme itself, relied on the judgment of this Court in ***C.P.Nos. 7 and 8 of 2012 (reported in (2013) 176 Com.Cases 345 (Mad)),*** wherein, this Court, by order dated 06.09.2012, referring to the judgment of the Bombay High Court reported in ***[1994] 80 Comp. Cases 289, In Re: PMP Auto Industries Limited***, and the judgment of the Karnataka High Court reported in ***[2009] 150 Comp. Cases 623, Mysore Cements Limited,*** in paragraph Nos. 8 and 9 has held as follows:-

> "8.The Regional Director also in paragraphs 9 and 10 of the affidavit, raised objection against change of name of the transferee company to M/s.Eye Foundation Ltd., which is the name of the transferor company, on the strength of two circulars issued by the Ministry of Corporate Affairs on May 30, 2011 and July 8, 2011, in this regard. In my considered view, the same is inapplicable to the case in hand as the name sought to be adopted by the transferee company is the name of the transferor company and the relevant provisions of law applicable to the change of name are sections 21 and 23 of the Companies Act. Our High Court, Karnataka and Bombay High Courts, in the following cases cited on the side of the petitioner, dispensed with the compliance of Section 21 on the ground that Section 391 of the Companies Act invests the court with powers to approve or

sanction a scheme of amalgamation/arrangement and in doing so, if there are any other things which for effectuation, require a special procedure to be followed except reduction of capital, then the court has power to sanction them, while sanctioning the scheme itself and section 391 is a complete code in the nature of a "single window clearance" system: (i) order passed by our High Court in C.P.Nos.177 and 178 of 2008 in Mehala Machines Limited, rep. by the Managing Director (transferor company) and M/s.Sanmarco Texmac P.Ltd., rep. by Director (transferee company); (ii) MANU/KA/0013/2009: (2009) 150 Comp Cases 623 (Karn) in (Mysore Cements Ltd., In re) and (iii) MANU/MH/0112/1991: (1994) 80 Comp Cases 289 (Bom) in (PMP Auto Industries Ltd., In re).

9. Our High Court has in paragraph 8 of its judgment, dealt with the objection regarding change of name and necessity for compliance of Sections 21 and 23 of the Companies Act which reads as follows:-

> 8. It may be noted that as per clause 15 of the scheme, upon the scheme becoming effective, the name of the transferee company shall be changed to Mehala Machines India P. Ltd. Normally but for the scheme presented under section 391 of the Companies Act to effect such a change in the name of a company, the procedure, under section 21 of the Companies Act has to be complied with. So too the provisions of section 44 of the Companies Act.

> However, in terms of the scheme passed by the requisite majority as laid down under section 391 of the Act complying with the procedure, laid down thereon, I do not find that there exists any necessity to have a repeated exercise of the same in terms of section 21 of the Act. It may be noted that Chapter V is a complete code by itself on the subject of arrangement/compromise and reconstruction comprehensive enough to include a change in the name consequent on the amalgamation or arrangement. Similar view was taken by this court in C.P.Nos.133 to 135 of 2006, dated August 19, 2006, in the matter of K.P.R.Mill P. Ltd. Thus, the objection raised by the Regional Director is satisfactorily explained."

Relying on the above decision, learned Senior Counsel for the petitioners would submit that in terms of the Scheme passed by the requisite majority as laid down under Section 391 of the Companies Act complying with the procedure laid down thereon, there does not exist any necessity to have a repeated exercise of the same in terms of Section 21 of the Act as amended by Section 13 of the 2013 Act.

