

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 818/2014

Reserved on 9th September, 2015
Date of pronouncement: 5th October, 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:

Dayco Engine Systems Private Limited

Petitioner/Transferor Company

WITH

Dayco Power Transmission Private Limited

Petitioner/Transferee Company

Through Mr. Sandeep Bhuraria,
Advocate for the petitioners
Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director
Mr. Ashish Makhija, 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 Dayco Engine Systems Private Limited (hereinafter referred to as the transferor company) with Dayco Power Transmission 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 29th October, 2007 with the Registrar of Companies, Maharashtra at Mumbai under the name and style of Dayco Engine Systems India Limited. The company changed its name to Dayco Vikas Engine Systems Private Limited and obtained the fresh certificate of incorporation on 3rd July, 2010. Thereafter, the company shifted its registered office from the State of Maharashtra to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 13th November, 2010. The company again changed its name to Dayco Engine Systems Private Limited and obtained the fresh certificate of incorporation on 6th February, 2014.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 23rd July, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Dayco Vikas Power Transmission Private Limited. The company changed its name to Dayco Power Transmission Private Limited and obtained the fresh certificate of incorporation on 6th February, 2014.

5. The present authorized share capital of the transferor company is Rs.15,85,00,000/- divided into 1,58,50,000 equity shares of Rs.10/- each.

The issued, subscribed and paid-up share capital of the company is Rs.15,77,96,400/- divided into 1,57,79,640 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.7,00,00,000/- divided into 70,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.6,78,57,140/- divided into 67,85,714 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. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, have 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 company would be able to derive benefits of economies of operation by combining relevant activities as well as eliminating overlapping of certain activities. It is further claimed that by the proposed Scheme reduction in cost of operation would be achieved by reducing the number of entities, thereby consolidating the value for stakeholders.

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:

“4532 equity shares of Rs.10/- each of the transferee company for every 10,000 equity shares of Rs.10/- each 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 17th March, 2014 have unanimously approved the proposed Scheme of Amalgamation. The Board of Directors of the petitioner companies vide their separate meetings held on 12th January, 2015 and again on 14th August, 2015 have also approved certain amendments in the 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. 165/2014 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 9th December, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the transferor and transferee companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. Since the written consents/no objections given by the corporate unsecured creditors of the transferee company, namely Gallay India Private Limited, Garima Vikas Metals Private Limited, and Dayco Europe S.r.l. were not supported by the Board Resolutions, the Court directed the petitioners to issue specific advance notice to the said corporate unsecured creditors at the time of moving of the second motion calling for their objection, if any, to the Scheme and to file proof of service of the said notice along with the second motion petition.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 24th 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 'Financial Express' (English) and 'Jansatta' (Hindi) editions. Affidavit of Service has been filed by the petitioners 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 15th January, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit. Further, in terms of directions passed by this Court vide order dated 9th December, 2014, the petitioners have also placed on record the courier receipts evidencing service of notice to the corporate unsecured creditors of the transferee company.

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 12th 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.

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 17th March, 2015. Relying on Clause 4.2.10 of Section-2 of Part-B 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 6.3.1 of Section-4 of Part-B of the Scheme, it has been stated that all assets and liabilities as appearing in the books of the transferor company on the appointed date, shall be recorded in the books of the transferee company as assets and liabilities at their respective fair values in accordance with the 'Purchase Method' as prescribed under Accounting Standard-14 issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 8 of Section-4 of Part-B 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. The Regional Director in para 14 of his report has referred to Clause 12.2 of Part-C of the Scheme, wherein it has been stated that in the event of non-occurrence of effective date before 31.12.2014 or within such further time as may be agreed to by the Board of Directors of the transferor and transferee companies, this Scheme shall become null and void. He has further submitted that the petitioner companies have not filed any Board Resolution regarding extension of period of the present Scheme of Amalgamation, hence the proposed Scheme is null and void to this extent. A similar objection has also been raised by the Official Liquidator in para 16 of his report.

17. In response to the objections raised by the Regional Director, Northern Region and the Official Liquidator, learned counsel for the petitioners has submitted that the Board of Directors of the petitioner companies in their separate meetings held on 12th January, 2015 have extended the validity of the Scheme from 31.12.2014 to 30.09.2015. He had also moved an application being Co. Appln. No. 1172/2015 in this regard seeking to amend the relevant Clause 12.2 of the Scheme to the extent that the date setting down the validity of the Scheme has been extended from 31.12.2014 to 30.09.2015 and to place on record the revised Scheme of Amalgamation. Notice of this application was issued to the Official Liquidator and the Regional Director, Northern Region.

