

IN THE HIGH COURT OF PUNJAB & HARYANA, AT CHANDIGARH

**CP No. 148 of 2014
Date of decision March 10 , 2015**

In the matter of : Sections 391 to 394 of the Companies Act, 1956

AND

In the matter of

**Scheme of Amalgamation between Texsa India Ltd.and Sika
India Private Ltd.**

AND

**In the matter of
Texsa India Limited**

....Petitioner -Transferor Company

SIKA India Pvt. Limited

....Petitioner-Transferee Company

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Deepak Suri, Advocate
for the petitioner-Companies.**

Mr. M. Jayakumar, Official Liquidator.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J (ORAL).

The present petition has been filed under Sections
391 to 394 of the Companies Act, 1956 for sanction of the Scheme of

Amalgamation between petitioner-Transferor Company with petitioner Transferee Company .The Scheme of Amalgamation has been annexed as Annexure P-1.

Main objects of the Transferor Company and Transferee Company are detailed in Memorandum and Articles of Association which are annexed as Annexure P-3 and Annexure P-6 respectively.

Similarly copy of the resolution of the Board dated 18.11.2013 of Transferor Company has been annexed as Annexure P-2 and copy of resolution of Board resolution dated 16.11.2013 of Transferee Company is at Annexure P-2 of the record of Ist Motion Petition i.e. C.P. No. 100 of 2014.

As on 31.3.2013 the Authorized Share Capital of the Petitioner/Transferor Company is Rs.2,00,00,000/- (Rupees Two Crore) divided into 20,00,000(Twenty Lakhs) Equity shares of Rs.10/- (Rupees Ten) each. The Issued, Subscribed and Paid-Up Share Capital of the Petitioner/Transferor Company is Rs.1,05,44,830/- (Rupees One Crore, Five Lakhs, Forty Four thousand, Eight Hundred and Thirty) only divided into 10,54,483 (Ten Lakhs, Fifty Four Thousand, Four Hundred and Eighty Three) equity, shares of Rs.10/- each fully Paid up.”

As on 31.3.2013, the Authorised Share Capital of the Transferee Company is Rs.4,50,00,000/- (Rupees Four Crores Fifty Lakhs only) divided into 44,00,000/- (Forty Four Lakhs) Equity Shares of Rs.10/- (Rupees Ten) each and 10,000 (Ten thousand) Redeemable Preference Shares of Rs.100/- (Rupees Hundred) each.

The Issued, Subscribed and fully Paid-Up Share Capital of the Transferee Company is Rs.1,88,83,550/- (Rupees One Crore Eighty Eight Lakhs Eighty Three Thousand Five Hundred and Fifty only) divided into 18,88,355 Equity Shares (Eighteen Lakhs Eighty Eight Thousand Three Hundred and Fifty Five) Equity Shares of Rs.10/- (Rupees Ten) each.”

The petitioners, have, earlier approached this Court by filing Company Petition No.100 of 2014 and vide order dated 30.5.2014 this Court had directed the convening of meetings of Secured and Unsecured Creditors of the petitioner-Transferor Company. Thereafter an application bearing No. 339 of 2014 was moved with a prayer for dispensing with the meeting of the Secured Creditors of petitioner-Transferor Company and appointment of Chairman and Co-chairman for convening the meeting of Unsecured Creditors of petitioner-Transferor Company. This Court vide order dated 4.7.2014 disposed of the aforementioned Company Application by dispensing with the meeting of the Secured Creditors of the petitioner-Transferor Company. The Chairman of the meeting of Unsecured Creditors had submitted his report and thereafter, the 1st motion petition was disposed of.

On presentation of this second motion petition, this Court vide order dated 19.9.2014 issued a notice to the Regional Director, Ministry of Corporate Affairs, Noida as well as to the Official Liquidator and also ordered the publication of the notice in the newspapers namely 'Indian Express (English)' and 'Jansatta (Hindi)'

both Delhi NCR Edition as well as in the Official Gazette of Government of Haryana. The compliance affidavit of the said order has been placed on record.

