IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2016

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.P. Nos. 486 and 487 of 2015

Sundaram Engineering Products Services Limited
A Company incorporated under the
Companies Act, 1956 and
having its registered office at
No.29, Haddows Road,
Chennai – 600 006
Represented by its Director,
Mr.R.S.Raghavan ..Petitioner/Transferor Company

Sundaram Investments Limited
A Company incorporated under the
Companies Act, 1956 and
having its registered office at
No.29(8), Haddows Road,
Chennai – 600 006
Represented by its Director,
Mr.H.Lakshmanan ..Petitioner/Transferee Company

Petition to sanction the Scheme of Amalgamation under Sections 391 to 394 of the Companies Act, 1956.

For Petitioner : Mr.T.K.Bhaskar

Mr.P.Atchuta Ramiah
Official Liquidator

Mr.G.Venkatesan,
Central Government Standing Counsel
for Regional Director,
Ministry of Company Affairs,
Chennai.

ORDER

Both these company petitions are filed under Sections 391 to 394 of the Companies Act, 1956, seeking for sanction of the scheme of amalgamation between the petitioner/transferor company, namely, Sundaram Engineering Products Services Limited with a transferee company, namely, Sundaram Investments Limited, with effect from 1st April, 2015 and to dissolve the petitioner Company without the procedure for winding up.

2.After admitting these petitions, notice to the Regional Director, Southern Region, Ministry of Corporate Affairs, Union of India, The Registrar of Companies, Chennai and Official Liquidator was issued.

3. Before presenting these Company Petitions, the transferor and transferee Companies separately filed Company Application Nos. 1092 and 1093 of 2015, seeking to dispensing with the convening, holding and conducting of the meeting of the equity shareholder of their Company for the purpose of considering the scheme of amalgamation.

4.On 28.10.2015, this court passed an order in both the above Company Application Nos.1092 and 1093 of 2015, dispensing with the convening of the meeting of the equity shareholders by taking note of the fact that there are 8 equity shareholders in the transferor company and 10 equity shareholders in the transferee company and all such shareholders have given their consent affidavits. Thus, this court after dispensing with the convening of the meeting of the equity shareholders, allowed the company petitioner to present these company petitions before this court.

5. After receiving notice, the Official Liquidator as well as the Regional Director filed their respective reports and affidavits before this Court. In the report of the Official Liquidator, it is stated that the examination of the records of the transferor Company with the Registrar of Companies shows no adverse objection affecting the interest of the Company or its members or creditors or prejudicial to the public interest was noticed. It is further stated in the report that the business of the transferor Company has not been carried on with intend to defraud or any other purpose or for any fraudulent purpose attracting the provisions of Section 542 of the Companies Act. Therefore, the Official Liquidator sought for passing appropriate orders on these applications.

6. The Regional Director in his affidavit has stated at para No. 11 that the scheme of amalgamation filed with the petitions have been examined and it has been decided not to make any objection to the

scheme, except the observations/ objections made in para No. 9 of the Affidavit. Para No. 9 of the Affidavit reads as follows:

> "9) It is respectfully submitted that clause 16 of the scheme provides that the name of the transferee company will be changed to "TVS Investments Limited" without going through the procedures laid down under the Companies Act, 2013 and rules framed thereunder. However the Company may be directed to follow the procedures by filing e-form before the ROC, Chennai."

7. Mr.T.K.Bhaskar, learned counsel appearing for the petitioner submitted that since, the amalgamation scheme has been passed with the consent of the 100% shareholders, as noticed by this Court, while dispensing with the convening of the meeting of both transferor and transferee companies and in view of the clause 16 of the Scheme of Amalgamation dealing with change of name of the transferee Company, which specifically contemplates deemed compliance with the Section 13 of the Companies Act, 2013, the Regional Director cannot once again direct the Company to follow the procedures by filing e-form, etc., for changing the company's name as TVS Investments Limited. He further submitted that the similar objection raised by the Regional Director in other similar matters was considered by this Court and rejected in C.P. Nos. 391 and 392 of 2014, dated 04.02.2015 reported in **[2015] 192 Comp Cas 152 (Mad)** and an unreported decision made in C.P. Nos. 299 and 300 of 2015, dated

13.10.2015. Thus, he contends that the issue involved in this case is squarely covered by these decisions.

8. On the other hand, the learned counsel appearing for the Regional Director submitted that what the Regional Director wanted the petitioner Company is to follow the procedure laid down under the Companies Act for effecting the name change and therefore, this Court can pass appropriate orders taking note of the said objection.

9. Heard both sides.

10. There is no dispute to the fact that the similar objection raised by the Regional Director in another case was considered by this Court and a decision was made overlooking the objections by taking note of the fact that the company therein has explained that the objection raised was not sustainable. Para Nos. 16 and 18 of the decision of this Court dated 04.02.2015, reads as follows;

> "16. Now coming to the objection of the Regional Director as to the change of name, it may be noted that as per clause 15 of the scheme, upon the scheme being sanctioned, the name of the transferee company shall be changed to "M/s. Michelin India P.Ltd.". Normally, but for the scheme presented under Section 391 of the Companies

Act, to effect such a change in the name of a company, the procedure under section 21 of the Companies Act as amended by Section 13 of the 2013 Act has to be complied with. However, in terms of the scheme passed by the requisite majority as laid down under Section 391 of the Companies Act complying with the procedure laid down thereon, I do not find that there exists any necessity to have a repeated exercise of the same in terms of Section 21 of the Act as amended by Section 13 of the 2013 Act....."