18. In response to the notices issued in CA 1172/2015, the Regional Director, Northern Region has filed his additional report on 25th July, 2015. In para 5.1 of his report, the Regional Director has submitted that none of the petitioner companies have filed copy of the purported Board Resolutions passed in their meetings held on 12th January, 2015 for the amendment of the proposed Scheme of Amalgamation. In para 5.2 of his report, the Regional Director has further submitted that Paras 3.1 and 3.2 of Part-B of the modified Scheme of Amalgamation shows the capital structure of both the petitioner companies as per their balance sheet as at 31.03.2013 mentioning therein, *inter-alia*, that subsequent to the

aforesaid balance sheet, there has been no change in the issued, subscribed and paid up capital of the respective companies. However, there is material change in the capital structure of both the companies subsequent to their balance sheets as at 31.03.2013 and reporting in Para 3.1 and 3.2 of Part-B of the modified Scheme is prima facie not factually correct to this extent. He has also submitted that contents of Para 6.1.1 of Section-4 of the amended Scheme are also not factually correct and requires further amendment in the revised Scheme.

19. In response to the aforesaid objections of the Regional Director, Northern Region, learned counsel for the petitioners has submitted that keeping in mind the various observations raised by the Regional Director, the petitioners have moved another fresh application being Co.Appln. 2470/2015, seeking appropriate modifications to the Scheme, which would in effect meet all the observations/objections raised by the Regional Director in the said affidavit. In the aforesaid application, the petitioners, in response to the first objection raised by the Regional Director in para 5.1 of his additional report, have submitted that the necessary Board Resolutions dated 12th January, 2015 of the petitioner companies extending the validity of the Scheme have been filed with ROC on 20th July, 2015 in the requisite form MGT-14. Copies of the said forms have been placed on record along with the said application. In response to the second objection raised by the Regional Director in para

5.2 of his report, the petitioners have submitted that the Board of Directors of the petitioner companies in their separate meetings held on 14th August, 2015 have amended Paras 3.1, 3.2, 6.1.1 of Part-B and 12.2 of Part-C of the Scheme with regard to increase in the authorized share capital of the transferor and transferee companies; merger of the authorized share capital of the transferor company into the transferee company, post amalgamation; and extension of validity of the Scheme upto 31st December, 2015 respectively. Copies of the requisite forms filed with ROC have also been placed on record along with the application. The petitioners have also placed on record the amended Scheme of Amalgamation, in view of the amendments made in Paras 3.1, 3.2, 6.1.1 of Part-B and 12.2 of Part-C of the Scheme. Vide order dated 9th September, 2015, this Court disposed off the application viz. Co.Appln. 1172/2015, being infructuous, and allowed the application viz. Co.Appln. 2470/2015 and the modified Scheme, as annexed to the application, was also taken on record. In view of the aforesaid, the objections raised by the Regional Director, Northern Region stand satisfied.

20. Learned counsel for the petitioners has also submitted that there is no change in the share exchange ratio pursuant to increase in the share capital of the petitioner companies, and a certificate dated 12th August, 2015 to this effect has been issued by AMR & Co., Chartered Accountants, which is placed on record along with CA 2470/2015. He has

further submitted that the Board of Directors of the petitioner companies in their meetings held on 14th August, 2015 have also considered this aspect and adopted the said opinion dated 12th August, 2015. In view of the aforesaid, the observation raised by the Official Liquidator in para 15 of his report to the effect that the Board of Directors have approved the draft Scheme of Amalgamation which inter-alia includes Share consideration, on 17.03.2014 prepared by AMR & Co., Chartered Accountants, whereas the Share Valuation Report was prepared on 01.04.2014, also stands satisfied.

21. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 17th March, 2015 of Mr. Ajay Kumar, authorized signatory 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 15th January, 2015.

22. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and there being no surviving objections to the same by the Regional Director, Northern Region and the Official Liquidator, there appears to be no impediment to the grant of sanction to the amended Scheme of Amalgamation annexed with CA 2470/2015. Consequently,

sanction is hereby granted to the amended 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. 01.04.2014, the transferor company shall stand dissolved without undergoing the process of winding up.

23. Learned counsel for the Official Liquidator prays that keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings costs of at least Rs.1,00,000/- should be paid by the petitioners. Learned counsel for the petitioners submits that he has no objection to the prayer being granted. Considering the facts and circumstances of the case, petitioners shall deposit a sum of Rs.1,00,000/-, by way of costs, with the Common Pool Fund of the Official Liquidator within three weeks.

24. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

October 05, 2015