IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 283 OF 2016
CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 227 OF 2016

In the matter of the Companies Act, 1956 and or Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Amalgamation between of Kirloskar Systech Limited, (Amalgamating Company) and Kirloskar Brothers Limited (Amalgamated Company) and their respective Shareholders

Kirloskar Systech Limited, a Company incorporated }
Under the provisions of Companies act, 1956 having its }
Registered office at Udyog Bhavan, Tilak Road, Pune-411002 }
....Petitioner

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.

Ms. Nisha Valani i/b Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma, Official Liquidator, present.

CORAM: A.K. MENON , J.

DATE: 29TH SEPTEMBER 2016

1. Heard the learned counsel for the Petitioner. No objector has come 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 the Scheme of Amalgamation between of Kirloskar Systech Limited, (Amalgamating Company) and Kirloskar Brothers Limited (Amalgamated Company) and their respective Shareholders.

3. Learned Advocate for the Petitioner submits that since the Petitioner Company is wholly owned subsidiary of the Amalgamated Company and all the shares of the Petitioner Company are presently held by Kirloskar Brothers Limited, the Amalgamated Company and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Amalgamated Company and there would be no reorganization of the Share Capital in the Amalgamated Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by Kirloskar Brothers Limited, the Amalgamated Company was dispensed with, in pursuance of order dated 16th April 2016 passed in CSD No. 227 of 2016.

4. The learned Counsel for the Petitioner submit that the Petitioner Company is in the business of providing Engineering Services and IT Services. The Amalgamated Company inter alia carries on the business of manufacturing of pumps, valves and is involved in activities of undertaking turnkey EPC contracts.

5. The rational for Scheme inter-alia is that the Petitioner /Amalgamating Company is 100% subsidiary of the Amalgamated Company. Substantial income of Petitioner/Amalgamating Company is generated by providing services to the Amalgamated Company. With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the undertaking of the Petitioner/Amalgamating Company into Amalgamated Company.

6. The Petitioner Company and Amalgamated Company had approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition filed by the Petitioner Company.

7. The learned counsel for the Petitioner state that Petitioner Company has complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the orders passed in Company Summons for Direction.

8. Counsel appearing on behalf of the Petitioner has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertaking given by the Petitioner Company is accepted.

9. The Official Liquidator has filed his report on 16th August 2016 stating that the affairs of the Petitioner Company have been conducted in a proper manner and that Petitioner Company may be ordered to be dissolved.

10. The Regional Director has filed an Affidavit on 27th September 2016, stating therein, save and except as stated in paragraph 6(1) to 6(iv), it appears according to R.D. that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs 6(i) to 6(iv), of the said affidavit it is stated that:-

(i) The tax implication 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 Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.

(ii) Petitioner in clause 6 of the Scheme inter alia has mentioned that upon the coming into effect of the Scheme and subject to the provisions of the Scheme.

Entire business & whole of undertaking of the transferor company as a going concern but to subject to the charges affecting the same be transferred and /or deemed to be transferred to and vested in Transferee Company as a going concern so as to become the assets & Liabilities of Transferee Company. The Petitioner Company has mentioned that there are no secured creditors.

The deponent prays that the Hon'ble court may direct the Transferor Company to make compliance with provisions of companies Act.

(iii) *As per the ROC, Pune Report there are certain complaint which has raised against M/s Kirloskar Brothers Limited. Details of complaint are available are enclosed along with ROC Report. The deponent prays the hon'ble Court may direct the Transferor Company to make compliance with provisions of companies Act.*

(iv) *Petitioner Company in its reply dated 26.06.2016 inter alia stating that in point 5a that the transferee company's shares are listed on BSE Limited and NSE limited & NOC as submitted by BSE vide letter NO. DSC/AMAL/KS/24(F)/255/2015-16 dated 4.1.2016 and by NSE vide letter No. NSE/LIST/56284 dated 4.1.2016 is annexed hereto and marked as Exhibit D-1 & D-2.*

The Deponent says that the Hon'ble Court may direct the Transferee Company to make compliance with the directions issued by both the stock exchanges.

11. So far as the observation in paragraph 6(i) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel states that it is bound to comply with all applicable provisions of the Income Tax Act, 1961 read with Income Tax Rules, 1962 issued in that behalf.

12. In so far as observations made in paragraph 6(ii) of the Affidavit of Regional Director is concerned, the Transferor Company undertakes that all compliances under the Companies Act will be made .

13. In so far as observations made in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Transferee Company undertakes

that all complaints have been addressed in accordance with law and that the Transferee Company also undertakes to comply relevant provisions under the Companies Act as may be required .

(v) As far as observations made in paragraph 6(iv) of the affidavit of Regional Director is concerned, the Transferee Company undertakes that all compliances as required by BSE vide its letter NO. DSC/AMAL/KS/24(F)/255/2015-16 dated 4.1.2016 and by NSE vide letter No. NSE/LIST/56284 dated 4.1.2016 will be complied with to the extent applicable.

14. In view of undertakings and clarifications given by the Petitioner, the Counsel for the Regional Director on instructions of Mrs. P. Sheela, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions given by the Petitioner Company. The said undertakings given by the Petitioner are accepted.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Company is made absolute in terms of prayer clause (a).

17. Petitioner 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 INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.

18. 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 receipt of the Order.

19. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.

20. Costs to be paid within four weeks from today.

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

22. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay.

(A.K. MENON , J)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer