IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Company Petition No. 66 of 2014
Connected with
Company Petition No. 6 of 2014

Date of decision: 16.1.2015

IN THE MATTER OF:
THE COMPANIES ACT, 1956

AND IN THE MATTER OF :

Scheme of Amalgamation of
M/s Osho Gears & Pinion Limited
.... Transferor/ Petitioner Company No. 1
WITH
M/s Emson Gears Limited
....Transferee / Petitioner Company No. 2

Present: Mr. V. M. Gupta, Advocate for
Mr. Manoj Bajaj, Advocate, for the petitioner-Companies.

Mr. M. Jayakumar, Assistant Official Liquidator.

Rajesh Bindal, J.

In this petition filed under Sections 391 - 394 of the Companies Act, 1956 (for short, 'the Act'), duly supported by affidavits, the petitioner companies seek sanctioning of Scheme of Amalgamation **(Annexure P/5).** This is the second motion petition.

Main objects of the petitioner-Transferor Company and the Transferee Company are detailed in their respective Memorandum and Articles of Association annexed with the petition at **Annexure P-1 and P-3,** respectively.

It is averred in the petition that the Registered offices of the petitioners-Transferor and Transferee Companies are situated at Ludhiana (Punjab), hence, the petition is within the jurisdiction of this Court.

The Board of Directors of the M/s Osho Gears & Pinion Limited (Transferor/ Petitioner Company No. 1) and M/s Emson Gears Limited (Transferee / Petitioner Company No. 2), have approved the Scheme of Amalgamation vide resolutions Annexures P-6 and P-7, respectively.

Earlier, the petitioner companies had approached this Court by filing of Company Petition No. 6 of 2014. Vide order dated 31.1.2014 passed therein holding of meetings of the equity shareholders of both the companies were dispensed with. Meetings of secured and unsecured creditors of both the companies were directed to be held on 15.3.2014. The reports of meetings of secured and unsecured creditors of both the companies were filed (Annexures P-10 to P-13).

Mr. Deepak Suri and Mr. Saurabh Arora, Advocates, who were appointed as Chairman and Co-chairman for convening the meetings of secured and unsecured creditors of M/s Osho Gears & Pinion Limited, have reported that both the Secured Creditors of M/s Osho Gears & Pinion Limited – petitioner company no. 1, namely, Punjab National Bank and Small Industries Development Bank of India, voted in favour of the scheme of amalgamation. The meeting was not attended by secured creditor namely Axis Bank having an outstanding amount of ₹ 91,398/-. All 22 unsecured creditors attended the meeting and 21 of them casted their votes in favour of the scheme and have approved the scheme of amalgamation without any modification.

Mr. Manish Jain and Mr. Vibhor Sharma, Advocates, who were appointed as Chairman and Co-Chairman for convening the meetings of secured and unsecured creditors of M/s Emson Gears Limited have reported that two Secured Creditors of M/s Emson Gears Limited – petitioner company no. 2, namely, Allahabad Bank and Small Industries Development Bank of India have voted in favour of the scheme of amalgamation. All 25 unsecured creditors attended the meeting, out of which 24 have accepted the scheme without any modification. One person did not cast his vote.

Notice of this Second Motion Petition was issued to the Regional Director, Ministry of Corporate Affairs, Noida as well as the Official Liquidator and was also ordered to be published in 'The Tribune' (English) and 'Punjab Kesri' (Hindi), and in the official Gazette of the State of Punjab. The aforesaid order has been complied with and an affidavit to this effect has been placed on record.

Pursuant thereto, the Official Liquidator has placed on record the report dated 8.9.2014 by way of affidavit of A. K. Chaturvedi, Regional Director, Northren Region, Ministry of Corporate Affairs, Noida. In para 4 and 5, he has pointed that:-

> "4. *That the Deponent further craves leave to submit that as per clause 17 of the Scheme it has been stated that "the Transferee Company shall take necessary steps for the suitable alternations in the MOA so as to enable it to implement this scheme". Hence, the Hon'ble Court may direct the company to comply with the provisions of the Companies Act, if any.*
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> *5. That the Deponent craves leave to submit that with reference to this Directorate's letter dated 07.05.2014 issued to Income Tax Department, Ludhiana, requesting to offer their comments on the scheme of amalgamation. Letter No. CIT (C)/Ldh/JB/4-15/740 dated 10.06.2014 received from Sh. Raj Singh, Deputy Commissioner of Income Tax, Central Circle-I, Ludhiana, enclosing therewith a letter dated 06.06.2014 addressed to The Commissioner of Income Tax, Central Range, Ludhiana, (copy enclosed as Annexure-I) stating that the issues are regarding the carried forward loss and unabsorbed depreciation which was to be examined in terms of provisions of section 72A of the Income Tax Act, 1961, Rule 9C of the Income Tax Rules and applicability of Form No. 62 as provided under Rule 9C. Further, stated that all the income tax liabilities of the Transferor Company whatsoever whether arising out of completed assessments, pending assessments, appeals, references, revisions, reviews or in any manner howsoever shall also be as from the transfer date devolve upon the Emson Gears Limited, the Transferee Company. Hence, Hon'ble High Court may be advised to direct the Transferee Company to comply with the conditions/ formalities of the Income Tax as stated above."*

The Official Liquidator has also submitted his report submitted in this Court on 23.9.2014 stating therein that in view of the observations of the Chartered Accountant given in Section V of his report, the amalgamation is not pre-judicial to the interest of shareholders, public at large, creditors and the revenue.

As regards the objections raised in para 4 and 5 of affidavit dated 8.9.2014 of the Regional Director, Vimal Kumar Dhall, Director of the Transferee Company has undertaken in para 4 of the affidavit dated 27.10.2014 filed by him that all the necessary steps required for alteration of Memorandum of Articles & Association shall be taken and the Transferee company shall comply with the provisions of the Income Tax Act, 1961 and the Rules made thereunder and also any guidelines issued by the Reserve Bank of India being concerned regulator.

The above-stated explanation submitted by the Director of the petitioner-Transferee Company sufficiently meets with the queries raised by Regional Director.

As regards the objections raised by the official liquidator in the report submitted on 23.9.2014, Vimal Kumar Dhall, Director of the Transferee Company has filed affidavit dated 13.1.2015 stating therein that all the accounting standards shall be observed and maintained strictly by the Transferee Company.

The petitioner- companies have confirmed that there are no investigations or proceedings pending against them under Sections 235 and 251 of the Act.

For the reasons afore-stated and on consideration of all the relevant facts and the procedural requirements contemplated under Sections 391 to 394 of the Companies Act, 1956 and the relevant Rules and on due consideration of the reports of Regional Director, Northern Region, Ministry of Corporate Affairs Noida 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 alteration in MOA, all conditions stipulated under the Income Tax Act, Accounting Standards issued by the Institute of Chartered Accountants of India and all the compliances as are required to be observed in terms of the guidelines issued by Reserve Bank of India being concerned regulator.

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 of such certified copy.

A notice of the order be published in the 'The Tribune' (English) and 'Punjab Kesri' (Hindi), both Punjab editions and in the official Gazette of the Government of Punjab.

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

Disposed of accordingly.

16.1.2015 (Rajesh Bindal)
vs Judge