

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 836/2015

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 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

DCM Engineering Limited

Petitioner/Transferor Company

WITH

DCM Limited

Petitioner/Transferee Company

**Through Mr. Mahesh Agarwal and
Mr. Rajeev Kumar, 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 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of DCM Engineering Limited (hereinafter referred to as the transferor company) with DCM 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 originally incorporated under the Companies Act, 1956 on 5th September, 1990 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of DCM Precision Engineering Private Limited. The company changed its name to DCM Precision Engineering Limited and obtained the fresh certificate of incorporation on 5th February, 1998. The company again changed its name to DCM Engineering Limited and obtained the fresh certificate of incorporation on 23rd March, 2004.

4. The transferee company was originally incorporated under the provisions of Indian Companies Act, 1882 on 26th March, 1889 with the Registrar, Joint Stock Companies, Punjab under the name and style of Delhi Cloth & General Mills Company Limited. The company changed its name to DCM Limited and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 6th October, 1983.

5. The present authorized share capital of the transferor company is Rs.24,00,00,000/- divided into 2,39,99,000 equity shares of Rs.10/- each aggregating to Rs.23,99,90,000/- and 100 13.50% redeemable

cumulative preference shares of Rs.100/- each aggregating to Rs.10,000/-. The issued, subscribed and paid-up share capital of the company is Rs.20,05,00,000/- divided into 2,00,50,000 equity shares of Rs.10/- each fully paid up.

6. The present authorized share capital of the transferee company is Rs.80,00,00,000/- divided into 6,00,00,000 equity shares of Rs.10/- each aggregating to Rs.60,00,00,000/-; 3,20,000 9.5% - 6th redeemable cumulative preference shares of Rs.25/- each aggregating to Rs.80,00,000/-; 36,80,000 preference shares of Rs.25/- each aggregating to Rs.9,20,00,000/- and 10,00,000 cumulative convertible preference shares of Rs.100/- each aggregating to Rs.10,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.17,37,59,195/- divided into 1,73,79,037 equity shares of Rs.10/- each fully paid up aggregating to Rs.17,37,90,370/- less calls in arrears of Rs.31,175/-.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 130/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the reports of the auditors, 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 has been submitted by the petitioners that the transferor company is a subsidiary of the transferee company which holds approx. 75.06% of the share capital of the transferor company. It is claimed that the proposed Scheme would result in creation of a single entity with better financial strength which would result in improving the competitive position of the businesses of the combined entity. It is further claimed that the proposed amalgamation would result in consolidation of the businesses presently being carried on by the transferor company and the transferee company would help in diversification of business risks and would also help in cost optimization in the system.

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:

“20 equity shares of Rs.10/- each fully paid up of the transferee company for every 77 equity shares of Rs.10/- each fully paid up 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 or under Sections 210, 212(1) to (7) & (11) to (17), 214, 215, 216(1) & (3), 217, 219, 220, 223, 224(1), (3) and (4) and 225 or any other applicable 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 8th December, 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. 130/2015 seeking directions of this court to dispense with the requirement of convening the meeting of the equity shareholders of the transferor company and for convening of separate meetings of the secured and unsecured creditors of the transferor company and equity shareholders, secured and unsecured creditors of the transferee company, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 1st September, 2015 this court allowed the application and dispensed with the requirement of convening and holding the meeting of the equity shareholders of the transferor company and directed convening of separate meetings of the secured and unsecured creditors

of the transferor company and equity shareholders, secured and unsecured creditors of the transferee company, 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 company and equity shareholders, secured and unsecured creditors of the transferee company have filed their reports stating that the meetings were duly held on 17th October, 2015, as directed, and that the Scheme of Amalgamation has been approved unanimously by the secured and unsecured creditors of the transferor company and equity shareholders, secured and unsecured creditors of the transferee company, 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 14th January, 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 26th 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 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 15th March, 2016 stating that the ROC in his report has not made any adverse comments to the Scheme of Amalgamation and that the Regional Director has no objection to the proposed Scheme of Amalgamation.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 18th March, 2016 of Mr. Apil Agarwal, authorized signatory of the

transferor company and Mr. Ashwani Singhal, authorized signatory of the transferee company have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 14th January, 2016.

18. 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.

19. 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.

20. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

May 16, 2016