IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 100 of 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 827 OF 2015

Yogi Machining And Forging Private Limited. …Petitioner No. 1 / Transferor Company

AND

COMPANY SCHEME PETITION NO. 101 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 828 OF 2015

Kumars Autotech (Pune) Private Limited. ….Petitioner No. 2 / Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Act;

AND

In the matter of Scheme Amalgamation of Yogi Machining And Forging Private Limited (Transferor Company)

WITH

Kumars Autotech (Pune) Private Limited (Transferee Company)

AND

Their respective shareholders

Called for Hearing

Ms. Prachi Manekar, Advocates for the Petitioners.

Mr. Ashok Varma i/b, A. A. Ansari for the Regional Director.

Mr. Vinod Sharma, Official Liquidator present.

CORAM: B. P. Colabawalla, J.

DATE: 17th June 2016

P.C:

1. Heard Counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Section 391 to 394 of the Companies Act, 1956 to the scheme of Amalgamation Yogi Machining And Forging Private Limited with Kumars Autotech (Pune) Private Limited and their respective shareholders.

3. The Learned Counsel for the Petitioners states that the Petitioner No. 1 Transferor Company i.e. Yogi Machining And Forging Private Limited is currently carrying out no commercial activity. And the Petitioner No. 2 Transferee Company i.e. Kumars Autotech (Pune) Private Limited is engaged in the business of manufacturing ferrous and non-ferrous automobile and other engineering parts, machining of forging and press components.

4. The Learned Counsel for the Petitioners states that the proposed scheme will have the benefit of greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value, improved organizational capability and leadership, reduction in operational costs which can be put to the best advantage of the stakeholders, benefit of synergies and economies of scale cost savings are expected to flow

from more focused operational efforts and simplification of business processes, productivity improvements and rationalization of administrative expenses.

5. 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.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioners has 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 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 undertakings given by the Petitioner Companies are accepted.

8. The Official Liquidator has filed his report on 07/06/2016 in Company Scheme Petition No. 100 of 2016 stating therein that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 13/06/2016, stating therein, save and except as stated in para 6(a) and 6(b) thereof, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph 6(a) & (b), of the said Affidavit, the Regional Director has stated that:

a) *With reference to clause 13.1(v) 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) *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 observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner/ Transferee Company through their Counsel undertakes that surplus if any arising out of the scheme shall be credited to the Capital Reserve Account of the Transferee Company and deficit if any arising shall be debited to the goodwill account of Transferee Company.

11. As far as observations made in paragraph 6(b) of the Affidavit of the Regional Director are concerned, the Petitioner through their Counsel submits that the Petitioner is bound to comply with all the applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of amalgamation will be met and answered in accordance with law.

12. The Learned Counsel for the Regional Director on instructions of Mr. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Westerns Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 100 of 2016 filed by the Transferor Companies is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 101 of 2016 filed by the Transferee Company is made absolute in terms of prayer clause (a) to (b).

15. The Petitioner Companies are 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.

16. The Petitioner/ Transferee Company is further 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 physical copy, as per the relevant provisions of the Companies Act, 1956 / 2013, whichever is applicable.

17. The Petitioner Companies to pay costs of Rs. 10,000/- each to the Regional Director, Western Region Mumbai, in Company Scheme Petition No. 100 of 2016 and 101 of 2016 and the Petitioner Companies in the Company Scheme Petition No. 100 of 2016 to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

19. 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.)

C E R T I F I C A T E

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

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