

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 340/2015

Reserved on 18th July, 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) to 394 of the
Companies Act, 1956**

Scheme of Merger of:

Clyde Bergemann Beekay India Private Limited

Petitioner/Transferor Company

WITH

Clyde Bergemann India Private Limited

Petitioner/Transferee Company

**Through Mr. Kamal Ahuja, Advocate
for the petitioners**

**Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director**

**Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391(2) to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Merger of Clyde Bergemann Beekay India Private Limited (hereinafter referred to as the transferor company) with Clyde Bergemann India Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was incorporated under the Companies Act, 1956 on 15th December, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 23rd April, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.17,20,50,000/- divided into 1,72,05,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.15,07,47,900/- divided into 1,50,74,790 equity shares of Rs.10/- each.

7. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the

joint applicant, being CA(M) 79/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

8. A copy of the Scheme of Merger 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 petitioners that the transferor and transferee companies are in partnership business. The shares held by BSBK Engineers Private Limited in the transferor company were transferred to the transferee company thereby the transferor company became the wholly owned subsidiary of the transferee company. It is claimed that the proposed merger will lead to the pooling of expertise and financial resources and more efficient use of existing resources for the benefit of the shareholders and less cost to the company. It is further claimed that the merger will facilitate operation on broader scale and allocation of resources to more productive and profitable use leading to economies of scale, which will in turn result in larger earnings for the stakeholders.

9. 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, therefore, upon the Scheme becoming

effective, the transferee company will not issue shares to itself and the share capital of the transferee company will remain unaffected and the inter-company shareholding will stand cancelled.

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

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 30th January 2015 have unanimously approved the proposed Scheme of Merger. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies had been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 79/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Merger. Vide order dated 25th May, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and creditors of the transferor and transferee companies, there being no secured creditor of

the transferor company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Merger.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Merger. Vide order dated 17th July, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and (Hindi) Delhi editions. Affidavit of service has been filed by the petitioner 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 1st August, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. 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 5th November, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Merger from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial

to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. 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 9th December, 2015. Relying on Clause 8 of the Scheme, he has stated that as on the effective date, there will be no employees of the transferor company. He has further submitted that in Clause 14.1 of the Scheme, it has been stated that the transferee company will follow the pooling of interest method of accounting as prescribed under the Accounting Standard-14 as notified under the Companies (Accounting Standards) Rules, 2006. He further submitted that in Clause 9 of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

16. Although the Regional Director has not raised any objection to the proposed Scheme, but in para 10 of his report he has stated that even though the transferor company is a wholly owned subsidiary of the transferee company but in para 12 of the Scheme there is a proposal to issue 0.15 new equity shares of Rs.10/- each in the transferee company for every 01 equity share of Rs.10/- each held by the members in the transferor company. The Regional Director has submitted that it is not

understood as to how the transferee company can issue shares to its own.

17. In response to the aforesaid observation, the petitioner companies have filed an application being CA 834/2016 stating that the provisions in respect of issuance of fresh shares pursuant to amalgamation of transferor company into the transferee company and share exchange ratio were inadvertently included in the Scheme, which are not applicable to the present merger. The petitioner, therefore, sought an amendment to the Scheme by deleting clauses 12 & 13 of the Scheme and amending clause 11 of the Scheme. The said amended Scheme was approved by the Board of Directors of the petitioner companies in their Board Meeting held on 21st January, 2016. Copies of the said Board Resolutions have been placed on record along with the amended Scheme of Merger. The application was allowed by this Court vide order dated 18.07.2016 and the amended Scheme of Merger was taken on record. In view of the aforesaid, the observation made by the Regional Director does not subsist.

18. No objection has been received to the Scheme of Merger from any other party. The petitioner companies, in the affidavits dated 4th March, 2016 of Mr. Chandra Shekhar Menon, Director of the transferor company and of Mr. Dilip Kumar Sinha, Director of the transferee company, have

submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 1st August, 2015.

19. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Merger and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Merger, there appears to be no impediment to the grant of sanction to the Scheme of Merger. Consequently, sanction is hereby granted to the amended Scheme of Merger annexed with CA 834/2016 under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies 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. Upon the sanction becoming effective from the appointed date of merger, i.e. 1st April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

20. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- should be paid by the petitioners 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 18.07.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

21. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

August 29, 2016