"18) It seems to me, on a closer reading of section 13 of the 2013 Act, as also section 21 of the Companies Act, 1956, to which I will presently refer that the amalgamation is principally an internal arrangement of the company for a mutual benefit in enlarging its capital base. Normally, the procedure under Section 21 of the Companies Act, as amended as section 13 of the 2013 Act, has to be complied with. However, it may be noted that on conversion, a company does not cease to exist to bring into existence any new company. In the scheme of things to emerge on an amalgamation, a transferor company is united with the transferee company. The scheme herein contemplates a change in their name. In the face of such facts, the question is whether the petitioner is to be subjected to the procedure under section 21 of the Companies Act, as amended as section 13 of the 2013 Act. This section requires special resolution to be passed on the proposed change of name of the company and the approval of the Central Government thereupon for changing the company's name. It may be noted that Chapter V is a complete code by itself on the subject of arrangement/ compromise and reconstruction comprehensive enough to include a change in the name consequent on the amalgamation or arrangement. Similar view was taken by this court in C.P.Nos.133 to 135 of 2006, dated August 19,2006 in the matter of K.P.R.Mill P.Ltd., and also in the decisions cited supra by learned senior counsel for the petitioners. Thus, the objection raised by the Regional Director is satisfactorily explained."

11. In Company Petition Nos. 299 and 300 of 2015, the learned Single Judge of this Court in the order made on 13th October, 2015, while considering the same objection, has observed as follows;

"The Regional Director, Ministry of Company Affairs has filed his report objecting the scheme as follows:-

" The Regional Director, Ministry of Company Affairs has filed his report objecting the scheme as follows:

Para 15 of Part B of the scheme of amalgamation contemplates to change the name of the transferee company as Polaris Banyan Holding Private Limited without going through the procedures enunciated under Section 13 and other applicable provisions of the Companies Act, 2013. This is objected to. The transferee company may be directed to go through the procedure enunciated under Section 13 and other applicable provisions and rules framed thereunder of the Companies Act, 2013."

Except the above objections the Regional Director has no other objection to the scheme being sanctioned and to the above objection, the learned counsel for the petitioner has given explanation and in view of the explanation submitted by the learned counsel for the petitioner and from the reading of the Sec. 13 of the Companies Act and this Court is of the view that the sole objection raised by the Regional Director is satisfactorily explained by the learned counsel for the petitioner. Moreover, the Official Liquidator has also filed his report along with the report of the Chartered Accountant and the report of the Chartered Accountant states that the transferor company has no unpaid or unclaimed dividends and hence, the question of commenting on compliance of Section 205 A of the Companies Act, 1956 does not arise."

12. In this case, as I have already pointed out, this Court while dispensing for the convening of the meeting of transferor and transferee company has taken note of the fact that 100% equity shareholders of both the companies have filed their consent affidavits. Thus, the scheme of amalgamation consented by the 100% equity shareholders also containing the clause for change of name of the transferee Company under clause 16 therein, makes it abundantly clear that there is no necessity for repeating the exercise once again for the purpose of change of the name of the company. Clause 16 of the scheme of amalgamation reads as follows:

"**<u>CHANGE OF NAME OF THE TRANSFREE COMPANY</u>**

> Upon the scheme becoming effective, without any further act or deed, the Transferee company shall be renamed as "TVS Investments Limited". The approval and consent of the Scheme by the Shareholders of the Transferee Company shall be deemed to be the approval of shareholders by way of special resolution for change of name as contemplated herein under Section 13 of the Companies Act, 2013 (corresponding Section 21 of the Companies Act, 1956). The sanction of this Scheme by the High Court shall be deemed to be compliance of Section 13 of the Companies Act, 2013 (corresponding Sections 21, 23 of the Companies Act, 1956) and other applicable provisions of the Act and the rules framed thereunder."

13. Therefore, I am of the view that since the only objection raised by the Regional Director at para No 9, has been fully explained by the petitioner with support of the decision made by this Court in other similarly situated matters, such objection can be rejected. In fact except this objection, it is specifically stated by the Regional Director that they have decided not to make any objection in the scheme.

14. I have further perused the scheme filed in the company petitions. The Scheme states that there is no objectionable feature in the scheme of amalgamation which is detrimental either to the employees of the

transferor company or of the transferee company. The said scheme is not violative of any statutory provisions. The scheme is fair, just, sound and is knot against any public policy or public interest. No proceedings are pending under sections 231 to 237 of the Companies Act, 1956. All the statutory provisions are complied with.

15. In view of the above stated discussion and the facts and circumstances of the present case and the decision made by this Court on earlier cases, both these Company Petitions are allowed.

16. Consequently, there shall be an order approving to the scheme of amalgamation of the transferor company Sundaram Engineering Products Services Limited, petitioner in C.P.No.486 of 2015 with the transferee company, Sundaram Investments Limited, petitioner in C.P.No.487 of 2015 with effect from 1st April, 2015 as the procedure laid down under Sections 391 and 394 of the companies Act are duly complied with. The transferor Company shall stand dissolved without winding up.

17. The learned Central Government Standing Counsel appearing for the Regional Director shall be paid a sum of Rs. 10,000/- (Rupees Ten Thousand only) from the Transferor Company.

rms/vsi 05.02.2016

K.RAVICHANDRABAABU.,J.

rms/vsi

C.P. No. 486 and 487 of 2015

05.02.2016