

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 785 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 680 OF 2015.
JAISINGH WIRES PRIVATE LIMITED
....Petitioner/ the First Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 786 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 681 OF 2015.
POLYCAB WIRES INDUSTRIES PRIVATE LIMITED
....Petitioner/ the Second Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 787 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 682 OF 2015.
POLYCAB ELECTRICAL INDUSTRIES PRIVATE LIMITED
....Petitioner/ the Third Transferor Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 788 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 683 OF 2015.
DATAR NOUVEAU ENERGIE TECHNIK LIMITED
....Petitioner/ the Fourth Transferor Company

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

AND

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

AND

In the matter of Scheme of Amalgamation of
JAISINGH WIRES PRIVATE LIMITED, the First
Transferor Company and POLYCAB WIRES
INDUSTRIES PRIVATE LIMITED, the Second
Transferor Company and POLYCAB ELECTRICAL
INDUSTRIES PRIVATE LIMITED, the Third
Transferor Company and DATAR NOUVEAU
ENERGIE TECHNIK LIMITED, the fourth
Transferor Company and POLYCAB
ELECTRONICS PRIVATE LIMITED, the fifth

Transferor Company with POLYCAB WIRES
PRIVATE LIMITED, the Transferee Company

Called for hearing

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

Mr. D.P. Singh i/b Mr. A.A. Ansari for the Regional Director.

Mr. Vinod Sharma, the Official Liquidator, present.

CORAM: K. R. Shriram, J.

DATE: 26th February, 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 JAISINGH WIRES PRIVATE LIMITED, the First Transferor Company and POLYCAB WIRES INDUSTRIES PRIVATE LIMITED, the Second Transferor Company and POLYCAB ELECTRICAL INDUSTRIES PRIVATE LIMITED, the Third Transferor Company and DATAR NOUVEAU ENERGIE TECHNIK LIMITED, the fourth Transferor Company and POLYCAB ELECTRONICS PRIVATE LIMITED, the fifth Transferor Company with POLYCAB WIRES PRIVATE 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 is engaged in the activities of manufacturing and /or dealing of cables and wires and the Second Transferor Company at present the Second Transferor Company is engaged in manufacturing and/or dealing of electrical cables, wires and instruments and the Third Transferor Company at present company is engaged in trading of consumer electrical products like fans, switches and lights and the Forth Transferor Company and at present company is engaged in manufacturing and/or dealing in a range of switchgears and related products. The proposed scheme of Amalgamation will have the benefit as per the opinion of the management that the amalgamation will result in simplification and consolidation of manufacturing activities and operations of all companies into a single Company for different product categories viz Cable, Wire, Fans, and Switchgears to ensure smooth business operations in future and it would be advantageous to centralize manufacturing as well as distribution activities of all companies which are currently diversified within group under different entities and this Scheme of amalgamation would result in ease in fund raising on account of large asset base and business operations and that the Amalgamation of the Transferor Companies with the Transferee Company will result in simplicity & reduction in regulatory compliances which shall improve the compliance culture & governance structure

and result in quick decision making and that the Amalgamation of the Transferor Companies with the Transferee Company will result in improved financial efficiency i.e financial resources shall be efficiently merged & pooled leading to more effective management of funds and rationalization of administrative & manpower expenses and overheads and this Scheme of amalgamation would result in synergistic integration of technical, operational, financial and other expertise & resources and that the Amalgamation of the Transferor Companies with the Transferee Company will result in greater internal control & functional integration at various levels such as information technology, human resources, legal, general management etc. leading to an efficient organization capable of responding swiftly to volatile and rapidly changing market scenarios and this Scheme of amalgamation would result in enhanced competitiveness & effectiveness in bidding for new projects due to combined credentials, experience and financial strength and that the Amalgamation of the Transferor Companies with the Transferee Company will result in better leveraging on large capital base, comprehensive range of products & services, extensive corporate & retail customer relationships & vast talent pool

4. The 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 Official Liquidator has filed his report on 16th day of December, 2015 in Company Scheme Petition Nos. 785 to 788 of 2015 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.
8. The Regional Director has filed an Affidavit on 24th day of November, 2015 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

(a) The Registered office of Fifth Transferor Company and Transferee Company is situated in the State of National Capital Territory of Delhi. Hence, present Scheme of Amalgamation between the Transferor Companies and Transferee Company will be subject to the condition of obtaining similar approval from Hon’ble High Court of Delhi in respect of Fifth Transferor Company and Transferee Company.

(b) The Deputy Commissioner of Income Tax, Central Circle-5(2), Mumbai vide para 2 of its letter dated 04/11/2015, has informed that, “Setting off and carrying forward of accumulated losses and unabsorbed depreciation by the Transferor Companies i.e., M/s Datar Nouveau Engietechnik Limited cannot be allowed in the hands of the amalgamated company, here the Transferee Company M/s Polycab Wires Private Limited as the conditions required to be adhered as per the provision of section 72A of the I.T Act, have not been fulfilled”. In this regard, it is respectfully submitted that the Tax, implication, if any, arising out of 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 returns filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Transferor Companies and Transferee Company.

9. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that the Fifth Transferor Company and the Transferee Company had already filed similar petition before the Hon'ble High Court of Delhi for approving the said scheme and the same is pending. The Learned Counsel for the Petitioner Company further submits that this Scheme of Amalgamation be approved subject to sanctioning of the said Scheme by Hon'ble High Court of Delhi.
10. So far as the observation in paragraph 6 (b) 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. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director Legal 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.

12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 785 to 788 of 2015 is made absolute in terms of prayers clause (a) to (d). Subject to approval by the Hon'ble High Court of Delhi.
14. 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.
15. 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.
16. 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. 785 to 788 of 2015 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.

17. Filing and issuance of the drawn up order is dispensed with.
18. 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.

(K. R. Shriram, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.