

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CP No. 128 of 2015 (O&M)
connected with CP No. 61 of 2015**

Date of decision : 17.11.2015

ACE TC Rental Private Limited

.... Transferor Company/ Petitioner Company no.1
And

Action Construction Equipment Limited

.... Transferee Company / Petitioner Company no.2

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Vikas Mohan Gupta and Mr. Pankaj Jain, Advocates,
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 Amalgamation (Annexure P-1), vide which ACE TC Rental Private Limited (Transferor Company/ Petitioner Company no.1) will merge into Action Construction Equipment Limited (Transferee Company / Petitioner Company no.2).

The registered office of the petitioner- companies is situated in the State of Haryana.

The Memorandum and Articles of Association of the Petitioner Companies have been annexed with the petition at Annexures P-4 (colly) and P-7 (colly) respectively.

The Board of Directors of both the Companies in their respective meetings held on 5.2.2015 have approved the Scheme of Amalgamation. Copies of the same have been annexed as Annexures P-2 and P-3 (colly), respectively.

Earlier vide order dated 5.5.2015 passed in CP No. 61 of 2015, this Court dispensed with convening of meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Transferor Company and Secured Creditors of the Transferee Company. It was further directed to convene the meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner-Transferee Company on 4.7.2015 for seeking approval of Scheme of Amalgamation. Notice of the meeting was also directed to be published in the newspapers and official gazette.

Vide order dated 20.7.2015, reports of the Chairmen appointed for conducting the meetings of Equity Shareholders and Unsecured Creditors of the Petitioner-Transferee Company were taken on record and the first motion petition 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 'Financial Express' (English) and 'Jansatta' (Hindi), both Delhi/ NCR Edition, 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.

As per report dated 18.9.2015 filed by way of affidavit of A. K. Chaturvedi, Regional Director, Northren Region, Ministry of Corporate Affairs, nothing has been pointed out which is against the Scheme of Amalgamation.

While referring to the report dated 28.9.2015 filed by the Official Liquidator, learned counsel appearing for the Official Liquidator submitted that in addendum dated 5.2.2015 to valuation report dated 30.5.2014 recommending share allotment of 1,84,90,500 fully paid equity shares of ₹ 2/- and issuance of 3,02,19,380 fully paid up 8% Cumulative Non-Participating Redeemable Preference Shares of ₹ 10/- each has been wrongly stated to be as per valuation report dated 30.5.2014 instead of 5.2.2015. He further submitted that the addendum dated 5.2.2015 to valuation report was not approved in the Board of Directors meeting held on 5.2.2015.

In reply to the aforementioned issues raised by learned counsel appearing for the Official Liquidator, learned counsel for the petitioners referred to the reply by way of affidavit dated 10.10.2015 of Rajan Luthra, authorised signatory of the petitioner Transferor company stating that the observation made in para 4(I) regarding addendum dated 5.2.2015 to the valuation report dated 30.5.2014 is due to a clerical mistake/ typographical error in the Board Resolution of the Transferor Company dated 5.2.2015. As far as objection raised regarding the fact that the approval was not taken to the addendum dated 5.2.2015 to valuation report in the Board of Directors in the meeting held on 5.2.2015 is concerned, he submitted that the inadvertent clerical mistake was rectified by the Board of the Transferor Company in its subsequent meeting held on 30.9.2015 (Annexure P-5 of the reply). He further submitted that if there was any procedural requirement, the petitioner companies will comply with the same.

Heard learned counsel for the parties and perused the paper book.

The objection raised by the Official Liquidator that in addendum dated 5.2.2015 to valuation report dated 30.5.2014 recommending share allotment of 1,84,90,500 fully paid equity shares of ₹ 2/- and issuance of 3,02,19,380 fully paid up 8% Cumulative Non-Participating Redeemable Preference Shares of ₹ 10/- each has been wrongly stated to be as per valuation report dated 30.5.2014 instead of 5.2.2015 and the said report was not approved by the Board of Directors of the petitioner Transferor Company in the meeting held on 5.2.2015, hence, violation of the provisions of the Act.

This aforesaid issues have been taken care of by the petitioner company by filing reply by way of affidavit dated 10.10.2015 of Rajan Luthra, authorised signatory of the petitioner Transferor company stating that the observation made in para 4(I) regarding addendum dated 5.2.2015 to the valuation report dated 30.5.2014 is due to a typographical mistake in the Board Resolution dated 5.2.2015 of the Transferor Company. With regard to approval to the addendum dated 5.2.2015 to valuation report in the Board of Directors in the meeting held on 5.2.2015 is concerned, it has been clarified that the inadvertent clerical mistake was rectified by the Board of the Transferor Company in its subsequent meeting held on 30.9.2015

(Annexure P-5 of the reply). It was further clarified that there is no requirement under the Companies Act, 1956 (for short, 'the Act') for approving the Valuation Report recommending the share exchange ratio/consideration to be paid under the Scheme of Amalgamation in the Board meeting, and only the Scheme is required to be approved.

Thus, the issues raised by the Official Liquidator do not survive any longer in view of the steps taken by the Transferor Company and undertaken in the affidavit.

The petitioner companies have confirmed that there are no investigations or proceedings pending against them under Sections 235 to 251 of the Act or under the corresponding provisions of Companies Act, 2013. There is no winding up petition filed or pending against the petitioner companies.

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 Amalgamation 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, if required, under the Income Tax Act and 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 Amalgamation 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 'Financial Express' (English) and 'Jansatta' (Hindi), both Delhi/NCR 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 ₹ 1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks.

The statement is accepted.

Disposed of accordingly.

17.11.2015

vs

(Rajesh Bindal)
Judge