

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

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The Honourable MR. JUSTICE T.S.SIVAGNANAM

Company Petition No.380 of 2016

Stahl India Private Limited .. Petitioner/Transferor Company
a Company registered under
Companies Act, 1956,
having its Registered Office at
1-A, Sargunar Salai, Nagalkeni
Chrompet, Chennai 600 044
represented by
Mr.S.Saravanan
Authorized Signatory

Company Petition is filed under Section 391 of the Companies
Act, 1956 praying

(a) That the Scheme of Arrangement between Stahl India Private Limited and their respective Compulsorily Convertible Debenture Holders and Shareholders, hereto, be sanctioned by sanctioned by the Hon'ble High Court or such other Tribunal (i.e) the National Company Law Tribunal (NCLT) and/or the National Company Law Appellate Tribunal (NCLAT) with effect from the effective date (as defined under clause 1.2 of the Scheme) so as to be binding on all the shareholders and creditors of the Petitioner Company namely, Stahl India Private Limited and on the said petitioner company.

For Petitioner	: Mr.P.H.Aravind Pandian Senior Counsel for Mr.Harishankar Mani
For Regional Director, Ministry of Corporate Affairs, Chennai (in both C.Ps)	: Mr.D.Ramesh Kumar, CGSC
Official Liquidator	: Mr.P.Atchutha Ramiah

ORDER

The Company Petition is filed under Section 391 of the Companies Act, 1956 for sanctioning the Scheme of Amalgamation of the transferor Company with their respective Compulsorily Convertible Debenture Holders and Shareholders with effect from the Effective Date (as defined under clause 1.2 of the Scheme). The Scheme of Amalgamation is annexed in the typed set of papers.

2. The petitioner is the transferor company and M/s Stahl Netherlands BV is the Compulsory Convertible Debenture Holders.

3. Heard Mr.P.H.Aravind Pandian, learned Senior counsel for the petitioner-Company, Mr.P.Atchutha Ramiah, learned Official Liquidator and Mr.D.Ramesh Kumar, learned Central Government Standing Counsel for the Regional Director (Southern Region), Ministry of Corporate Affairs, Chennai.

4. This Court, in Comp.A.Nos.811 and 812 of 2016, on 12.09.2016, had already dispensed with the requirement to convene the meeting of the equity shareholders of the transferor company and M/s Stahl Netherlands BV, the Compulsory Convertible Debenture Holders. Therefore, the consent affidavits of all the equity shareholders and the consent affidavits of the Compulsorily Convertible Debenture Holders have been filed and the respective consent affidavits have been annexed in the petitions. No objection certificate from 9 unsecured creditors have also been filed in the typed set of papers. In the transferor company, there are no secured creditors and the Chartered Accountants Certificates certifying to that effect have been filed.

5. I have perused the proposed Scheme filed along with the company petition. The Scheme involves buy back of shares from the shareholders. I find that the Scheme proposed is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner company. The said scheme as framed is not violative of any statutory provisions.

6. 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.

7. On notice, the Regional Director of Corporate Affairs has filed an affidavit dated 09.12.2016. In the said affidavit, the Regional Director has referred to a report submitted by the Registrar of Companies, wherein it has been stated that the provisions of Section 67 of the Companies Act, 2013, (the Act) does not allow buy back of shares and provisions of section 68 of the Act provides for the buy back shares and hence the company should have come under the provisions of Section 68 of the Act and not come under the provisions of Section 391 of the Act which is against public policy. However, clause 4.5 of the Scheme has stated that the company proposed to undertake the buy back through this Scheme since the proposed capital repayment (buy back) is in excess of the limits prescribed under the Section 68(3) of the Companies Act, 2013. It is a fact that the scheme proposes to buy back not exceeding 50% of the equity shares post conversion of the CCDs. After referring to the above contention raised by the Registrar of Companies, the report refers to certain decisions rendered by other High Courts on the subject. After referring to those decisions, the Regional Director has recorded his opinion as hereunder:-

"12. It is also pertinent here to submit that this Hon'ble High Court in a similar case viz., M/s Cognizant Technology Solutions India Private Ltd., vide its order dt.18.4.2016 has held that the scheme as framed is not violative of any statutory provisions and that it is fair, just, sound and is not contrary to any public policy or public interest.

13. It is submitted that the order of the Hon'ble High Courts of Bombay, New Delhi and Madraas has covered all the questions/issues raised by ROC, Chennai, which is referred in para 9 of this affidavit including the wide scope of the provisions of Section 391 of the Act".

8. In view of the above, there shall be an order approving the Scheme of Amalgamation between the transferor company and their respective Compulsorily Convertible Debenture Holders and Shareholders with effect from the Appointed Date subject to the compliance with the extant provisions of law including Sections 391 to 394 of the Companies Act, 1956. The petition is allowed.

9. The learned Central Government Standing Counsel appearing on behalf of the Regional Director is entitled to a fee of Rs.5,000/- from the petitioner company.

14.12.2016

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T.S.SIVAGNANAM,J.

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