

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 833/2015

Reserved on 3rd May, 2016

Date of pronouncement: 16th May, 2016

In the matter of

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

And

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

Scheme of Amalgamation of:

Payal Polyplast Private Limited

Petitioner/Transferor Company

WITH

Payal Petrochem Private Limited

Petitioner/Transferee Company

**Through Mr. P. Nagesh and
Mr. Ashutosh Gupta, Advocates 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 Section 391 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Payal Polyplast Private Limited (hereinafter referred to as the transferor company) with Payal Petrochem 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 25th March, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 29th April, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.3,23,73,000/- divided into 32,37,300 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.4,01,00,000/- divided into 40,10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.4,01,00,000/- divided into 40,10,000 equity shares of Rs.10/- each.

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

audited balance sheets, as on 31st March, 2014, along with the reports of the auditors, of the transferor and transferee companies have 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 application and the accompanying affidavit. It is claimed by the petitioners that the amalgamation will contribute in furthering and fulfilling the objectives and business strategies of petitioner companies thereby accelerating growth, expansion and development of their business. The amalgamation would also provide the transferee company a strong and focused base to undertake the business more advantageously. It is further claimed that the amalgamated company as the merged entity will have an enhanced shareholder's value accruing from consolidation of the business operations resulting in economies of scale, improving allocation of capital, and optimizing cash flows, thus contributing to the overall growth prospects of the combined entity.

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 company in the following ratio:

“01 equity share of Rs.10/- each of the transferee company for every 10,000 equity shares of Rs.10/- each held by the shareholders in the transferor company.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and corresponding provisions of the Companies Act, 2013 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 28th March, 2015 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. 134/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders and for convening of separate meetings of their secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 13th August, 2015 this court allowed the application and dispensed with the requirement of convening and holding the meeting of the equity shareholders of the transferor and transferee companies and directed convening of separate meetings of their secured and unsecured

creditors, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The Chairpersons of the ordered meetings of the secured and unsecured creditors of the transferor and transferee companies have filed their reports stating that the meetings were duly held on 19th September, 2015, as directed, and that the Scheme of Amalgamation has been approved unanimously by the secured and unsecured creditors of the transferor and transferee companies, present and voting, in the meetings.

14. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 5th November, 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) 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 4th March, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

15. 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 18th March, 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 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.

16. 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 21st March, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation. However, in para 7 of his report, it has been mentioned that the ROC in his report has stated that the company has not provided the valuation report. In response to this observation, on 28.03.2016, learned counsel for the petitioners has submitted that there are two shareholders in the transferor company, who are also the shareholders in the transferee company. Further, the transferee company has three shareholders, one of whom is related to the other two shareholders. He further prayed and was granted permission to place on record an affidavit to the effect that, despite a share valuation report not being placed on

record, the shareholders of both the companies are agreeable to the provisions made in the proposed Scheme with regard to the share exchange ratio. In view thereof, the petitioner companies have placed on record the affidavits dated 21st April, 2016 of each shareholder of the transferee company stating therein that they have no objection to the share exchange ratio proposed under the said Scheme and further that they have no objection to the proposed merger of the transferor company with the transferee company. In view of the aforesaid, the observation of the Regional Director stands satisfied.

17. The Regional Director in para 8 of his report has further submitted that para 3 of the Scheme provides that the name of the transferor company shall replace the name of the transferee company. He, therefore, prays that the petitioner companies may be directed to comply with the relevant provisions of the Companies Act, 2013 and guidelines issued by the Ministry from time to time. In response to the aforesaid observation, learned counsel for the petitioners undertakes on behalf of his client that all requisite steps will be taken by his client to effect the proposed change of name of the transferee company. The said undertaking is accepted by this Court and the petitioner shall remain bound by the same. In view thereof, the observation of the Regional Director stands satisfied.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 23rd March, 2016 of Mr. Nikhil Gupta, authorized signatory of the petitioner companies have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 4th March, 2016.

19. Considering the approval accorded by the equity shareholders and 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.

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 03.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

21. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 16, 2016