IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 275 of 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 953 OF 2015

In the matter of the Companies Act, 1956;

And

In the matter of Section 391 & 394 of Companies Act, 1956;

And

In the matter of Scheme of Amalgamation of Varroc Exhaust Systems Private Limited ('VESPL') with Varroc Engineering Private Limited (VEPL) and their respective shareholders and creditors

VARROC EXHAUST SYSTEMS PRIVATE LIMITED)
a company Incorporated under the Companies Act, 1956)
having its registered office at C/o Varroc Engineering Pvt Ltd,)
E-4, MIDC, Waluj, Aurangabad, Maharashtra State, India.)

…….Petitioner Company

Called for hearing

Mr. Hemant Sethi, for the Petitioner Company.

Mr. Atul S Singh i/b Mr. Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma, Official Liquidator, present.

CORAM: A. K. Menon, J.

DATE: 29th September, 2016

PC:

1. Heard the learned counsel for the Petitioner Company.

2. The sanction of the Court is sought to the Scheme of Amalgamation between Varroc Exhaust Systems Private Limited with Varroc Engineering Private Limited and their respective shareholders and creditors.
3. The learned Counsel for Petitoner state that the Transferor Company is presently carrying on business of manufacturing Catalytic converter.
4. The proposed Scheme of Amalgamation inter-alia is aimed at achieving commercial benefits as the amalgamation will enable consolidation of Operations of both the Companies into one entity and provide impetus for the growth of the Transferee Company.
5. The Transferor Company and the Transferee Company have approved the Scheme by passing the Board Resolutions which are annexed to the Company Scheme Petitions.
6. The Counsel for the Petitioner further states that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Company Summons for Direction.
7. The Counsel for the Petitioner further states that the Petitioner Company has complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Company through their Counsel undertakes to comply with all statutory requirements, if any, as

required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 16th September, 2016 stating therein that save and except as stated in paragraph 6 (i) to (iv) of the said Affidavit, it appears according to Regional Director 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 t that :

(i) *Regarding Clause 12.1.4 of the Scheme, 12.1.4, the excess or deficit, if any, of the net assets value (assets minus liabilities) of the Transferor Company transferred to the Transferee Company, after making the adjustment as mentioned above and reserves taken over, shall be recorded as and credited to the Capital Reserve or debited to Profit and Loss Account as the case may be, in the books of the Transferee Company. It is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against any other reserves / accounts of the Transferee Company.*

(ii) *In addition to compliance of AS 14, the Transferee Company shall pass such Accounting Entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS5.*

(iii) *The tax implications if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect*

to the schme. The decision of the Income Tax Authority is binding on the petitioner company

(iv) *ROC Mumbai vide report / letter No. ROC/STA(DG)473353/391-394/473 dated 09.08.2016, at point 17 of the said letter has indicated that "M/s. Varroc Engineering Private Limited, the Transferee Company has not complied with the provisions of section 383A of the Companies Act, 1956 corresponding to section 203 of the Companies Act, 2013". In this regard it is submitted that the company may kindly be directed to comply with the above mentioned provisions of the Act.*

9. As far as observations made in paragraph 6(i) of Affidavit of the Regional Director is concerned, the Transferee Company undertakes that any surplus arising shall be debited to Goodwill Account and will not be adjusted against any other reserves / accounts of the Transferee Company.

10. In so far as the objections raised in paragraph 6(ii) of Affidavit of the Regional Director is concerned, in addition to compliance of Accounting Standard-14, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

11. As far as observations made in paragraph 6(iii) of Affidavit of the Regional Director is concerned, the Transferee Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the

Scheme of Amalgamation will be met and answered in accordance with law.

12. In so far as objections raised in paragraph 6(iii) of the Affidavit of Regional Director are concerned, the Counsel for the Petitioner has tendered an affidavit dated 23rd September 2016 and in paragraph 7 of the said Affidavit it is stated that the Transferee Company has complied with the provisions of section 383A of the Companies Act 1956 corresponding to section 203 of the Companies Act 2013 and there has been no default on its part.

13. The Official Liquidator has filed his report dated 31st August, 2016 in Company Scheme Petition No. 275 of 2016 stating therein that the affairs of the Transferor Companies Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved without winding up.

14. 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. None of the parties concerned has come forward to oppose the Scheme.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 275 of 2016 filed by the Transferor Company is made absolute in terms of prayer clauses (a) of the respective Petitions.

16. The Petitioner Company to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay 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 receipt of Order.

17. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E - Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioner Company in the Company Scheme Petition 275 of 2016 to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator. Costs to be paid within four weeks from the date of the order.

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

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

(A. K. Menon, J)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

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