

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 633/2014

Reserved on 10th March, 2015
Date of pronouncement: 17th March, 2015

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Petition under Section 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

M/s. Systemes Moteurs India Private Limited

Petitioner/Transferor Company

WITH

M/s. Sogefi MNR Filtration India Private Limited

Non-Petitioner/Transferee Company

**Through Mr. Samar Bansal and
Mr. Vinayak Mehrotra, Advocates for
the petitioner**

**Mr. Kirtiman Singh and Ms. Perna
Shah, Advocates for the Regional
Director**

**Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner/transferor company seeking sanction of the Scheme of Amalgamation of M/s. Systemes Moteurs India Private Limited (hereinafter referred to as the petitioner/transferor company) with M/s. Sogefi MNR Filtration India Private Limited (hereinafter referred to as the transferee company).

2. The registered office of the petitioner/transferor company is situated at New Delhi, within the jurisdiction of this court. However, the registered office of the transferee company is situated at Bangalore, Karnataka, outside the jurisdiction of this court. Learned counsel for the petitioner submitted that the Scheme of Amalgamation in respect of the transferee company had already been sanctioned by the Karnataka High Court vide order dated 2nd February, 2015 passed in CP No. 210/2014 filed by the transferee company. A copy of the same is placed on record.

3. The petitioner/transferor company was originally incorporated under the Companies Act, 1956 on 18th March, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Mark IV Air Intake India Private Limited. The company changed its name to Systemes Moteurs India Private Limited and obtained a fresh certificate of incorporation on 25th August, 2012.

4. The authorized share capital of the petitioner/transferor company, as on 22nd May, 2014, was Rs.19,25,00,000/- divided into 1,92,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company was Rs.12,76,36,860/- divided into 1,27,63,686 equity shares of Rs.10/- each.

5. A copy of the Memorandum and Articles of Association of the petitioner/transferor company has been filed on record with the application, being CA(M) 135/2014, earlier filed by the petitioner. The audited balance sheet, as on 31st March, 2013, of the petitioner/transferor company, along with the report of the auditors, had also been filed.

6. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is submitted by the petitioner that the amalgamated entity will have the ability to leverage its large asset base, diverse products and services and vast pool of intellectual capital, to enhance shareholders and stakeholders value. It is claimed that amalgamation will enable optimization of operational and other costs associated with the functioning of the companies which are engaged in similar and related businesses, focused operational efforts, rationalization, standardization, and simplification of business processes, productivity improvements, improved procurement and elimination of duplication and rationalization of all administrative costs.

7. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the petitioner/transferor company in the following ratio:

“1 (one) equity of Rs.10/- each of the transferee company for every 24.0205 fully paid up equity shares of Rs.10/- each held by the shareholders in the transferor company.”

8. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/transferor company.

9. The Board of Directors of the petitioner/transferor company in their meetings held on 28th May, 2014 and 21st January, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the petitioner/transferor company have been placed on record.

10. The petitioner/transferor company had earlier filed CA (M) No. 135/2014 seeking directions of this court to dispense with the requirement of convening the meetings of its shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 1st October, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meeting of the equity shareholders, secured and unsecured creditors of the petitioner/transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. The Court, however, directed the petitioner to issue

specific individual notice to ING Vysya Bank Limited, Deutsche Bank AG Bangalore and the corporate unsecured creditors of the petitioner/transferor company, namely, Lanxess India Private Limited, Ring Plus Aqua Limited, Sebro Industries Private Limited and MEUNIDEC at the time of moving second motion petition calling for their objection, if any, to the Scheme.

11. The petitioner/transferor company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 15th October, 2014, notice in the petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in 'Statesman' (English) and 'Veer Arjun' (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 8th November, 2014 and 7th November, 2014 respectively. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service. The petitioner company has also filed an affidavit dated 5th November, 2014 of Sh. Ajay Kumar Maan, authorized signatory of the petitioner company submitting that pursuant to directions passed by this court vide order dated 1st October, 2014, notice was issued to the unsecured creditors, whose board resolutions have not been annexed

with their consents filed at the time of moving first motion application, by registered post.

12. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner/transferor company. Based on the information received, the Official Liquidator has filed his report dated 23rd January, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the petitioner/transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956. However, in Para 9 of the report, it is submitted by the Official Liquidator that in spite of increase in the authorized share capital of the transferee company, pursuant to the Scheme, it will remain insufficient to issue shares to the shareholders of the transferor company.

13. In response to the notices issued in the petition, Mr. A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 28th January, 2015. Relying on Clause 8.1 of Part-C of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any

break or interruption in their services. He has further submitted that in Clause 12.1(b) of Part-C of the Scheme, it has been stated that the transferee company shall account for the arrangement in the books of accounts according to Accounting Standard-14 issued by the Institute of Chartered Accountants of India. He further submitted that in terms of Clause 10.5 of Part-C of the Scheme, it has been stated that as on effective date, the transferor company shall stand dissolved without the process of winding up.

14. The Regional Director, in para 11 of his report, has further submitted that the authorized share capital of the transferee company is not sufficient for allotment of shares to the shareholders of the transferor company, hence the transferee company may be advised to comply with the requirements of the Companies Act, 2013. Further, in para 12 of his report, he has submitted that the balance sheet of the petitioner/transferor company as at 31.03.2014 reveals that as on 31.03.2014, it has outstanding short term unsecured borrowings of Rs.19.05 crores from banks on account of cash credit. He, therefore, prays that the petitioner company may be asked as to how it has obtained such huge borrowings from the banks without creating any charge thereon in terms of the provisions of Section 125 of the Companies Act, 1956.

15. In response to the objections raised by the Official Liquidator and the Regional Director, Northern Region with regard to insufficiency of authorized share capital of the transferee company, the petitioner/transferor company has filed the affidavit dated 6th February, 2015 of Mr. Ajay Kumar Maan, Chief Finance Officer and Authorized Signatory of the petitioner/transferor company stating that, upon sanction of the Scheme, the transferee company shall issue and allot 01 equity share of Rs.10/- each to the shareholders of the petitioner/transferor company holding 24.0205 equity shares of Rs.10/- each and the fraction, if any, shall be rounded off to the next number. Therefore, in terms of the said share exchange ratio, the transferee company shall issue and allot equity shares amounting to Rs.53,13,660/- to the shareholders of the transferor company. He, therefore, submits that the increase of Rs.55,00,000/- in the authorized share capital of the transferee company, as approved in Clause 10.1 of the Scheme of Amalgamation, is sufficient to allot shares to the shareholders of the petitioner/transferor company. In view of the above, the objections raised by the Official Liquidator and the Regional Director, Northern Region do not survive.

16. So far as the objection of the Regional Director with regard to short term unsecured borrowings of Rs.19.05 crores of the petitioner/transferor company is concerned, the petitioner company in the affidavit dated 6th February, 2015 of Mr. Ajay Kumar Maan, Chief Finance Officer and

Authorized Signatory of the petitioner/transferor company has submitted that the unsecured loans with the Deutsche Bank and ING Vysya Bank have been arranged by the group company i.e. Sogefi SpA with their global relation and engagement with the bank. Security has been provided by the Ultimate Holding Company and its subsidiary companies through BNP Paribas Bank and ING Bank NV respectively. It is further submitted that this loan is therefore secured with respect to the company, Sogefi SpA but is unsecured with respect to the transferor company. Copies of the loan agreements entered into by the transferor company with the banks are placed on record. Further, the petitioner company has undertaken to comply with all requirements as may be needed under the Foreign Exchange Management Act, 1999 and any other rules and regulations issued by the Reserve Bank of India.

17. The matter was listed for consideration on 19th February, 2015 when the Regional Director, Northern Region sought and was granted time to file further affidavit in support of the objections raised by him. Pursuant to said order, the Regional Director has filed his additional affidavit dated 4th March, 2015 stating that all the objections/observations that had been raised by him earlier now stand adequately addressed and that he has no further objection in the matter. In view of the above, nothing survives so far as the objection of the Regional Director, Northern Region is concerned.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner company, in the affidavit dated 24th January, 2015 of Sh. Samar Bansal, Advocate of the petitioner company, has submitted that no objection has been received from any creditor or other party pursuant to the citations published in the newspapers on 7th & 8th November, 2014. No objections are also stated to have been received from the unsecured creditors to whom individual notices have sent in terms of order dated 1st October, 2014.

19. Considering the approval accorded by the equity shareholders, secured and unsecured creditors of the petitioner/transferor company, to the proposed Scheme of Amalgamation and there being no surviving objection to the same by the Regional Director, Northern Region, and the Official Liquidator; and also in view of the order dated 2nd February, 2015 passed by the Karnataka High Court in CP 210/2014 granting sanction to the proposed Scheme of Amalgamation in respect of the transferee company, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner company will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified

that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, that is 1st April, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

20. Learned counsel for the petitioner/transferor company submits that the petitioner/transferor company would voluntarily deposit a sum of Rs.1,00,000/- in the Common Pool Fund of the Official Liquidator within two weeks from today. The statement is accepted.

21. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

March 17, 2015