

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 784/2014

Reserved on 26th February, 2015
Date of pronouncement: 23rd March, 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:

Hitachi Metglas (India) Private Limited

Petitioner/Transferor Company

WITH

Hitachi Metals (India) Private Limited

Petitioner/Transferee Company

**Through Mr. Satwinder Singh and
Mr.N.P.S. Chawla, 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 Hitachi Metglas (India) Private Limited (hereinafter referred to as the transferor company) with Hitachi Metals (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 originally incorporated under the Companies Act, 1956 on 6th June, 2003 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of FineMetglas Solutions India Private Limited. The company changed its name to Hitachi Metglas (India) Private Limited and obtained the fresh certificate of incorporation on 5th January, 2004.

4. The transferee company was incorporated under the Companies Act, 1956 on 30th January, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.12,15,00,000/- divided into 1,21,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.12,00,00,000/- divided into 1,20,00,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.90,00,000/- divided into 9,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.90,00,000/- divided into 9,00,000 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) 161/2014, 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 the proposed amalgamation will simplify management structure, leading to better administration and reduction in costs resulting from more focused operational efforts, standardization and simplification of business process and the elimination of duplication and rationalization of administrative expenses. It is further claimed that the proposed amalgamation would provide synergistic linkages besides economies in costs and other benefits resulting from the economies of scale, by combining the businesses and operations of the transferor company and the transferee company.

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:

“01 equity share of Rs.10/- each fully paid up of the transferee company for every 19 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 26th September, 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. 161/2014 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 1st December, 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 13th 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 20th February, 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.

15. 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 24th February, 2015. Relying on Clause 13.1 of Part-II 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 16 of Part-III of the Scheme, it has been stated that accounting treatment as given in Clause 16 is in compliance with the 'Pooling of Interest Method' as prescribed under Accounting Standard-14 i.e. 'Accounting for Amalgamation' governed by the Companies (Accounting Standards) Rules, 2006. He further submitted that in Clause 19 of Part-IV 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.

16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 24th February, 2015 of Mr. Gaurav Varma, Counsel of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 13th January, 2015.

17. Considering the approval accorded by the equity shareholders and unsecured 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.

18. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

March 23, 2015