

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 88/2015

Reserved on 2nd August, 2016
Date of pronouncement: 29th August, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Petition under Sections 391(2) & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Ganges Concast Industries Limited

Non-petitioner/Transferor Company

WITH

Salasar Stainless Limited

Petitioner/Transferee Company

**Through Mr. Rajeev K. Goel, Advocate
for the petitioners**

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 by the petitioner/transferee company seeking sanction of the Scheme of Amalgamation of Ganges Concast Industries Limited (hereinafter referred to as the transferor company) with Salasar Stainless Limited (hereinafter referred to as the petitioner/transferee company).

2. The registered office of the petitioner/transferee company is situated at New Delhi, within the jurisdiction of this Court. However, the

registered office of the transferor company is situated at Uttar Pradesh, outside the jurisdiction of this court. Learned counsel for the petitioner has submitted that a separate petition has been filed by the transferor company in the court of competent jurisdiction seeking sanction of the Scheme of Amalgamation in respect of the transferor company.

3. The petitioner/transferee company was incorporated under the Companies Act, 1956 on 9th April, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorized share capital of the petitioner/transferee company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.4,99,90,000/- divided into 49,99,000 equity shares of Rs.10/- each.

5. Copy of the Memorandum and Articles of Association of the petitioner/transferee company has been filed on record with the application, being CA(M) 15/2015, earlier filed by the petitioner. The audited balance sheet, as on 31st March, 2014, of the petitioner/transferee company, along with the report of the auditors, had also been filed.

6. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is submitted by the petitioner that the transferor company is a wholly owned subsidiary of the transferee company and the proposed amalgamation would result in business synergy, pooling of resources and consolidation of these companies. It is claimed that the proposed amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resources and enhancement of overall business efficiency. It will enable these companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

7. So far as the share exchange ratio is concerned, the Scheme provides that since the transferor company is a wholly owned subsidiary of the transferee company, no shares will be issued by the transferee company pursuant to this Scheme.

8. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner company.

9. The Board of Directors of the petitioner/transferee company in their meetings held on 20th December, 2014 have unanimously approved the proposed Scheme of Amalgamation. A copy of the Resolution passed at the meeting of the Board of Directors of the petitioner/transferee company has been placed on record.

10. The petitioner/transferee company had earlier filed CA (M) No. 15/2015 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 6th February, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the petitioner/transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

11. The petitioner/transferee company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 28th September, 2015, notice in the petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Citations were also directed to be published in 'Business

Standard' (English) and (Hindi) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 24th November, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

12. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 8th February, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner. He has further submitted that the transferor company, which is going to be dissolved pursuant to this Scheme is outside the jurisdiction of this Court.

13. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 8th February, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation subject to compliance of provisions of section 117(3) and 179(3) of the Companies Act, 2013 by the petitioner/transferee company. The Regional Director in para 7 of this report has submitted that the

Board of Directors of the petitioner/transferee company have approved the proposed Scheme in their Board meeting held on 20.12.2014. Accordingly, in terms of provisions of Section 117(3) read with 179(3) of the Companies Act, 2013, the company is required to file such resolution (e-form MGT-14) with the ROC within 30 days of passing the resolution whereas the company has not yet filed the said resolution thereby prima facie violated the provisions of Section 117(3) of the Companies Act, 2013.

14. In response to the aforesaid observation, the petitioner/transferee company in the affidavit dated 12th July, 2016 of Mr. Alok Kumar, Director of the petitioner/transferee company, has submitted that the petitioner company has moved an application to the Central Government, Ministry of Corporate Affairs, New Delhi seeking condonation of delay in filing e-form MGT-14 and undertakes to file the same immediately on receipt of the requisite approval from the Central Government. It has been further submitted that the petitioner/transferee company is not the subject matter of dissolution and will remain in existence even after the sanction of the Scheme. Therefore, if the company fails to file the e-Form MGT-14, the ROC may initiate appropriate proceedings against the petitioner company for non filing of e-Form MGT-14. The undertaking given by the petitioner/transferee company to file e-Form MGT-14 on receipt of approval from the Central Government is accepted. In case of any default

by the company, the ROC would be at liberty to take appropriate action, as permissible in law, against the petitioner company.

15. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner/transferee company, in the affidavit dated 2nd February, 2016 of Mr. Shashank Agarwal, Managing Director of the petitioner/transferee company, has submitted that neither the petitioner company nor its counsel have received any objection pursuant to the citations published in the newspapers on 24th November, 2015.

16. Considering the approval accorded by the equity shareholders and creditors of the petitioner/transferee company to the proposed Scheme of Amalgamation and the affidavits filed by the Official Liquidator and the Regional Director, Northern Region, not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, subject to sanction of the Scheme from the court of competent jurisdiction in respect of the transferor company, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner/transferee company will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from

payment of stamp duty as payable in accordance with law. The sanction of the Scheme will be effective from the appointed date of amalgamation, i.e. 1st April, 2014.

17. Learned counsel for the Official Liquidator prays that costs of at least Rs.50,000/- should be paid by the petitioner keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to him. As already directed vide order dated 02.08.2016, the petitioner shall deposit a sum of Rs.50,000/- by way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

18. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 29, 2016