The Regional Director, Ministry of Corporate Affairs, Noida has submitted his representation/affidavit dated 6.1.2015 and para 5 to 7 of the same reproduced as under:-

“5. That the Deponent craves leave to submit that as per Ministry of Corporate Affairs' General Circular No.1/2014 dated 15.01.2014, letter for furnishing the comments/observations, if any, in regard to scheme was sent to the office of Chief Commissioner of Income Tax, Gurgaon vide this Directorate's letter dated 11.11.2014. In this regard it is submitted that the letter has been received back undelivered with the postal remark “Refused.”

6. That the Deponent craves leave to submit that as required by this office, the Petitioner/Transferor Company has submitted requisite information vide letter dated 1.12.2014 (received on 5.12.2014) a copy of which is annexed hereto and marked as Exhibit 'A' for kind perusal of the Hon'ble Court. (The annexure to the letter dated 1.12.2014 are not enclosed since voluminous.).

7. That the Deponent craves leave to submit that in order to examine the matter, deponent called for report of Registrar of Companies, Delhi and Haryana in regard to affairs of the petitioner/Transferor Company. Report of the ROC dated 10.12.2014 is enclosed herewith as Exhibit 'B' for kind perusal of the Hon'ble Court. The above said ROC report inter alia provides in para no.31(c) as follows:

(i) The holding company of Texsa India Limited was declared insolvent by the court order dated 2.5.2013 on its voluntary petition for insolvency in Spain and as per the court order dated 1.7.2013, all the shares of Texsa S.A. and its subsidiaries (including Texsa India Limited (Transferor Company) were transferred to Texsa System S.L. on 10.9.2013 and within two days i.e. on 12.9.2013 these shares were purchased by Sika India Private Limited (subsidiary of Sika A.G. Switzerland)."

A reply to the affidavit of the Regional Director has been filed on behalf of Transferor Company, wherein the voluntary declaration of bankruptcy of the petitioner-Company had been given and as per the declaration, it has been stated that in Spain entire Texsa S. A. along with its subsidiaries including, but not limited to, Texsa India Limited were transferred to Holding Soprema S. A. Thereafter a petition was filed to transfer of Texsa S. A. to Soprema Catalunya S. L., a Spanish Company and a group company of Holding Soprema S.A. Accordingly Soprema Catalunya S.L. became the legal and beneficial owner of the shares of Texsa India Limited. In this regard, copy of order passed by the Commercial Court of Spain on 28.6.2013 has been annexed as Annexure P-2 of the reply. The Soprema Catalunya S.L. thereafter changed its name to Texsa Systems S. L., Spain and copy of the Certificate of Incorporation is annexed as Annexure P-3 of the reply. Texsa Systems S.L. Further transferred the shares of Texsa India Limited to Sika India Private Limited vide Share Purchase Agreement dated 12.9.2013. Copy of

the agreement is annexed as Annexure P-4 with the reply.

The Official Liquidator has also filed his report dated 16.1.2015 and the relevant paragraph 5 of the said report is reproduced as under:-

“5. That from the Auditor's Report of Texsa India Limited as on 2012-13, 2013-14 it was observed that:

(a) Texsa S.A., the holding Company of Texsa India Ltd. was declared insolvent by the Court order dated 2nd May, 2013 on its Voluntary Petition for insolvency in Spain. As per the court order dated 1st July, 2013, all the shares of Texsa S.A. and its subsidiaries including Texsa India Ltd. were to be transferred to Suprema Catalunya S.I. (name changed to Texsa Systems S.I. w.e.f. 2nd July 2013).

Accordingly on 10th September 2013, the shares in name of Texsa S.A. were transferred to Texsa systems S.I.

