

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 73 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 931 OF 2015

Sulzer Chemtech Tower Field Services (India) Private Limited

...Transferor Company No.1 /Petitioner Company

In the matter of the Companies Act, 1956
 (1 of 1956) (or re-enactment thereof upon
 effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the
 Companies Act, 1956 (or any
 corresponding provision of Companies
 act, 2013 as may be notified);

AND

In the matter of Scheme of Amalgamation
 of Sulzer Chemtech Tower Field Services
 (India) Private Limited with Sulzer India
 Private Limited and their respective
 Shareholders and Creditors

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan and Ameya Lambhate,
 Advocates for the Petitioner

Mr. D. R. Shah, i/b. Panka Kapoor for the Regional Director in both
 Company Scheme Petition.

Mr. Vinod Sharma, Official Liquidator present in Company Scheme
 Petition Nos.73 of 2016.

Coram : S. C. Gupte, J.

Date : 29th April, 2016

P.C:-

1. Heard Advocate for the parties. No objectors have come before the Court to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Sulzer Chemtech Tower Field Services (India) Private Limited with Sulzer India Private Limited and their respective Shareholders and Creditors
3. Learned Advocate for the Petitioner Companies states that the Transferor Company is carrying on the business of providing Maintenance and Installation Services for the companies in oil and gas industries and the Transferee Company is carrying on the business of manufacturing of structured column packing, random packing, mixing process equipments, filtration equipments, rings, internals, trays etc. which forms integral part of the columns used in the refinery industry.
4. The proposed scheme of amalgamation of the Transferor Company with Transferee Company will have the benefit that the resources available with both the companies could be pooled together and the Transferee Company will be able to effectively utilize the same for the benefit of the Transferee Company on a larger scale and the operational costs will be reduced and the management will be able to operate and run the Transferee Company and the Transferor Company as a single unit more effectively and economically resulting in better results and synergies and the undertakings of the Transferor company would benefit for financial resources, and managerial, technical and marketing expertise of the Transferee Company and would bring in greater economies in scale of operations and will help in reducing expenditure considerable and will conducive to better and more efficient and economic control and conduct of the business of the Transferee Company and would be operational synergy in terms of procurement benefits, common license and reduction of administration work etc., for the Transferee

Company and it would result in the combined assets, man-power and cash flows of both the companies and enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility to market and meet consumer needs more effectively.

5. The Learned Advocate for the Petitioner Company states that the Petitioner Company is a wholly owned subsidiary of Transferee Company viz., Sulzer India Private Limited and no new shares are being issued and there will be no change in capital structure of the Transferee Company and the Scheme does not affect the rights of the members and interest of the creditors of the Transferee Company and does not involve any re-organization of the paid up Share Capital of the Transferee Company and in view of the judgement of this Hon'ble Court in Mahaamba Investment Limited V/s. IDI Limited (2001) Company Cases 105 filing of a separate Company Summons for Direction and Company Scheme Petition for sanction of the Scheme by Sulzer India Private Limited, Transferee Company was dispensed with vide order dated 18th December, 2015 passed in Company Summons for Direction No. 931 of 2015.
6. The Petitioner Companies have approved the Scheme of Amalgamation by passing Board Resolutions which are annexed to their Company Scheme Petition.
7. The Learned Advocate for the Petitioners further state that the Petitioner Company have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the Order passed in Company Summons for Direction.
8. The Learned Advocate appearing on behalf of the Petitioners have stated that the Petitioners 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 through its Advocate undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.

9. The Regional Director has filed an Affidavit on 21st April, 2016 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 reads as under:

“6. That the Deponent further submits that:-

(a) Clause No. 11.2 of the Scheme provides for amendment of object clause of the Memorandum of Association of the Transferee Company. In this connection, the Transferee Company may be directed to comply with provisions of Section 13(1),(6) and 15 of the Companies Act, 2013 and to file amended copy of Memorandum of Association alongwith Form No. 21 with the Registrar of Companies.

(b) 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.”

10. As far as the observations made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Petitioner Company undertake that the Transferee Company undertake to

comply with the provisions of section 13(1) & (6) read with section 15 of the Companies Act, 2013 and file amended copy of Memorandum of Association along with filing of necessary forms with the Registrar of Companies.

11. As far as the observations made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.
12. The Official Liquidator has filed his report on 22nd April, 2016 in Company Scheme Petition No. 73 of 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
13. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company 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, Company Scheme Petition No. 73 of 2016 is made absolute in terms of prayer clause (a), (b) and (d).
16. The Petitioner Company is directed 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 the order.

17. The Petitioner Company is further directed to file a copy of this order along with a copy of the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copies as per relevant provisions of the Companies Act, 1956/2013 whichever is applicable.
18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Official Liquidator, High Court, Bombay in Company Scheme Petition No.73 of 2016. Costs 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.

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