

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY PETITION NO. 2 OF 2016

Kolhapur Gases (Carbondioxide)
Private limited,
A Company registered under
the provisions of the Companies Act, 1956
having its Registered Office at
Chowgule House,
Mormugao Harbour Goa 403 803 ... Petitioner Company

WITH

COMPANY PETITION NO. 3 OF 2016

Kolhapur Oxygen & Acetylene
Private Limited,
A Company registered under the
provisions of the Companies Act, 1956
having its Registered Office at Chowgule
House, Mormugao Harbour, Goa 403803. ...Petitioner Company

Mr. Purushottam R. Karpe, Advocate for the Petitioner Company.

Mr. M. Amonkar, Central Government Standing Counsel for the
Regional Director.

Coram:- F. M. REIS, J.

Date:- 2nd September, 2016

ORAL JUDGMENT

Heard Mr. P. Karpe, learned counsel appearing for the
petitioner company and Mr. M. Amonkar, learned Central Government

Standing Counsel appearing for the Regional Director. None appears before the Courts to oppose the Scheme and nor any party has controverted any averments made in the petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Kolhapur Gases (Carbondioxide) Private Limited ("Transferor Company") with Kolhapur Oxygen & Acetylene Private Limited ("Transferee Company").

3. The petitioner companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Petitions.

4. The learned Advocate for the petitioners states that the petitioner companies have complied with all the directions passed in Company Application and that the petitions have been filed in consonance with the orders passed in respective Company Application.

5. The learned Advocate appearing on behalf of the petitioners has stated that they have complied with all the requirements as per

directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the petitioner companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report before this Court on 12th July, 2016 in Company Petition No.2 of 2016, inter-alia stating therein that the affairs of the Transferor Company appears to have not been conducted in manner prejudicial to the interest of its members and public interest and this Court may pass appropriate order/orders as it deemed fit in the premises of the case.

7. The Regional Director has filed his affidavit before this Court on 12th July, 2016 inter-alia, stating therein that save and except as stated in paragraph 6 of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit, the Regional Director has stated that :

"That the Deponent further submits that, the Tax issue, if any, arising out of this scheme shall be subject to the final decision of the

Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to examine the tax returns filed by the petitioner company independently and the decision of Income Tax Authority is binding on the petitioner company".

8. So far as the observation in paragraph 6 of the affidavit of the Regional Director is concerned, the petitioner companies are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

9. The learned counsel for the Regional Director on instructions of Mr. K. L. Kamboj, Regional Director legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by the Advocate for the petitioner company. The said undertaking is accepted.

10. From the material on record, the Scheme appears to be fair

and reasonable and is not violative of any provisions of law and is not contrary to public policy.

11. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 2 of 2016 and Company Petition No.3 of 2016 are made absolute in terms of prayer clause (b).

12. The petitioner companies to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court of Bombay at Goa, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of this order.

13. The petitioner is directed to file/lodge a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act, 1956/2013, whichever is applicable.

14. The petitioners in all the Company Scheme Petitions to pay costs of Rs.25,000/- each to the Regional Director, Western Region,

Mumbai. The petitioner in the Company Scheme Petition No. 2 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay at Goa. The costs to be paid within four weeks from today.

15. Filing and issuance of the drawn up order is dispensed with.

16. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay at Goa.

F. M. REIS, J.

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