IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.319 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.298 OF 2016

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

AND

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

AND

In the matter of the Scheme of Amalgamation

of

MCD Nitrile India Private Limited (Transferor Company)

into

Tranter India Private Limited (Transferee Company)

And

Their respective Shareholders and Creditors

Tranter India Private Limited, a company incorporated under the Companies Act, 1956 and having its registered office at Gat No. 127 and 128, Dingrajwadi, Taluka – Shirur, Pune – 412208	)	…….Petitioner Company

Called for Hearing

Mr. Kunal Mehta i/b M/s Crawford Bayley & Co, Advocate for Petitioner Company.

Mr. Anurag Gokhale i/b Shri. A. A. Ansari for Regional Director in the Petition.

CORAM: B. P. COLABAWALLA, J

DATE: 22nd July, 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 ("Scheme") of MCD Nitrile India Private Limited into Tranter India Private Limited and their respective shareholders and creditors.

3. The Petitioner Company has approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the Company Scheme Petition.

4. The learned Advocate for the Petitioner Company states that the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the petition has been filed in consonance with the order passed in the Company Summons for Direction.

5. The Learned Advocate appearing on behalf of the Petitioner Company 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, the Petitioner Company undertakes 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 learned Advocate for the Petitioner Companies states that the Petitioner Company is currently engaged in business of manufacture, sale and service of heat exchangers and provides related engineering and project services.

7. The learned Advocate for the Petitioner Company further states that the Scheme of Amalgamation will have synergetic benefits and enable a focussed business approach for the maximisation of benefits to all the stakeholders.

8. The Regional Director has filed his Affidavit on 16th June, 2016, *inter alia,* stating therein that save and except as stated in paragraphs 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 :

a) With reference to clause 11 of the scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to goodwill account of Transferee Company.

b) Clause 11.4 of the scheme provides for adjustment of differences in Accounting Policies between the Transferor Company and the Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard – 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 AS-5 etc.

c) *That the Registered Office of the Transferee Company is situated in the State of West Bengal. Hence the Transferee Company has to file similar Petition before the Hon'ble High Court of Kolkata for approving the said scheme.*

d) *That the Deponent further 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 returns filed by the Petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner company."*

9. So far as the observation in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through its counsel undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to goodwill account of Transferee Company.

10. So far as the observation in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through its counsel undertakes that in addition to the compliance of Accounting Standard 14, the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards.

11. So far as the objection of the Regional Director as stated in paragraph 6 (c) of his Affidavit is concerned, the Petitioner/Transferee Company through its counsel states that the Transferor Company has filed a similar Scheme before the High Court of Kolkata for approval of the same. The scheme will become effective from the date on which the Hon'ble Kolkata high Court grants sanction to the scheme in the petition filed by the Transferor Company.

12. So far as the objection of the Regional Director as stated in paragraph 6 (d) of his Affidavit is concerned, the Petitioner Company submits that the Petitioner is 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.

13. The Learned Counsel for Regional Director on instructions of S. Ramakanth, Joint Director in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company through their advocate. In view thereof, the said undertaking is accepted.

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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 319 of 2016 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (b).

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 this order.

17. Petitioner is directed to 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.

18. The Petitioner Company to pay costs of Rs. 10,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.

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

20. 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.

(B. P. COLABAWALLA, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer.