HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY PETITION Nos.153 & 154 of 2015

Date:29.9.2015

COMPANY PETITION No.153 of 2015

Between:

M/s DT Tubes Private Limited,

Bollarum, Medak District, reptd by its

Director-Mrs. Susheela Devi Singhal

……Petitioner/

Transferor Company

**AND**

COMPANY PETITION No.154 of 2015

Between:

M/s Deccan Strips & Tubes Private Limited,

Hyderabad, reptd by its

Director-Mr. Sumeet Singhal

……Petitioner/

Transferee Company

Counsel for the petitioners: Mr. R.Prakash

The Court made the following:

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY PETITION Nos.153 and 154 of 2015

COMMON ORDER:

Company Petition No.153 of 2015 is filed by M/s DT Tubes Private Limited (transferor Company). Company Petition No.154 of 2015 is filed by M/s Deccan Strips & Tubes Private Limited (transferee Company).

Both these Company Petitions have been filed for sanction of the scheme of amalgamation.

In Company Petition No.153 of 2015, the petitioner averred that it was incorporated under the Companies Act, 1956 (for short 'the Act') on 28.5.2004, with its registered office situated at Bollarum, Patancheru, Medak District, Telangana; that its authorized share capital as on 31.3.2014 is Rs.1 crore divided into 1 lakh equity shares of the value of Rs.100/- each; that its issued, subscribed and paid up capital as on 31.3.2014 is Rs.79 lakhs divided into 79,000 equity shares of the value of Rs.100/- each fully paid up; that its main objects are *inter alia* to carry on the business of manufacturers, importers, exporters, sellers, purchasers of and dealers in pig iron, sponge iron, wrought iron, alloy steel, etc; and that through Board Resolution, dated 15.12.2014, (Annexure-H), its Board of Directors has resolved to amalgamate it with M/s Deccan Strips & Tubes Private Limited (transferee company) by fixing the appointed date as 01.04.2014 (Annexure-H).

The petitioner further averred that it has five shareholders and all of them have given consent affidavits to the proposed scheme of amalgamation; that it has filed Company Application No.26 of 2015 for dispensing with the holding of meeting of its shareholders for considering the proposed scheme of amalgamation and that this Court by order, dated 31.3.2015, allowed the said Company Application.

In Company Petition No.154 of 2015, the petitioner averred that it was incorporated under the Act on 12.10.2009; that its main objects *inter alia* are to carry on the business of manufacturers, importers, exporters, sellers, purchasers of and dealers in pig iron, sponge iron, wrought iron, alloy steel, steel converts, rolled steel makers, Ferro silicon, Ferro alloys and other ferrous substances and metals of every description and grades, etc; that its authorized share capital as on 31.3.2014 is Rs.3 crores divided into 30 lakhs equity shares of the value of Rs.10/- each; that its issued, subscribed and paid up capital as on 31.3.2014 is Rs.2,59,20,000/- divided into 25,92,000 equity shares of the value of Rs.10/- each; and that through the Board Resolution, dated 15.12.2014, (Annexure-H) its Board of Directors has resolved to amalgamate M/s DT Tubes Private Limited (transferor company) into the petitioner-company.

The petitioner has further averred that it has three shareholders, who have given their consent affidavits to the proposed scheme of amalgamation; that it has filed Company Application No.27 of 2015 for dispensing with the holding of meeting of its shareholders for considering the proposed scheme of amalgamation and that this Court by order, dated 31.3.2015, allowed the said Company Application.

This Court by separate orders, dated 08.6.2015, ordered notices of Company Petition No.153 of 2015 to the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Official Liquidator attached to this Court and ordered notice of Company Petition No.154 of 2015 to the Regional Director. Advertisements were also ordered to be published in two newspapers, *viz.*, 'Financial Express' (English daily) and 'Andhra Jyothi' (Telugu daily) having circulation in the State of Telangana.

In pursuance of the said orders, the petitioners carried out publications in the newspapers and filed proof of such publications through two separate memos, dated 02.7.2015, vide USR.Nos.2822 and 2823 of 2015, respectively, and no objections/claims are stated to have been received.

In response to the notices issued by this Court, the Regional Director has submitted his common report in both the Company Petitions and the Official Liquidator (In-charge) has submitted his report in Company Petition No.153 of 2015.

In his common report, dated 28.07.2015, the Regional Director has *inter alia* stated that in pursuance of General Circular No.1 of 2014, dated 15.01.2014, issued by the Ministry of Corporate Affairs, New Delhi, comments from the Income Tax Department were invited by him, vide letter, dated 25.06.2015; that no comments/objections from the Income Tax Department have been received in response to the said notice; that the petitioners are regular in filing the statutory returns; and that no complaints, no inspection or investigation is pending against the petitioners. He has, however, suggested that the transferee-company may be directed to follow Accounting Standard No.14 issued by the Institute of Chartered Accountants of India. He has further pointed out that the petitioners have availed secured and unsecured loans and that they have not submitted the consent letters of their creditors along with their respective Company Petitions. He has, therefore, requested that the petitioners may be directed to produce the consent letters of their respective creditors before this Court with copies to him. The Regional Director also suggested that the Court may direct the petitioners to make specific prayer in the Company Petitions for directing the Registrar of Companies to take all necessary consequential action for dissolution of the transferor company without going through the process of winding up.

In his report, dated 16.7.2015, the Official Liquidator (In-charge) has stated that basing on the information made available to him by the petitioner, he is of the opinion that the affairs of the petitioner (transferor-company) involved in the proposed scheme of amalgamation are not conducted in a manner prejudicial to the interests of its members or to the general public. He has also made several observations. However, Mr. M.Anil Kumar, learned counsel for the Official Liquidator, submitted that the material objection raised in the said report is confined to non-submission of the consent letters of the secured, unsecured and trade creditors of the transferor company.

Along with Company Application No.1426 of 2015, the transferor company has filed the consent letters of its secured and unsecured creditors.

Similarly, along with Company Application No.1427 of 2015, the transferee company has filed the consent letters of its secured and unsecured creditors.

The learned counsel for the Official Liquidator has, however, pointed out that the transferor company has not filed the consent letters of its trade creditors.

Clause-5.2 of the scheme of amalgamation reads as under:

> “With effect from the appointed date, all liabilities, debts, duties and obligations of whatsoever nature of the transferor company shall without any further act or deed be transferred to and be taken over by the transferee company in accordance with and under Section 394 of the Act.”

In the light of the above reproduced clause, under which the transferee company has undertaken to discharge all the liabilities, debts, duties and obligations of whatsoever nature of the transferor company, non-filing of the consent affidavits of the trade creditors of the transferor company, who often keep changing in view of the short term nature of the debts of the transferor company, need not be treated as any lapse on the part of the petitioners. As the interests of the trade creditors of the transferor company are covered by the scheme, under which the transferee company has undertaken to discharge all the liabilities of the transferor company, this objection has no merit.

As regards the suggestion made by the Regional Director in his common report relating to the following of Accounting Standard No.14 issued by the Institute of Chartered Accountants of India by the transferee company, the learned counsel for the petitioners submitted that the transferee company will follow the said Accounting Standard.

The observation made by the Regional Director in para-6 of his common report, that the petitioners may be directed to make a specific prayer in the Company Petitions that the Registrar of Companies may be directed to dissolve the transferor company without going through the process of winding up, has no merit as, in para-23(ii) of Company Petition No.153 of 2015, the said prayer has been incorporated and the Regional Director himself has referred to the said para in his common report.

In the light of the above facts and having regard to the reports of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Official Liquidator and as no objections/claims have been received in pursuance of the advertisements got published by the petitioners in the newspapers, this Court is of the opinion that the proposed scheme of amalgamation is in conformity with the provisions of the Act and the same does not in any manner affect the interests of any of the stake holders including the general public.

Therefore, the proposed scheme of amalgamation is sanctioned with effect from the appointed date i.e., 01.04.2014. The transferor company is ordered to be dissolved without going through the process of winding up. The petitioners shall cause a certified copy of this order to be delivered to the Registrar of Companies for the State of Telangana and State of Andhra Pradesh, Hyderabad within 30 days of its receipt and take all other consequential steps in pursuance of the approval of the scheme of amalgamation.

The Company Petitions are, accordingly, allowed.

*JUSTICE C.V.NAGARJUNA REDDY*

*29th September, 2015*

*DR*