IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.208 of 2015 (O&M)
Date of Decision: 29.07.2016

IN THE MATTER OF:
SCHEME OF AMALGAMATION:

KEC METALLICS PRIVATE LIMITED

. . . . Petitioner No. I/Transferor Company

WITH

KAMAL ENCON INDUSTRIES LIMITED

. . . . Petitioner No. 2/Transferee Company

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Arun Saxena, Advocate, with
Mr.Praveen Gupta, Advocate,
for the petitioner-Transferee Company

Mr.Deepak Aggarwal, Advocate, with
Mr.D.K. Singh, Official Liquidator.

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RAKESH KUMAR JAIN, J.

This petition is filed under Section 391 to 394 of the Companies Act, 1956 [for short 'the Act'], duly supported by an affidavit of the petitioner-Companies, seeking sanction of the Scheme of Amalgamation (Annexure P-1) [for short 'the Scheme'].

The main objects of the petitioners-Transferor & Transferee Companies are detailed in their respective Memorandum and Articles of Association, which are annexed with the petition as Annexures P-2 and P-4, respectively.

The Registered Office of the Petitioner No.1/Transferor Company and Petitioner No.2/Transferee Company is at Yamuna Nagar, Haryana.

The Board of Directors of the Petitioner No.1/Transferor Company and Petitioner No.2/Transferee have approved the Scheme in their respective board meetings held on 30.06.2015. Copy of the

Board Resolution is annexed at Annexures P-6 & P-7, respectively.

Earlier, the petitioner-Transferor and Transferee Compaies had approached this Court by way of Company Petition No.174 of 2015 and vide order passed on 09.10.2015 therein, holding of meetings of the Equity Shareholders of the Transferor and Transferee Companies and Secured Creditors of the Petitioner-Transferee Company and Unsecured Creditors of Petitioner No.1/Transferor Company were dispensed with. It was also ordered that since there are no Secured Creditors of the petitioner No.1/Transferor Company, therefore, no meeting is required. The first motion petition was disposed of accordingly.

Notice of the present petition was issued on 07.12.2015 to the Regional Director, Ministry of Corporate Affairs, Noida and the Official Liquidator and was also ordered to be published in the newspapers, namely, 'Indian Express' (English) and 'Jansatta' (Hindi) both Haryana Edition as well as in the official gazette of Government of Haryana and was also ordered to be uploaded on the official website of the Official Liquidator. The said order has been complied with and the affidavit of Publication dated 14.3.2016 has been placed on record.

The Official Liquidator has filed his report dated 26.04.2016. The Official Liquidator, on the basis of the report of M/s KJMA & Associates, Chartered Accountant, has raised no objection by observing that the affairs of the Transferor company had not been conducted in a manner prejudicial to the interest of its Members, Creditors or to the public at large.

The Official Liquidator has filed report by way of a representation/affidavit of A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, dated 25.04.2016 has been placed on record, in which the Regional Director has raised objection at Para No.7 that the Transferee Company has approved the Scheme of Amalgamation in its Board meeting held on 30.6.2015 but the Resolution (e-form MGT-14) has not been filed in the office of Registrar of Companies within the prescribed time. He has also stated in para 7(ii) of the representation/affidavit that the company has not provided the valuation report on the basis of share exchange ratio. He has also made the following averments in para No.8 of his representation/affidavit: -

> *"That the deponent states that in response to the Deponents letter dated 8.1.2016 issued to the Income Tax Department requesting to offer their comments, letter dated 20.1.2016 has been received from Dy. Commissioner of Income Tax, Circle, Yamuna Nagar, Jagadhri stating that a total demand of Rs.2,54,54,146/- is outstanding against M/s Kamal Encon Industries Ltd. (Transferee Company) for the A.Y. 2008-09, 2009-10 and 2013-14. It has been further stated that the provision for the above outstanding demand may be made while finalizing the scheme of amalgamation between M/s KEC Metallics Pvt. Ltd. and M/s Kamal Encon Industries Ltd. A copy of letter dated 20.1.2016 of the*

IT Department is attached herewith an marked as Exhibit-C for kind perusal of the Hon'ble Court."

In response to the aforesaid observations made by the Regional Director in para No.7(i) & 8 of his representation/affidavit, Rajinder Mohan Gadh, Director of the Transferee Company has filed his affidavit dated 20.5.2016 with the following averments: -

"4. That is stated that copy of board resolution dated 30.6.2015 attached with Forum-MGT 14 has been duly filed by petitioner No.2/Transferee Company on 23.4.2015 vide SRN: G01688795. That copy of Form MGT-14 along with copy of chalan & SRN generated has been duly annexed herewith this affidavit and marked as Annexure: A.