Subsequently on 12th September 2013 these shares were transferred from Texsa Systems S.I. to Sika India Private Ltd. (subsidiary of Sika A.G.). The ECB loan in the books of Texsa India Ltd. from Texa S.A. is assigned to Sika Finanz A.G. (100% subsidiary of Sika A.G.).

(b) That amount of default in repayment of interest on ECB (External Commercial Borrowings) loan as at 31st March, 2013 is Rs.2,09,63,619. The details are as under:-

Period of default	Amount
2010-11	29,10,218
2011-12	88,69, 835
2012-13	91,835,66
Total	2,09,63,619

(c) That secured loan from bank i.e. Cash credit facility from bank of Rs.62,773,524 has been taken by Company. Loan is secured by first charge on entire assets of Company including stock in transit (if any) and book debts. Further corporate guarantee for the loan has been given by Texsa S.A.

Spain (holding Company.)

(d) Since the Company has started manufacturing operations during the current year, it is required to maintain cost records pursuant to the requirement of clause (d) of sub section (1) of section 209 of the companies act, 1956. The Company is in process of making and maintaining these records. However auditors are not required to carry out a detailed examination of same.

(e) That funds amounted to Rs.19,856,803 raised on short term basis have been used for financing long term assets.

(f) The accumulated losses of the Company are more than 100% of its net worth. Further, during the financial year, the Company has incurred cash losses. However the company hs not incurred cash losses in the immediately proceeding financial year.

(g) The Company has been generally regular in depositing undisputed statutory dues applicable to this Company. There are no undisputed amounts payable in respect of statutory dues which have remained outstanding as at 31st March 2013 for a period of more than 6 months from the date they became payable except work contract tax of Rs.120,544 sales tax of Rs.350,779 and professional tax of Rs.2,700.

(h) That the disputed statutory dues aggregating to Rs.64.04 lacs on account of matters pending before appropriate authorities are detailed below:-

Delhi sales tax Act (local sales tax & central sales tax)

<i>Nature of dues</i>	<i>Period</i>	<i>Amount</i>	<i>Status</i>
Disputed tax	2001-02	1.42	Remand case pending before Assessing officer
Disputed tax	2003-04	3.09	Remand case pending before Assessing officer
Disputed tax	2004-05	1.99	Appeal pending before appellate authority
Disputed tax	2006-07	7.00	Appeal pending before appellate authority

<i>Nature of dues</i>	<i>Period</i>	<i>Amount</i>	<i>Status</i>
Disputed tax	2007-08	3.74	Appeal pending before appellate authority
Disputed tax	2008-09	24.10	Appeal pending before appellate authority
Disputed tax	2009-10	6.47	Appeal pending before appellate authority
Disputed tax	2010-11	11.98	Appeal pending before appellate authority

•Maharastra sales tax act (local sales tax & central sales tax)

<i>Nature of dues</i>	<i>Period</i>	<i>Amount (rs. In lac)</i>	<i>Status</i>
Disputed Tax	2000-01	0.88	Assessment in process
Disputed Tax	2004-05	1.27	Appeal pending before Tribunal

•Others

Penalty by haryana sales tax authority	2002-03	2.10	Appeal pending before first appellant authority
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The Company has deposited Rs.5.98 lacs against the above disputes.

(i) That the Company has taken loan from one party covered in the register maintained under Section 301 of companies act, 1956. The maximum amount involved during the year was Rs.3,47,71,900 and the year end balance of loan taken from such parties was Rs.243,403,300.”

However, the Official Liquidator in para (6) of the report has mentioned the Chartered Accountant on examination found that the affairs of the Company had been conducted in a manner not prejudicial to the interest of its members or to public

interest. The relevant portion of paragraph 8 of the report of Chartered Accountant has been reproduced hereunder:-

XX	XX	XX	XX
<i>The auditor is expected to actually scrutinize the books of accounts and other records and papers with a view to advise the official liquidator whether the affairs of the company have or have not been conducted in a manner prejudicial to the interest of its members or to public interest.”</i>		After scrutinizing the books of accounts, we have observed that affairs of the company are conducted in the manner not prejudicial to the interest of its member or to public interest.	

