

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 451/2015

Reserved on 26th April, 2016
Date of pronouncement: 30th May, 2016

In the matter of

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

And

**Petition under Sections 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Philco Overseas Limited

Petitioner/Transferor Company

WITH

Superfreeze India Limited

Petitioner/Transferee Company

**Through Mr. Tariq Muneer and Mr.A.
Singh, Advocates for the petitioners
Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director
Mr. Ashish Makhija, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Philco Overseas Limited (hereinafter referred to as the transferor company) with Superfreeze India 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 25th October, 1994 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 24th July, 1996 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.14,50,000/- divided into 1,45,000 equity shares of Rs.10/- each fully paid-up.

6. The present authorized share capital of the transferee company is Rs.1,75,00,000/- divided into 17,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,68,36,000/- divided into 16,83,600 equity shares of Rs.10/- each fully paid-up.

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

joint application being CA(M) 41/2015 earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor company, along with the report of the auditors, and the audited balance sheet, as on 31st March, 2014, of the transferee company had also been filed.

8. 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 claimed by the petitioners that the proposed Amalgamation would result in consolidation and simplification of the group structure; reducing operational and compliance costs, achieving operational and management efficiency; and synergies arising out of consolidation of business, such as, enhancement of net worth of the combined business to capitalize on future growth potential, optimal utilization of resources.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor companies as under:-

“10,97,000 fully paid up equity shares of Rs.10/- each in the share capital of the transferee company in the proportion of the number of equity shares held by the shareholders in the transferor company.”

The petitioners have also placed on record the affidavit dated 17th March, 2016 of Mr. Sanjeev Maini, director of the transferor company showing the ratio in which the shareholders of the transferor company will get shares in the transferee company, post amalgamation. Further, they have also placed on record the individual affidavit of each shareholder of the transferee company acknowledging the share exchange ratio.

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 10th March, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 41/2015 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 Amalgamation. Vide order dated 8th May, 2015 this court

allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor company and equity shareholders and unsecured creditors of the transferee company, there being no secured or unsecured creditors of the transferor company and no secured creditor of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 16th 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 'Statesman' (English) and 'Veer Arjun' (Hindi) editions. Affidavits have been filed by the petitioners showing compliance publication of citations in the aforesaid newspapers on 8th October, 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 9th December, 2015 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 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 14th December, 2015. Relying on Clause 8.1 of the Scheme, he has stated that, upon sanction of the Scheme of Arrangement, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 13.1.1 of the Scheme, it has been stated that the transferee company shall follow the method of accounting as prescribed for the pooling of interest method under Accounting Standard-14 issued as notified under the Companies (Accounting Standard) Rules, 2006. He further submitted that in Clause 15.1 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. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 19th December, 2015 of Mr. Sanjeev Mani, director of the petitioner

companies have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 8th October, 2015.

17. Considering the approval accorded by the equity shareholders of the petitioner companies, there being no creditors of the petitioner companies, to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region and the Official Liquidator having not raised 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, sanction is hereby granted to the Scheme of Amalgamation 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 Amalgamation, i.e. 1st April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

18. 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 26.04.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

19. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

May 30, 2016