

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.08.2016

DELIVERED ON : 31.08.2016

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.144 and 145 of 2016

M/s.CMP-IR India Private Limited  
C-6, Phase - I,  
MEPZ, Tambaram, Chennai - 600 045.  
represented by its Director  
Mr.N.G.Nallasivam

.. Petitioner in C.P.No.144 of 2016  
/ Transferor Company

M/s.Seinsa Autofren India Private Limited  
C-7, Phase - I,  
MEPZ, SEZ, Tambaram, Chennai - 600 045.  
represented by its Director  
Mr.G.Selvaraj

.. Petitioner in C.P.No.145 of 2016  
/ Transferee Company

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

For Petitioners : Mr.R.Rajesh

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

Mr.Atchuta Ramaiah,  
Official Liquidator

**COMMON ORDER**

1. These company petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the transferor company with the transferee company with effect from 01.04.2015. The scheme of amalgamation (in short scheme) is appended as Annexure '5' to these petitions.

2. The petitioner in C.P.No.144 of 2016 is the transferor company and the petitioner in C.P.No.145 of 2016 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. It is stated that there is no secured creditor as far as transferor company as well as transferee company are concerned and the certificates of the Chartered Accountant confirming the same are appended as Annexure '7' to these petitions.

3.1. A copy of two separate resolutions dated 21.03.2016 and 16.03.2016 passed by the Board of Directors of both the transferor company as well as the transferee company respectively adopting the

scheme is enclosed as Annexure '4' to these petitions.

4. The affidavits of equity shareholders of both the transferor and the transferee company giving their consent to the scheme are appended as Annexure '9' to these petitions. This Court, by order dated 01.04.2016 passed in C.A.Nos.358 and 359 of 2016 dispensed with the convening, holding and conducting of the meeting of the shareholders of both the transferor and transferee company for the purpose of considering and if thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving amalgamation.

5. When the matter was called out on 11.08.2016, learned counsel for the petitioners placed before the Court two affidavits sworn by the Director of the petitioner companies respectively enclosing the list of unsecured creditors and their consents to the proposed scheme. Hence, this Court directed the learned Official Liquidator and the counsel for the Regional Director to examine the same and file a report.

5.1. Accordingly, learned Official Liquidator has filed a report dated 17.08.2016 observing as follows:

*"2. That the Official Liquidator hereby submits that on the scrutiny of the Balance Sheet as on 31.03.2015 and the affidavits filed by the Petitioner Company, it is observed that the Transferor Company M/s.CMP-IR India Private Limited does not have any secured and unsecured loans. It is also noticed that under the Head "Current Liabilities and Provisions", dues to Trade payable is shown as Rs.4,998,411/- and Short-term provisions is shown as Rs.10,081,739/-. The Petitioner Company has stated that the Transferor Company has only 7 (Seven) unsecured creditors as on 30/06/2016 and these unsecured creditors are only trade creditors and advances from customers. It is further observed that all the unsecured creditors of the Transferor Company as on 30/06/2016, except one of the unsecured creditor namely Tambaram Municipality have issued No Objection Certificates as regards to the proposed Scheme of Amalgamation. As regards Tambaram Municipality, the unsecured creditor has stated that the property tax for the 1st half of 2016-17 was already paid and the 2nd half of 2016-2017 has to be payable on October 2016."*

6. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report stating that he has no objection to the scheme being sanctioned.

7. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. Chartered Accountant, in his report, states that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to public interest, and that, he has not come across any act of misfeasance by the Directors attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant. In the absence of any inference that the affairs of the transferor company were being conducted in a manner prejudicial to the interest of its members or public interest, the Official Liquidator has filed his report before this Court for appropriate orders.

8. I have perused the proposed scheme filed along with the company petitions as also the affidavits placed on record. I find that the Scheme as proposed is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner companies. The said scheme, as framed, is not violative of any statutory provisions.

9. The scheme as formulated is fair, just, sound and is not contrary to any public policy or public interest. No proceedings appear

to be pending under the provisions of Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions appear to have been complied with.

10. Consequently, there shall be an order approving the scheme of amalgamation between the transferor company, viz., CMP-IR India Private Limited with the transferee company, viz., Seinsa Autofren India Private Limited, with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act.

11. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, the transferor company shall stand dissolved, albeit, without winding up.

12. It is made clear, that this order will not be construed as an order granting exemption from payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

13. The learned Senior Central Government Standing Counsel will be entitled to a fee of Rs.5,000/-, which shall be paid by the transferee company.

14. The above petitions are disposed of in the aforementioned terms.

Index: Yes / No  
Internet: Yes / No  
sl

31.08.2016

**RAJIV SHAKDHER,J.**

SI

Pre-Delivery Common Order in  
C.P.Nos.144 and 145 of 2016

Dated: 31.08.2016