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Punjab & Haryana High Court at Chandigarh

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No. 101 of 2015 (O&M)

Date of decision : 6.10.2015

In the matter of

FCC India Manufacturing Private Limited

.... Petitioner no. 1/ Transferor Company

with

FCC Clutch India Private Limited

.... Petitioner no. 2/ Transferee Company

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Deepak Suri, Advocate, for the petitioners.

Mr. Deepak Aggarwal, Advocate, with
Mr. D. K. Singh, Official Liquidator.

Rajesh Bindal, J.

In this petition, the petitioner companies seek sanctioning of Scheme of merger (Annexure P-1).

It is averred in the petition that the registered office of the petitioner companies is situated at Gurgaon, hence, the petition is within the jurisdiction of this Court.

Main objects of the Transferor/ petitioner no. 1 and Transferee/ petitioner no. 2 are detailed in their respective Memorandum and Articles of Association annexed with the petition at Annexure P-5 and P-9, respectively.

The Board of Directors of the petitioner companies have approved the said Scheme in their respective meetings held on 20.3.2015, vide resolutions Annexures P-2 and P-3, respectively.

Earlier vide order dated 24.4.2015 passed in CP No. 53 of 2015, this Court dispensed with convening of meetings of equity shareholders of the Transferor and Transferee Companies and unsecured creditors of the Transferee Company, however, meeting of unsecured creditors of the Transferor Company was directed to be convened on 30.5.2015. As there was no secured creditor of both the companies, no

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meeting was required to be conducted. Notice of the meeting was also directed to be published in the newspapers and official gazette. Vide order dated 20.7.2015, the report of the Chairman dated 5.6.2015 was taken on record and the first motion petition bearing CP No. 53 of 2015 was disposed of accordingly.

This is the second motion petition. Notice of the petition was directed to be issued to Regional Director, Ministry of Corporate Affairs and the Official Liquidator. Notice was also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi), both Haryana Editions, and in the official Gazette of Government of Haryana. The aforesaid order has been complied with and affidavit to this effect has been placed on record.

Learned counsel for the petitioners submitted that in the report submitted by the Official Liquidator it has been mentioned that the affairs of the company are not being conducted in the manner prejudicial to the interest of the members or against the public interest. He further submitted that details of the pending litigation of the Transferor company, as mentioned in the report of the Official Liquidator, shall be taken care of by the Transferee company as specific provision therefor has been made in the Scheme.

Learned counsel for the Official Liquidator referred to the pending litigation while stating that regarding taxes the provisions have been made only for the period after the effective date in clause 10 of the Scheme. Specific provision for the period before the effective date has not been made in the Scheme regarding taxes.

After hearing learned counsel for the parties, in my opinion, clause 6 of the Scheme, as has been stated by learned counsel for the petitioners, will take care of the pending litigation including the cases referred to in the report of the Official Liquidator pertaining to taxes. Para 6.1 of the Scheme clearly provides that every kind of proceedings, which are pending against the Transferor company shall continue against the Transferee Company, as it shall steps into the shoes of the Transferor Company. It will prosecute and defend all the pending actions.

In addition thereto, the Official Liquidator has placed on record the report dated 31.8.2015 by way of affidavit of A. K. Chaturvedi, Regional Director, Northren Region, Ministry of Corporate Affairs, Noida.

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The petitioner- companies have confirmed that there are no investigations or proceedings pending against them under the Act. The provisions of Competition Act, 2002 are not applicable to the Scheme.

For the reasons afore-stated and on consideration of all the relevant facts, compliance of procedural requirements contemplated under the Act and the relevant Rules, on due consideration of the reports of Regional Director, Ministry of Corporate Affairs, and the Official Liquidator, the Scheme of merger is hereby sanctioned. The assets and liabilities of the Transferor Company shall stand vested in the Transferee Company. The Transferor Company shall be dissolved without being wound up. The Transferee Company shall be required to comply with the procedural requirements with regard to all conditions stipulated under the Income Tax Act, Accounting Standards issued by the Institute of Chartered Accountants of India.

The Scheme shall be binding on the Transferor and Transferee Companies, their respective Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme of merger be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt thereof.

A notice of the order be published in the 'Indian Express' (English) and and 'Jansatta' (Hindi), both Haryana Editions, and in the official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the petitioner companies states that the petitioner – Transferee Company would voluntarily deposit a sum of ₹ 50,000/- in the Common Pool Fund Account of the Official Liquidator within one month.

Statement is accepted.

The petition is disposed of accordingly.

6.10.2015 **(Rajesh Bindal)**
vs **Judge**