

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

COMP No. 3 of 2005

Abhishek Steel Industries Limited,
535-C, Urla Industrial Complex, Urla,
Raipur (CG) 493221

Transferee Company

Raipur Ferro Alloys Limited,
535-A, Urla Industrial Complex,
Urla, Raipur (CG) 493221

Transferor Company 1

Rajesh Re-Rollers Limited,
535-B, Urla Industrial Complex,
Urla, Raipur (CG) 493221

Transferor Company 2

For Petitioner/Companies	Mr. Prafull Bharat and Ms. Astha Shukla, Advocates.
For Respondent/ UOI For Official Liquidator	Mr. N.K. Vyas, Assistant Solicitor General Mr. Amrito Das, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

20/7/2016

1. Heard.
2. This is the second motion filed by the petitioner i.e. the Transferee Company M/s. Abhishek Steel Industries Limited for sanctioning the scheme of merger of the said

Company with the Transferor Company No.1 Raipur Ferro Alloys Limited and Transferor Company No.2 Rajesh Re-Rollers Limited under Sections 391 to 394 of the Companies Act, 1956 (in short "the Act, 1956"). The first motion dated 05.10.2005 was moved by the Transferee Company before this Court on 28.10.2005 with a prayer for convening a meeting at the premises of the registered office of the petitioner Companies or as may be determined by the High Court after appointing Chairman to conduct the said meeting, wherein, all the creditors and members of the Company may meet separately to approve the scheme of merger with or without modifications.

3. By order dated 25.08.2006, this Court directed for issuance of notice in English Daily Newspaper "Hitwada" and Hindi Daily Newspaper "Dainik Bhaskar" for convening of the meetings under the Chairmanship of Shri Ranbir Singh Marhas, Advocate. Such meetings were directed to be held in the following manner :

"a. Hotel Picadily, Raipur (CG) on dated 7-10-2006 at 4.00 p.m. in the case of secured creditors and unsecured creditors of Abhishek Steel Industries Ltd.

b. Hotel Picadily, Raipur (CG) on dated 7-10-2006 at 4.30 p.m. in the case of secured creditors and unsecured creditors of Raipur Ferro Alloys Ltd.

c. Hotel Picadily, Raipur (CG) on dated 7-10-2006 at 5.00 p.m. in the case of secured creditors and

unsecured creditors of Rajesh Re-Rollers Ltd.

d. Hotel Picadily, Raipur (CG) on dated 8-10-2006 at 4.00 p.m. in the case of equity shareholders of Abhishek Steel Industries Ltd.

e. Hotel Picadily, Raipur (CG) on dated 8-10-2006 at 4.00 p.m. in the case of equity shareholders of Raipur Ferro Alloys Ltd.

f. Hotel Picadily, Raipur (CG) on dated 8-10-2006 at 5.00 p.m. in the case of equity shareholders of Rajesh Re-Rollers Ltd. for the purpose of considering and if thought fit, approving with or without modifications the scheme of amalgamation prepared and which has been submitted before this Court.”

4. The quorum for the meetings was directed to be the same as required under the Articles of Association for extraordinary meetings of Shareholders and the value of each members or creditors was also fixed in accordance with the books of the Company and where the entries in the books are disputed, the Chairman was authorised to determine the value for the purposes of the meetings. Voting by proxy was also permitted in accordance with the rules.

5. In terms of the said order of the Court , notices were issued in 'Hitwada' and 'Dainik Bhaskar' newspapers and thereafter, the Chairman appointed by the Court convened the meeting and submitted report on 08.11.2006. According to the report, the meetings were

attended by 03 Directors and 04 unsecured creditors of Abhishek Steel Industries, Raipur; 03 Directors and 01 unsecured creditors of Raipur Ferro Alloys Limited, Raipur; 03 Directors and 02 unsecured creditors of Rajesh Re-Rollers Limited, Raipur; 03 Directors and 23 equity shareholders of Abhishek Steel Industries, Raipur; 03 Directors and 07 equity shareholders of Raipur Ferro Alloys Limited, Raipur; and 03 Directors and 07 equity shareholders of Rajesh Re-Rollers Limited, Raipur. The compromise/arrangement was read out and explained by the Chairman and thereafter, the Directors/unsecured creditors/equity shareholders, as the case may be, present in the meeting unanimously voted in favour of the proposed arrangement for being adopted and carrying into effect.

