IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.10.2016

DELIVERED ON: 07.11.2016

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.280 to 282 of 2016

Infastech Fastening Technologies India Private Limited
having its Registered Office at
Plot No. Oz-14, Oragadam Growth Centre,
Hi Tech SEZ, SIPCOT Industrial Growth Centre,
Oragadam – 602 105, Tamil Nadu
represented by its Director
Mr.Rangaraju Sivasubramaniyan
.. Petitioner in C.P.No.280 of 2016
/1st Transferor Company

Avfast (India) Private Limited
having its Registered Office at
No.55, Thandalam Village,
Sriperumbudur Taluk,
Kancheepuram – 605 105
Tamil Nadu, represented by its Director
Mr.Rangaraju Sivasubramaniyan
.. Petitioner in C.P.No.281 of 2016/
2nd Transferor Company

Stanley Engineered Fastening India Private Limited
having its Registered Office at
No.55, Thandalam Village,
Sriperumbudur Taluk,
Kancheepuram – 605 105, Tamil Nadu
represented by its Director
Mr.Arjun Sridharan
.. Petitioner in C.P.No.282 of 2016/
Transferee Company

Petitions filed under sections 391 to 394 read with section 100 of the Companies Act, 1956 read with Rules 11(a)(10) and 79 of the Company (Court) Rules, 1959, to sanction the scheme of amalgamation.

For Petitioners : Mr.N.P.Vijaykumar

Mr.D.Simon
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai

Mr.Arun Prasad
Asst. Official Liquidator

C O M M O N O R D E R

1. These Company Petitions are preferred under Sections 391 to 394 and Section 100 of the Companies Act, 1956, read with Rules 11(a)(10) and 79 of the Company (Court) Rules, 1959 for the purpose of seekingsanction of the proposed Scheme of amalgamation, with effect from the Appointed Date. The scheme of amalgamation (in short the Scheme) is appended as Annexure D to these petitions.

2. The petitioner in C.P.No.280 of 2016 is the 1st transferor company; the petitioner in C.P.No.281 of 2016 is the 2nd transferor company; while the petitioner in C.P.No.282 of 2016 is the transferee company.

3. It is stated that the transferor companies are wholly owned subsidiaries of the transferee company.

4. A perusal of the record shows that the petitioners have complied with the prescribed procedure. It is stated that there are no secured creditors in so far as the transferor companies and the transferee company are concerned. The certificates of the Chartered Accountant affirming the said position are appended as Annexure 'G' to these petitions.

4.1. Copies of three (3) separate resolutions of even date, i.e., 25.03.2016, passed by the Board of Directors of the transferor companies as well as the transferee company approving the scheme are enclosed as Annexure 'C' to these petitions.

5. The affidavits of equity shareholders of the transferor companies and the transferee company giving their consent to the proposed scheme are appended as Annexure 'F' to these Petitions.

5.1. This Court, in its order dated 01.07.2016, passed in C.A.Nos.514 to 516 of 2016, dispensed with the convening and holding of the meeting of the equity shareholders of the transferor companies and the transferee company respectively, to consider the proposed Scheme, inter alia, for the reason that its equity shareholders had given their consents to it.

5.2. As far as the unsecured creditors are concerned, it is stated that there are no unsecured creditors in so far as the 2nd transferor company is concerned. A Chartered Accountant's certificate dated 18.04.2016, affirming the same, is appended as Annexure H to C.P.No.281 of 2016.

5.3. Insofar as the unsecured creditors of the 1st transferor company is concerned, a perusal of the record shows that the 1st transferor company has unsecured creditors valued at Rs.4,34,35,936/-. A Chartered Accountant's certificate dated 18.04.2016, affirming the same, is appended as Annexure H to C.P.No.280 of 2016. Out of the total unsecured creditors, 51% of the unsecured creditors in number, representing 95% of the total owed amount, have given their consent to the proposed Scheme.

5.4. Insofar as the unsecured creditors of the transferee company are concerned, a perusal of the record shows that the transferee company has unsecured creditors valued at Rs.19,16,86,662/-. A Chartered Accountant's certificate dated 18.04.2016, affirming the same, is appended as Annexure H to C.P.No.282 of 2016.

5.5. The transferee company avers in its affidavit that, upon amalgamation, the transferee company's combined net worth would be Rs.190,91,46,573/- and, hence, the transferee company would be able to meet the claims of its unsecured creditors.

6. On a perusal of the Scheme, it is seen that the transferee company has proposed to reduce its share capital. It is averred that upon the Scheme being effective, the issued, subscribed and paid-up equity share capital of the transferee company amounting to Rs.771,905,400/-, divided into 7,719,054 equity shares of Rs.100/- each fully paid up, shall be reduced to Rs.77,190,540/- divided into 7,719,054 equity shares of Rs.10/- each fully paid up.

6.1. It is further averred that the reduction of the paid up equity share capital of the transferee company, as indicated above, does not entail any dimunition of liability, in respect of any un-paid share capital or, payment to the shareholders of any paid-up share capital or, payment in any other form, to the shareholders of the company. It is also averred that the transferee company ought not be required to add the words “and reduced” as a suffix to its name and that the transferee company should be permitted to continue to be described by its existing name in the given circumstances.

7. 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.

8. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. The report of the Chartered Accountant states that the affairs of the above transferor companies 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 material that the affairs of the transferor companies were being conducted in a manner prejudicial to the interest of its members or public interest, and in the absence of any comments that the affairs of the transferor companies had been conducted in a manner prejudicial to its members, the Official Liquidator has filed his report before this Court for orders.

9. I have perused the proposed Scheme filed along with the company petitions. 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.

9.1. 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 1st transferor company, viz., Infastech Fastening Technologies India Private Limited and 2nd transferor company, viz., Avfast (India) Private Limited with the transferee company, viz., Stanley Engineered Fastening India Private Limited, with effect from the Appointed Date, as per Sections 391 to 394 of the Companies Act, 1956.

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 above transferor companies 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 would be entitled to a fee of Rs.5,000/-, to be paid by the transferee company.

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

07.11.2016

sl

RAJIV SHAKDHER,J.

Sl

Pre-Delivery Order in
C.P.Nos.280 to 282 of 2016

Dated: 07.11.2016