IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CP No.232 of 2015 (O&M)
connected with CP No.207 of 2015
Date of Decision:-06.12.2016

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IN THE MATTER OF

THE SCHEME OF AMALGAMATION BETWEEN

SUCON INDIA LIMITED

….. Applicant/Transferor Company

With

AKRITI GLOBAL TRADERS LIMITED

….. Applicant/Transferee Company

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Anand Chhibber, Sr. Advocate, with
Ms.Riya Bansal, Advocate,
for the petitioner-companies.

Mr.D.K. Singh, Official Liquidator.

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RAKESH KUMAR JAIN, J.

This petition is filed under Sections 391-394 of the Companies Act, 1956 [for short 'the Act'] and Rule 9 of the Companies (Court) Rules, 1959 [for short 'the Rules'], duly supported by affidavits of the Petitioner-Transferor and Transferee Company, seeking sanction of the Scheme of Amalgamation (Annexure P-1) [for short 'the Scheme'].

The Registered Office of the Transferor and Transferee Company is situated at Faridabad, Haryana.

The Board of Directors of both the Transferee and Transferor Company have approved the Scheme in their respective meetings held on 08.10.2015 respectively, vide Resolutions at Annexure P-2 & P-3.

Earlier, both the Transferor and Transferee Companies had approached this Court by way of a Company Petition No.207 of 2015 and vide order dated 01.12.2015 passed therein, holding of meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Petitioner-Transferor and Transferee Company were dispensed with and the Ist Motion petition was disposed of accordingly.

Notice of the present petition was issued on 22.12.2015 to the Regional Director, Ministry of Corporate Affairs, New Delhi and the Official Liquidator and was also ordered to be published in the newspapers, namely, 'Indian Express' (English) and 'Jansatta' (Hindi), both Delhi/NCR 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.

Pursuant to the aforesaid orders, affidavit of Publication dated 19.03.2016 has been placed on record.

Official Liquidator has filed his report dated 09.05.2016. The Official Liquidator, on the basis of the report of the M/s Bhutoria Ganesan & Co., Chartered Accountant has raised no objection by observing that the affairs of the company are conducted in the manner not prejudicial to the members or to the public interest.

However, the report, by way of an affidavit/representation of A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, dated 12.05.2016 has been placed on record, in which he has raised following queries in paras 10, 11 & 13 : -

"10. That the deponent states that the Registrar of Companies vide his above referred report has informed that the Transferee company has not appointed Whole Time Company Secretary, thus there is a prima facie violation under Section 383A of the Companies Act, 1956. Registrar of Companies, Delhi has been instructed to take up the matter of non-compliance of aforesaid section and furnish his report.

11. That the deponent states that query letter issued by this Directorate vide letter No.6/19/T-3/2016/12911 dated 25.02.2016 has been returned by postal authorities with remarks "on inquiry in the village of addressee, the addressee could not be traced". In this regard also Registrar of Companies Delhi has been instructed to take up the matter with the company for non-maintenance of registered office and furnish his report.

13. That the deponent states the Hon'ble Court may direct the Petitioner Companies to comply with the provisions of the Accounting Standard 14 as prescribed under Section 211(3C) of the Companies Act, 1956 and under Section 133 of the Companies Act,

> *2013 as stated in clause 4 of the Scheme of Amalgamation.”*

In response to the aforesaid queries raised by the Regional Director, reply by way of an affidavit dated 17.5.2016 of Parmod Kumar, Director of Transferee Company has been filed in which following averments have been made: -

> *“2. That the Ld. Regional Director in its affidavit at Para No.10 has stated that the Transferee Company has not appointed Whole Time Company Secretary under Section 383A of the Companies Act, 1956. In response to the said query of the Ld. Regional Director, The Transferee Company has already submitted an affidavit dated 6th April, 2016 to the good offices of Ld. Regional Director, stating that the Transferee Company had appointed a Whole Time Company Secretary, Mr. Vishnu Arora, s/o Naresh Arora, bearing membership No.39881, who resigned from the Company on 16th December, 2015 and the Company is in process to appoint a new Company Secretary. The E-Form filed by the Transferee Company for the resignation of Mr.Vishnu Arora along with its challan was also attached with the affidavit submitted with the Ld. Regional Director.*

That in any case even after the present amalgamation, the Transferee Company will continue to be in existence. The Transferee Company undertakes to deal with any non-compliance, if any left after the present amalgamation, in accordance with law. A copy of affidavit filed by the Transferee Company with the offices of the Regional Director, Northern Region, is annexed herewith and marked as "Annexure A-1.

3. Further, at para No.11 of the affidavit of the Regional Director, Northern Region, it has been stated that, its good offices sent a query letter vide its letter No.6/19/T-3/2016/12911 dated 25.02.2016, which has been returned by the postal authorities with remarks "on inquiry in the village of addressee, the addressee could not be traced". In response to the said query, the Transferee Company has filed an affidavit dated 6th April, 2016, stating that the Transferee Company is maintaining the registered office as per the provisions of Section 12 of the Companies Act, 2013 and that any letter or correspondence for the

Transferee Company is being received at its registered office address only. The Transferee Company has kept caretakers on its registered office who receives or collects all the letter or correspondence of the Transferee Company. The reason that the letter of Regional Director, Northern Region, was not delivered, may be because the caretakers were on leave. A copy of affidavit filed by the Transferee Company with the offices of the Regional Director, Northern Region, is annexed herewith and marked as "Annexure A-2"

Further, it is submitted that in any case even after the present amalgamation, the Transferee Company will continue to be in existence. The Transferee Company undertakes to deal with any non-compliance, if any left after the present amalgamation, in accordance with law."

On 18.10.2016, following order was passed by this Court: -

"Mr.Thakur has submitted that since the transferee company was not

maintaining the registered office, therefore a penalty of ₹1 lac was imposed by the Registrar of Companies. He prays for two weeks' time to revert back after paying the said penalty.

Adjourned to 18.11.2016."

Learned counsel for the petitioner-Companies has produced an affidavit of Dharam Pal, Whole Time Director of the Transferor Company dated 15.11.2016 stating that the Transferor Company and its Directors have deposited the penalty amount with the appropriate authority with respect to the penalty order dated 15.09.2016, subject to the outcome of the appeal filed by the Transferor Company before Regional Director (NR), Ministry of Corporate Affairs, Delhi.

The explanations submitted by Parmod Kumar, Director of the Transferee Company and Dharam Pal, Whole Time Directors of the Transferor Company in their affidavits dated 17.5.2016 and 15.11.2016, respectively, meets with the queries raised by the Regional Director.

It is further submitted by counsel for the petitioner-Companies that no proceedings under Sections 235 to 251 of the Act are pending against the petitioner-Companies.

Thus, 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, the relevant Rules and on due consideration of the report of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and the Official Liquidator, the

Scheme of Amalgamation is hereby sanctioned and as a result thereof, all the assets and liabilities of the Transferor Company shall stand vested in the Transferee Company and the Transferor Company shall be dissolved without being wound up.

The Scheme of Amalgamation shall be binding on both the Transferor and Transferee Company, their respective shareholders, creditors and all concerned.

Let a formal order of sanction of the Scheme of Amalgamation 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, 'India Express' (English), 'Jansatta' (Hindi) both Delhi/NCR editions 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 Applicant/Transferee Company has stated that the Applicant/Transferee Company would voluntarily deposit a sum of ₹50,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
JUDGE

06.12.2016
Vivek

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*