6. After the above said report was submitted, the second motion was moved by the Transferee Company for sanctioning compromise or arrangement as required under Section 391 of the Act, 1956 read with Rule 79 of the Companies (Court) Rules, 1959 (in short "the Rules, 1959") for confirming compromise/arrangement mentioning inter alia that on merger, the Transferee Company will have advantages of getting further manufacturing facilities without cash expenditure and further, it will not have to incur heavy capital expenditure to set up an R & D Center without building up of financial resources; the merger will bring capital at no recurring interest cost; and the viability of small units being

difficult in the wake of tough competition, extra burden of two part power tariff and overhead costs will be reduced. It was also stated that the proposed merger will substantially increase the level of operation and product diversification as also the equity base and help in expansion.

7. Similarly, overhead cost will be reduced and economies of scale will be achieved through the merger. The Transferor Company No.2 will provide fund support without interest burden except equity service.
8. The Transferor Company No.1 has agreed for the amalgamation process due to advantages on account of exhaustion of its financial resources; geographical integration of the Companies being constituted in the same industrial area; reduction in interest cost, penal interest etc; utilisation of better capacity to meet the growing competition in the market; effective manpower utilisation, reducing labour cost etc.
9. The advantages for the Transferor Company No.2 was stated to be that despite being in existence since 1984; the Company has not been able to draw plans for industrial or trading activity due to low capital base, therefore, it has find prudence to merge with a better/good company to stop its losses to secure good return for its shareholders.
10. Mr. Prafull Bharat, learned counsel appearing for the

Transferee as well as Transferor Companies, would submit that the Scheme of Amalgamation will not prejudice the interest of any of the employees or labourers, therefore, it will not only be in the interest of Company but in the interest of all concerned to sanction the merger.

11. Mr. N.K. Vyas, learned Assistant Solicitor General for Registrar of Companies and Mr. Amrito Das, learned counsel for the Official Liquidator, would submit that they have submitted report favouring/recommending the scheme of arrangement.

12. In the matters of **Flex Industries Ltd., in Re, (1989) 3 Comp LJ 28 (Del)** and **Indo Continental Hotel and Resorts Ltd., Re, (1990) 69 Com Cases 93 (Raj)**, the scheme of amalgamation which enjoyed an around approval including that of the official liquidator, creditors and employees, has been confirmed by the Court. Similarly, in **Seshasayee Properties Limited, Re, (1994) 3 Comp LJ 454 (MP)**, a scheme of amalgamation was approved where small companies were sought to be amalgamated into one company with a wider capital base and also conducive to administrative efficiency and there was no opposition from any quarter.

13. Yet again in the matter of **ISCT Information Technology Ltd. Re, (1996) 2 Comp LJ 106 (Delhi)**, a scheme of amalgamation was approved by the Court as the scheme was approved by the Board of Directors of both the

companies and the scheme was mutually beneficial, because it would result in economies of scale, reduction in administrative expenditure and procedural work and also bring about better and more productive utilisation of various resources and thereby, enable the new company to optimise productivity and profitability.

14. In view of the settled legal position and for the fact that the present scheme of arrangement submitted by the Companies on 28.11.2006 has been approved in the meeting of Shareholders, Unsecured Creditors and Directors and learned counsel for the Central Government as well as learned counsel for the Official Liquidator have favoured/recommended the scheme of arrangement, the same deserves to be and is accordingly sanctioned.

15. Let an order be prepared as provided in Form No.41 of the Rules, 1959. The Transferee and Transferor Companies shall pay a sum of Rs.1 lakh to the Counsel for the Official Liquidator.

16. In view of the above, the company petition is disposed of.

Sd/-

COMPANY JUDGE

(Prashant Kumar Mishra)

Head Note

Scheme of Amalgamation of Companies approved by Shareholders, Creditors, Directors; not objected by UOI & Official Liquidator deserves sanction.