5. That vide para 8 of said RD report, the statement of Dy. Commissioner Income Tax, Circle, Yamuna Nagar, Jagadhri has been produced by Ld. Regional Director to the effect that "a total demand of ₹2,54,54,146/- is outstanding against M/s Kamal Encon Industries Ltd.

6. That in respect of aforesaid it is stated that the said income tax demand has been raised by Dy. Commissioner is pursuant to Reassessments for AY 2008-

09 & 2009-10 and Regular Assessment for AY 2013-14 of Transferee Company.

7. That it is further stated that the appeals have been filed with the Commissioner of Income Tax (Appeals) Panchkula by the Transferee Company and are pending adjudication. The details of appeals so filed are as under: -

Assessment Year	*Appeal Filed with*	*Date of Filing of Appeal*	*Appeal No.*
2008-09	*CT (A) Panchkula*	*15.04.2015*	*52/YN/15-16*
2009-10	*CIT (A) Panchkula*	*15.04.2015*	*53/YN/15-16*
2013-14	*CIT (A) Panchkula*	*27.01.2015*	*254/YNR/15-16*

8. That it is further stated that vide order dated 30.7.2015 Principal Commissioner of Income Tax, Panchkula, directed the transferee company to pay the installments of Rs.10 lakhs per month starting from August 2015 till December 2015 & subject to the payment of said monthly installments the Balance Demand was stayed till 31.12.2015 or the decision of Tribunal, whichever is earlier. That copy of the said order is being annexed herewith and marked as Annexure : B."

9. That it is stated that in compliance of said order dated 31.12.2015 Transferee Company has already deposited/paid ₹70 *lakhs i.e. approximately 27.50% of total tax demand raised by the department.*

10. That it is further stated that an application dated 15th April 2016 has been filed with the Assessing Officer in view of the Office Memorandum issued by the CBDT dated 29.2.2016, modifying instruction No.1914 dated 21.03.1996, directing the assessing officers to stay the outstanding demands in case 15% of tax is paid. That as the Transferee Company has paid much more than 15% (approximately 27.50%) of total outstanding demand & the stay is likely to be granted soon. Copy of the stay application is also being annexed and marked as Annexure : C.

11. That it is tated that the Transferee Company is a law abiding entity & is the surviving /resulting company in the process of present Amalgamation and undertakes to pay all its legal liabilities arising in the due course of business which includes the statutory tax demands once finalized/adjudicated as per the due process of law.

In response to the observations made by the Regional Director in para No.7(ii) of his representation/affidavit, Rajinder

Mohan Gadh, Director of the Transferor Company has filed his affidavit dated 20.5.2016. In para No.8 of which he has stated that *"copy of said valuation report was duly served upon the office of Regional Director, Northern Region, by Petitioner Company vide its reply towards the query letter issued by said Directorate. That copy of covering letter dated 23rd Feb 2016 addressed to Registrar of Companies along with which copy of petition/application with all the annexures was duly served, in pursuance of Regional Director's directions is annexed herewith and marked as Annexure :B.* In para 9, he has further averred that "*once the compliance of said direction of Regional Director's Officer, in letter and spirit, is done by the petitioner company no deficiency in said respect could be attributed to it".* It is also averred in para 11 that *"copy of valuation report alongwith accounting calculation as well as justification thereof has been also annexed with first motion. Company Petition No.174 of 2015 and is part of court records."*

The above stated explanations submitted by Rajinder Mohan Gadh, Director of both the Transferor and Transferee Companies by way of his affidavits dated 20.5.2016 meets with the queries raised by the Regional Director.

It is further submitted by counsel for the petitioner No.2/Transferee Company that neither there are any investigation proceedings against the Petitioner-Companies under Sections 235 to 251 of the Act nor under any of the provisions of the Companies Act, 1956 and / or applicable provisions of the Companies Act, 2013.

For the reasons mentioned hereinabove and on the consideration of all the relevant facts and the procedural requirements contemplated under Sections 391 & 394 of the Act and the relevant Rules and on due consideration of the report of the Regional Director Northern, Ministry of Corporate Affairs, New Delhi and Official Liquidator, the Scheme of Amalgamation is hereby sanctioned and as a result thereof, the assets and liabilities of Transferor Company shall stand vested in the Transferee Company and the Transferor Company shall be dissolved without being wound up.

The Scheme shall be binding on the Transferor and Transferee Companies, their respective shareholders, creditors and all concerned.

Let formal order of sanction of the Scheme be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

A notice of the order be published in the newspapers, namely, Indian Express (English), Jansatta (Hindi) both Haryana Edition and in the official gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the petitioner-Transferor and Transferee Companies states that the petitioner-Companies would voluntarily deposit a sum of ₹1,00,000/- jointly in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
JUDGE

29.07.2016
Vivek

WHETHER SPEAKING/REASONED YES/NO
WHETHER REPORTABLE YES/NO