For the sake of brevity, paragraphs (b), (c)and (f) of the reply are extracted hereunder:-

“(b)That since the date of acquisition of shares of Texsa India Limited by Sika India Pvt. Ltd.i.e.12th September 2013, the ECB loan of Texsa India Limited has been taken over by Sika Finanz AG from Texsa Systems S.L.Spain through execution of Assignment Deed between Sika Finanz AG and Texsa Systems S.L.Spain

That the copy of ECB Agreements for Long Term Borrowings viz.Assignment Deed for assignment of ECB loan in the books of Texsa India Limited are already attached hereto and marked as Annexure P-4.

Moreover, the matter has been forwarded to the RBI, India through the respective banks of Texsa India Limited i.e. Axis Bank and Standard Chartered Bank through whom the said loans have been provided, to register the change in the lender. Pursuant to the assignment of ECB Loan in the name of Sika Finanz AG, the interest and the

repayments for the period subsequent to the acquisition shall be paid to Sika Finanz AG. After the approval of RBI for assignment of ECB Loans, Texsa India Limited shall make payment of the interest as well as of the loan as per repayment schedule.

(c) That the secured loan of Rs.62,773,524 (standing in the books of Petitioner/Transferor Company as on 31st March 2013) was taken from the State Bank of Bikaner and Jaipur. However, the said Secured Creditor has been repaid as on 14.2.2014. Hence in the Audited Financials for the year ended as at 31 March 2014, there are no secured creditors of Petitioner/Transferor Company. The copy of the No Objection Certificate received from the said Secured Creditor is annexed hereeto and marked as Annexure P-5.

(f) That the net worth of the Petitioner/Transferor Company as on 31.3.2013 was Rs.12,560,633. The losses for the year were Rs.17,689,132 and the accumulated profits of the year were Rs. 2,015,803. Further the net worth of the Petitioner/Transferor Company as on 31.3.2014 are Rs.(90,871,940). The losses for the year are Rs.103,432,573 and the accumulated losses of the year are Rs. 101,416770.”

The above stated explanations submitted by the Authorized Signatory of the petitioner-Transferor Company sufficiently meets with the queries raised by the Regional Director and the Official Liquidator.

It is averred in para 21 of the petition that there are no proceedings pending against either the petitioner-Transferor Company or the Transferee Company under Section 235 to 251 of

the Companies Act, 1956.

For the reasons aforementioned and keeping in view the procedural requirements under Section 391 to 394 of the Companies Act, 1956 and as well as relevant affidavits and rules and due consideration of the report of the Regional Director, Ministry of Corporate Affairs, Noida coupled with the affidavits filed by the authorized representative of the petitioner-Transferor Company, the Scheme of Amalgamation of the Transferor Company with the Transferee Company is hereby sanctioned and all the assets and liabilities of the of petitioner-Transferor Company shall merge into petitioner-Transferee Company. The petitioner-Transferor Company shall be dissolved without being wound up.

The Scheme shall be binding on petitioner-Transferor Company and the Transferee Company, their respective share holders, creditors, both secured and unsecured and all concerned.

It is made clear that subject to whatever compliance the petitioner-Transferor Company and the petitioner-Transferee Company has to do as undertaken in the reply, they shall do the same. It is made clear that without compliance the scheme of Amalgamation would not deemed to be sanctioned.

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

Copy of this order be published in 'Indian Express

(English)' and 'Jansatta (Hindi)' both Delhi/NCR Edition as well as in the Official Gazette of State of Haryana.

Any interested person shall be at liberty to apply to this Court for any directions as per law.

The Company Petition is disposed of accordingly.

(AMIT RAWAL)
JUDGE

March 10 , 2015
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