

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 130/2015

Reserved on 21st July, 2015
Date of pronouncement: 1st September, 2015

In the matter of

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

And

**Application under Sections 391 to 394 of the
Companies Act, 1956 read with Rules 6 & 9 of
the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

DCM Engineering Limited

Applicant/Transferor Company

WITH

DCM Limited

Applicant/Transferee Company

**Through Mr. Mahesh Agarwal and
Mr. Rajeev Kumar, Advocates for the
applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meeting of the equity shareholders of the transferor company and for convening of separate meetings of the secured and unsecured creditors of the transferor company and the equity shareholders, secured and unsecured creditors of the transferee company to consider and approve, with or

without modification, the proposed Scheme of Amalgamation of DCM Engineering Limited (hereinafter referred to as the transferor company) with DCM 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 5th September, 1990 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of DCM Precision Engineering Private Limited. The company changed its name to DCM Precision Engineering Limited and obtained the fresh certificate of incorporation on 5th February, 1998. The company again changed its name to DCM Engineering Limited and obtained the fresh certificate of incorporation on 23rd March, 2004.

4. The transferee company was originally incorporated under the provisions of Indian Companies Act, 1882 on 26th March, 1889 with the Registrar, Joint Stock Companies, Punjab under the name and style of Delhi Cloth & General Mills Company Limited. The company changed its name to DCM Limited and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 6th October, 1983.

5. The present authorized share capital of the transferor company is Rs.24,00,00,000/- divided into 2,39,99,000 equity shares of Rs.10/- each aggregating to Rs.23,99,90,000/- and 100 13.50% redeemable cumulative preference shares of Rs.100/- each aggregating to Rs.10,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.20,05,00,000/- divided into 2,00,50,000 equity shares of Rs.10/- each fully paid up.

6. The present authorized share capital of the transferee company is Rs.80,00,00,000/- divided into 6,00,00,000 equity shares of Rs.10/- each aggregating to Rs.60,00,00,000/-; 3,20,000 9.5% - 6th redeemable cumulative preference shares of Rs.25/- each aggregating to Rs.80,00,000/-; 36,80,000 preference shares of Rs.25/- each aggregating to Rs.9,20,00,000/- and 10,00,000 cumulative convertible preference shares of Rs.100/- each aggregating to Rs.10,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.17,37,59,195/- divided into 1,73,79,037 equity shares of Rs.10/- each fully paid up aggregating to Rs.17,37,90,370/- less calls in arrears of Rs.31,175/-.

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 reports 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 application and the accompanying affidavit. It has been submitted by the applicants that the transferor company is a subsidiary of the transferee company which holds approx. 75.06% of the share capital of the transferor company. It is claimed that the proposed Scheme would result in creation of a single entity with better financial strength which would result in improving the competitive position of the businesses of the combined entity. It is further claimed that the proposed amalgamation would result in consolidation of the businesses presently being carried on by the transferor company and the transferee company would help in diversification of business risks and would also help in cost optimization in the system.

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:

“20 equity shares of Rs.10/- each fully paid up of the transferee company for every 77 equity shares of Rs.10/- each

fully paid up held by the shareholders in the transferor company.”

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210, 212(1) to (7) & (11) to (17), 214, 215, 216(1) & (3), 217, 219, 220, 223, 224(1), (3) and (4) and 225 or any other applicable provisions of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 8th December, 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 transferor company has 18 equity shareholders. All the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

13. The transferor company has 04 secured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the transferor company shall be held on 17th October, 2015 at 12:30 p.m. at Ghalib Auditorium Aiwan-E-Ghalib, Mata Sundari Lane, New Delhi-110002. Mr. U. K. Shandilya, Advocate, (Mobile No. 9810137662) is appointed as the Chairperson and Ms. Anju Lal, Advocate, (Mobile No. 9810430756) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the transferor company shall be 02 in number and more than 25% in value of the total secured debt.

14. The transferor company has 274 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferor company shall be held on 17th October, 2015 at 02:00 p.m. at Ghalib Auditorium Aiwan-E-Ghalib, Mata Sundari Lane, New Delhi-110002. Mr. Rahul Chauhan, Advocate, (Mobile No. 9650802472) is appointed as the Chairperson and Ms. Pallavi Sharma, Advocate, (Mobile No. 9899447004) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of

the unsecured creditors of the transferor company shall be 50 in number and more than 25% in value of the total unsecured debt.

15. The transferee company has 44297 equity shareholders and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the equity shareholders of the transferee company shall be held on 17th October, 2015 at 10:00 a.m. at Ghalib Auditorium Aiwan-E-Ghalib, Mata Sundari Lane, New Delhi-110002. Mr. Suryakant Singhla, Advocate, (Mobile No. 9810075888) is appointed as the Chairperson and Ms. Kanika Agnihotri, Advocate, (Mobile No. 9810980027) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the equity shareholders of the transferee company shall be 100 in number and more than 25% in value of the total equity share capital.

16. The transferee company has 05 secured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the transferee company shall be held on 17th October, 2015 at 11:00 a.m. at Ghalib Auditorium Aiwan-E-Ghalib, Mata Sundari Lane, New Delhi-110002. Mr. Naresh Mathur, Advocate, (Mobile No. 9810170878) is

appointed as the Chairperson and Mr. Anuj Rajput, Advocate, (Mobile No. 9312508815) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the transferee company shall be 02 in number and more than 25% in value of the total secured debt.

17. The transferee company has 497 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferee company shall be held on 17th October, 2015 at 04:00 p.m. at Ghalib Auditorium Aiwan-E-Ghalib, Mata Sundari Lane, New Delhi-110002. Mr. Subhash Oberoi, Advocate, (Mobile No. 9810083354) is appointed as the Chairperson and Mr. Abdul Aleem, Advocate, (Mobile No. 9871416520) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferee company shall be 100 in number and more than 25% in value of the total unsecured debt.

18. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the

valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings is filed with the registered offices of the applicant companies at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

19. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the secured and unsecured creditors of the transferor company and the equity shareholders, secured and unsecured creditors of the transferee company, along with copies of the Scheme of Amalgamation and the statement under Section 393 of the Companies Act, 1956, shall be sent to the secured and unsecured creditors of the transferor company and the equity shareholders, secured and unsecured creditors of the transferee company by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meetings, in their presence or in the presence of their authorized representatives. Notice of the meetings shall also be published in the Delhi editions of the newspapers "Business Standard" (English) and "Jansatta" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings. It is, however, clarified that the requirement of sending personal notices to the equity shareholders of the

transferee company, who are holding less than 100 shares, is dispensed with.

20. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the applicant companies so that the aforesaid meetings of the secured and unsecured creditors of the transferor company and the equity shareholders, secured and unsecured creditors of the transferee company are conducted in a just, free and fair manner.

21. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.50,000/- each in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

22. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

September 01, 2015