13. Besides, learned Senior Counsel for the petitioners relied on the judgment of the Gujarat High Court reported in ***[2009] Comp. Cases 593,***

Mekaster Valves and Engineering Services Private Limited, wherein, reliance was placed on the judgment of the Bombay High Court reported in ***(1981) 51 Comp.Case 20, Vasant Investment Corporation Limited vs. Official Liquidator, Colaba Land and Mill Co. Ltd.,*** which has dealt with the wide powers under Section 391 of the Companies Act, 1956 and has held as under:-

> "13.In the case of Vasant Investment Corporation Limited vs. Official Liquidator, Colaba Land and Mill Co.Ltd. (1981) 51 Comp Cases 20, the Bombay High Court has held that the Court is given wide powers under Section 391 of the Companies Act, 1956, to frame a Scheme for the revival of a Company. Section 391 is a complete Code under which the Court can sanction a Scheme containing all the alterations required in the structure of the Company for the purpose of carrying out the Scheme, except reduction of share capital which requires a special procedure. In considering a Scheme under Section 391, the Court must attach importance to the wishes of the members. In addition, it should be satisfied (1) that the statutory provisions are complied with, (ii) that the class affected by the Scheme has been properly represented, and (iii) that the arrangement is such that a man of business would reasonably approve."

14. Lastly, learned Senior Counsel has relied upon the judgment of

the Apex Court reported in ***AIR 2005 SC 3345, Bhagwati Developers vs. Peerless General Finance and Investment Co. and others***, wherein, in paragraph Nos. 5 and 6 of the said judgment, a reference was made to the SEBI Guidelines and Circulars, which reads as under:-

> "5.The appellant challenges the power of the Respondent Company to issue Bonus Shares out of Revaluation Reserve on three grounds viz.(a) that the Bonus Shres had been issued contrary to SEBI guidelines, (b) their issue is contrary to the Circular of the Department of Company Affairs dated 6th September, 1994 and (c) that the issue could not have been made as it is contrary to Article 182 of the Articles of Association of the Company.
>
> 6.The SEBI guidelines, which have been relied upon, were clarified on 13th August, 1992 wherein it has been stated that these guidelines do not apply to issue of securities by existing private/closely held and other unlisted companies. In view of this clarification, we see no infirmithy in the impugned judgment wherein it has been held that the SBI guidelines were not applicable to the Respondent Company.
>
> 7.We are also in agreement with the observation, in the impugned Judgment, to the effect that the Circular dated 6th September, 1994 does not have any mandatory effect. These Circulars are merely advisory in character."

Relying on the above judgment, learned Senior Counsel would submit that the Circulars of the Department of Company Affairs are not having any mandatory effect and they are merely advisory in character.

15. I am also in full agreement with the above observation and therefore, I am of the view that the Circular referred to by the Regional Director in paragraph No.6, dated 08.07.2011 does not have any mandatory effect and it is merely advisory in character.

16. Now coming to the objection of the Regional Director as to the change of name, it may be noted that as per Clause 15 of the Scheme, upon the Scheme being sanctioned, the name of the transferee company shall be changed to “M/s.Michelin India Private Limited”. Normally, but for the Scheme presented under Section 391 of the Companies Act, to effect such a change in the name of a company, the procedure under Section 21 of the Companies Act as amended by the Section 13 of the 2013 Act has to be complied with. However, in terms of the Scheme passed by the requisite majority as laid down under Section 391 of the Companies Act complying with the procedure laid down thereon, I do not find that there exists any necessity to have a repeated exercise of the same in terms of Section 21 of the Act as amended by Section 13 of the 2013 Act.

17. Before I discuss these provisions, it is worthwhile to refer to Section 13 of the Companies Act, 2013 (18 of 2013) (as amended in 2014) (for short hereinafter referred to as "the 2013 Act") , which is the amended provision of Section 21 of the Companies Act, which deals with the "***Alteration of Memorandum***" and it reads as under:-

> **"13. Alteration of memorandum**
>
> (*1*) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.
>
> (*2*) Any change in the name of a company shall be subject to the provisions of subsections (*2*) and (*3*) of section 4 and shall not have effect except with the approval of the Central Government in writing:
>
> Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word "Private", consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.
>
> (*3*) When any change in the name of a company is made under sub-section (*2*), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(*5*) The Central Government shall dispose of the application under sub-section (*4*) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

(*6*) Save as provided in Section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—

(*a*) the special resolution passed by the company under sub-section (*1*);

(*b*) the approval of the Central Government under sub-section (*2*), if the alteration involves any change in the name of the company.

