

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 245 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.36 OF 2016.

PUSHPAK INFRACON PRIVATE LIMITED.

.....Petitioner/ Transferor Company.

WITH

COMPANY SCHEME PETITION NO.246 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.37 OF 2015

PUSHPAK STEEL INDUSTRIES PRIVATE LIMITED.

.....Petitioner/the Transferee Company.

In the matter of the Companies Act I
of 1956.

AND

In the matter of Sections 391 to 394
of the Companies Act, 1956.

AND

In the matter of Scheme of
Amalgamation between Pushpak
Infracon Private Limited and Pushpak
Steel Industries Private Limited and
their respective Shareholders and
creditors

Called for Hearing

Mr. Satish Raut i/b Mr. Chandrakant Mhadeshwar Advocate for
Petitioner Company.

Mr. A. R. Singh i/b Shri. Pankaj Kapoor for Regional Director in all the
Petitions.

Mr. Vinod Sharma Official Liquidator, present in C.S.P No. 245 of 2016.

Coram : A. K. Menon, J.

Date: 08th September, 2016

PC:

1. Heard learned counsel for parties. None appears before the Court 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 between Pushpak Infracon Private Limited and Pushpak Steel Industries Private Limited and their respective Shareholders and creditors.

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

4. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

5. The Learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, 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 on 23rd August, 2016 in Company Scheme Petition No. 245 of 2016, inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

7. The Regional Director has filed his Affidavit on 23rd August, 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 paragraphs 6 of the said Affidavit, the Regional Director has stated that :

“6. That the Deponent respectfully submits that, the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax return filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.”

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

9. The Learned Counsel for Regional Director on instructions of Mrs. P. Sheela, Joint 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 Scheme Petition No. 245 of 2016 is made absolute in terms of prayer clauses (a) to (d) and 246 of 2016 are made absolute in terms of prayer clauses (a) to (c).

12. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court, 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 this order.

13. 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.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition No. 245 of 2016 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. 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.

(A.K. Menon, J.)

C E R T I F I C A T E

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

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