

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 576 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 414 OF 2016.

METALPLAST EXIM (INDIA) LIMITED

....Petitioner/ the First Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 577 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 415 OF 2016.

NICO PROPERTIES PRIVATE LIMITED

....Petitioner/ the Second Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 578 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 416 OF 2016.

AMAR FERRO METALS PRIVATE LIMITED

....Petitioner/ the Third Transferor Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 579 OF 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 417 OF 2016.
METEC ASIA LIMITED
....Petitioner/ the Fourth Transferor Company

WITH
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 580 OF 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 418 OF 2016
METALLOYS RECYCLING LIMITED
....Petitioner/ the Transferee
Company

In the matter of the Companies Act, 1 of 1956
and other relevant provisions of the
Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 and other relevant
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of
METALPLAST EXIM (INDIA) LIMITED, the First

Transferor Company and NICO PROPERTIES PRIVATE LIMITED, the Second Transferor Company and AMAR FERRO METALS PRIVATE LIMITED, the Third Transferor Company and METEC ASIA LIMITED, the Fourth Transferor Company with METALLOYS RECYCLING LIMITED, the Transferee Company

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

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

Vinod Sharma, the Official Liquidator.

CORAM: S. C Gupte, J.

DATE: 18th November, 2016

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Court is sought to a Scheme of Amalgamation of METALPLAST EXIM (INDIA) LIMITED, the First Transferor Company and NICO PROPERTIES PRIVATE LIMITED, the Second Transferor Company and AMAR FERRO METALS PRIVATE LIMITED, the Third Transferor Company and METEC ASIA LIMITED, the Fourth Transferor Company with METALLOYS RECYCLING LIMITED, the Transferee

Company, under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the First Transferor Company at present is in the business of trading in currency & commodity derivatives, besides processing & recycling of ferrous & non-ferrous metals and the Second Transferor Company at present is in the business of dealing in properties. Currently there is no Income and the Third Transferor Company at present is in the business to buy, sell or deal in all types of ferrous and non-ferrous metals and scraps thereof besides carrying on business as broker and traders in all commodities and commodity and the Fourth Transferor Company at present is in the business of trading of ferrous & non-ferrous metals and the Transferee Company at present is in the business of process, mine, extract, recycle, alter, improve, refine mix, buy, sell, import, export, deal and trade in the business of ferrous and non-ferrous metals. The proposed scheme of Amalgamation will have the benefit that the amalgamation will enable the transferee company to consolidate the businesses and lead to synergies in operations and create a stronger financial base and it would be advantageous to combine the activities and operations of all companies into a single Company for synergistic linkages and the benefit of combined financial resources and it will be reflected in the profitability of the Transferee Company and that the amalgamation will result in significant reduction in the multiplicity of

legal and regulatory compliances required at present to be carried out by the transferor companies and the transferee company.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The Learned Counsel for the Petitioners further states that Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.
6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit 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 rules made there under whichever is applicable. The said undertaking is accepted.
7. The Regional Director has filed an Affidavit on 18th day of October, 2016 stating therein, save and except as stated in paragraph 6, 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:-

“6. . That the Deponent further submits that,

- (i) The Petitioner Companies shall pass accounting entries as per Accounting Standards AS-5 and AS-14 as provided under section 133 of the Companies Act, 2013 and rules thereof. Therefore, Deponent prays that the Hon’ble Court may pass such orders as deem fit.*
- (ii) ROC-Mumbai had given observation as Transferee Company claim that it had not accepted any deposit, however, in the Balance Sheet as at 31.12.2015, in the note 7 deposit amount of Rs.2,05,000/- shown under liability side. The Company should have clarified the nature of deposit shown in the provisional Balance Sheet. Therefore, Deponent prays that the Hon’ble Court may ask for clarifications for the same.*
- (iii) 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 companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner companies.*
- (iv) The Deponent submits that the Transferee Company shall record the Reserves of the Transferor Company in the same form and at the same values as they appear in the financial statements of the Transferor Company at the close of business of the day immediately preceding the appointed date.*

8. So far as the observation in paragraph 6(i) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submit that the Petitioner Companies had accepted the pooling of interest method as set out in AS 14 however the Petitioner Companies should also pass accounting entries as mentioned in AS-5 of the Accounting Standards.

9. So far as the observation in paragraph 6(ii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submit that the deposit amount of Rs. 2,05,000 shown in Note 7 of the Balance Sheet as at 31.12.2015 is not liability but it shown on the asset side of the balance sheet and is deposit given by the Petitioner Company towards the electricity deposit.
10. So far as the observation in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. So far as the observation in paragraph 6(iv) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Transferee Company shall record the Reserves of the Transferor Company in the same form and at the same values as they appear in the financial statements of the Transferor Company at the close of business of the day immediately preceding the appointed date.
12. The Learned Counsel for Regional Director on instructions of Mr. Dalmiya, Deputy 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 Petitioners. The above undertakings are accepted.

13. The Official Liquidator has filed his report on 11th day of November, 2016 in Company Scheme Petition Nos. 576 to 579 of 2016 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violate of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 576 to 579 of 2016 are made absolute in terms of prayers clause (a) to (d) and 580 of 2016 is made absolute in terms of prayer clauses (a) to (c).
16. The Petitioner Companies to file 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 the Order.
17. The Petitioners are directed to file a certified copy of 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 Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition Nos. 576 to 579 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Cost 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 regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.