

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 786/2014

Reserved on 26th March, 2015
Date of pronouncement: 5th May, 2015

In the matter of

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

And

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

Scheme of Amalgamation of:

Mars Industries Private Limited

Petitioner/Transferor Company

WITH

Dorset India Private Limited

Petitioner/Transferee Company

**Through Mr. Mahesh Aggarwal and
Mr. Rajeev Kumar, Advocates for the
petitioners**

**Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director**

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

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Mars Industries Private Limited (hereinafter referred to as the transferor company) with Dorset India Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this court.

3. The transferor company was incorporated under the Companies Act, 1956 on 8th May, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi

4. The transferee company was incorporated under the Companies Act, 1956 on 18th April, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,58,42,000/- divided into 25,84,200 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 159/2014, earlier filed by the petitioners.

The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

8. 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 claimed that by the proposed amalgamation the synergies that exist between the two entities in terms of similar products, processes and resources can be put to the best advantage of all stakeholders. It is further claimed that the proposed amalgamation will provide economies of scale, sourcing benefits, vendor rationalization, more focused operational efforts, rationalization, standardization, and simplification of business processes and productivity in improvements.

9. 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 transferor company in the following ratio:

“08 equity shares of Rs.10/- each at a premium of Rs.9,370/- per share, as fully paid up of the transferee company for every 100 equity shares of Rs.10/- each fully paid up held by the shareholders in the transferor company.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the transferor and transferee companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 6th October, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 159/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 27th November, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor and transferee companies, there being no secured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 16th

December, 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 'Business Standard' (English) and (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 16th January, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 10th March, 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 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 13 of his report, the Official Liquidator has submitted that the shares in consideration of amalgamation are issued at a premium of Rs.9,370/-. However, as per the valuation report prepared by SMC Capitals Limited, the valuer has not recommended any premium on issue of shares to the shareholders of the transferor company in lieu of shares held in the

transferor company. Further, in para 14 of his report, the Official Liquidator has submitted that as per the information provided by the transferor company in its reply dated 04.02.2015, there are disputed tax liabilities of Sales Tax for the year 2009-10, 2010-11 and 2006-07 and of Excise for the year 2011-12, wherein appeal is pending. Further, payment of TDS is also in default till 31st December, 2014. The Official Liquidator, therefore, prays that the petitioner companies may be asked to clarify the same.

15. In reply to the first observation made by the Official Liquidator, the petitioner companies in their reply dated 11th March, 2015 have submitted that the valuation report prepared by SMC Capitals Limited has recommended the share swap ratio of 8:100 based on the value per share of the transferor company and the transferee company i.e. Rs.748.20 per share and Rs.9,380/- per share for the transferor company and the transferee company respectively, thus, reflecting the fair price per share of the transferee company i.e. Rs.9,380/- per share (including a premium of Rs.9,370/- per share over the face value of Rs.10/- per share).

16. In reply to the second observation made by the Official Liquidator in para 14 of his report, the petitioners, while referring to Para 9 of the Scheme, have undertaken that post the Scheme becoming effective, all the pending proceedings of the transferor company shall not abate or be

discontinued and instead the same shall continue in the name of the transferee company. The aforesaid undertaking is accepted and the petitioner shall remain bound by the same. In view of the aforesaid, the observations made by the Official Liquidator stand satisfied.

17. 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 10th March, 2015. Relying on Clause 10 of Part-III 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 7 of Part-III of the Scheme, it has been stated that the assets and liabilities of the transferor company shall be accounted for and dealt with in the books of accounts of the transferee company in accordance with the 'Purchase Method' of Accounting Standard-14 governed by the Companies (Accounting Standards) Rules, 2006. He further submitted that in Clause 14 of Part-III of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 11th March, 2015 of Mr. Rajesh Bansal and Mr. Saurabh Bansal,

authorized signatory of the transferor and transferee companies respectively, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 16th January, 2015.

19. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, 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 companies 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, i.e. 1st April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

20. Learned counsel for the Official Liquidator prays that costs may also be imposed keeping in view the fact that the matter has involved

examination of records from the office of the Regional Director and the office of the Registrar of Companies and for filing the reports. He submits that costs of at least Rs.1,00,000/- per company may be imposed. Learned counsel for the petitioners states that he has no objection to the request made by learned counsel for the Official Liquidator. Looking to the circumstances, the petitioners shall deposit a sum of Rs.1.0 lakh each by way of costs in the Common Pool Fund of the Official Liquidator, within one week from today.

21. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 05, 2015