(*7*) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(*8*) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

(*i*) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(*ii*) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(*9*) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (*a*) of sub-section (*6*) of this section.

(*10*) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(*11*) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void."

18. It seems to me, on a closer reading of Section 13 of the 2013 Act, as also Section 21 of the Companies Act, 1956, to which I will presently refer that the amalgamation is principally an internal arrangement of the company for a mutual benefit in enlarging its capital base. Normally, the procedure under Section 21 of the Companies Act, as amended as Section 13 of the 2013 Act, has to be complied with. However, it may be noted that on conversion, a company does not cease to exist to bring into existence any new company. In the Scheme of things to emerge on an amalgamation, a Transferor Company is united with the Transferee Company. The Scheme herein contemplates a change in their name. In the face of such facts, the question is whether the petitioner is to be subjected to the procedure under Section 21 of the Companies Act, as amended as Section 13 of the 2013 Act. This Section requires special resolution to be passed on the proposed change of name of the company and the approval of the Central Government thereupon for changing the

company's name. It may be noted that Chapter V is a complete code by itself on the subject of arrangement/ compromise and reconstruction. It may be noted that Chapter V is a complete code by itself on the subject of arrangement/compromise and reconstruction comprehensive enough to include a change in the name consequent on the amalgamation or arrangement. Similar view was taken by this Court in ***C.P.Nos.133 to 135 of 2006*** dated 19.08.2006 in the matter of ***K.P.R.Mill Private Limited*** and also in the decisions cited supra by the learned Senior Counsel for the petitioners. Thus, the objection raised by the Regional Director is satisfactorily explained.

19. The Official Liquidator has filed his report along with the report of the Chartered Accountant. The report of the Chartered Accountant states that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members 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 that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant. In the absence of any inference that the affairs of the Transferor Company were being conducted in a manner prejudicial to the interest of its members and

in the absence of any comments that the affairs of the Transferor Company conducted in a manner prejudicial to its members, the Official Liquidator has filed his report before this Court for orders.

20. I have perused the Scheme filed in the Company Petitions. The Scheme states that 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 231 to 237 of the Companies Act, 1956. All the statutory provisions are complied with.

21. It is apt and appropriate to point out that the Court is given wide powers under Section 391 of the Companies Act, 1956, to frame a Scheme for the revival of a Company. Section 391 is a complete Code under which the Court can sanction a Scheme containing all the alterations required in the structure of the Company for the purpose of carrying out the Scheme. In considering a Scheme under Section 391, the Court should be satisfied (1) that the statutory provisions are complied with, (ii) that the class affected by the Scheme has been properly represented and (iii) that the arrangement is such that a man of business would reasonably approve.

22. In the light of the fact that the Scheme is passed through the procedure laid down under Section 391 of the Companies Act and approved by the majority of the shareholders, I do not find that there exists any necessity to have a repeated compliance of the same in terms of Section 21 of the Companies Act, as amended as Section 13 of the 2013 Act.

23. In the above circumstance, I do not find any impediment in approving the Scheme of Amalgamation. Consequently, following the decisions cited supra, there shall be an order approving to the Scheme of Amalgamation of the Transferor company viz., M/s.Michelin India Private Limited, the petitioner in C.P.No.391 of 2014, with the Transferee Company, viz., M/s.Michelin India TamilNadu Tyres Private Limited, petitioner in C.P.No.392 of 2014, as provided in Annexure Nos. 4 and 5 respectively in these Company Petitions, with effect from1st April 2014, as the procedure laid down under Sections 391 and 394 of the Companies Act are duly complied with. These Company Petitions are allowed.

24. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, the Transferor Company shall stand dissolved without winding up.

25. The learned Additional Central Government Standing Counsel is entitled to a fee of Rs.5,000/- from the Transferee Company.

04.02.2015

Index: Yes / No

Internet: Yes / No

R.MAHADEVAN,J.
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