

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 14.12.2016

Judgment Delivered on: 31.01.2017

CO.PET.180/2016

HaskoningDHV India Limited

...Petitioner/Transferor Company

AND

HaskoningDHV Consulting Private Limited

...Petitioner/Transferee Company

Through: Mr. D. Bhattacharya and Ms. Deeti
Ojha, Advocates for the Petitioners
Ms. Aparna Mudiam, Asst. ROC for
RD
Mr. Rajiv Bahl, Advocate for OL

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') read with Rules 67 to 87 of the Companies (Court) Rules, 1959, by HaskoningDHV India Private Limited (hereinafter referred to as 'Transferor Company') and HaskoningDHV Consulting Private Limited (hereinafter referred to as

‘Transferee Company’), seeking sanction of this Court to the proposed scheme of Amalgamation (hereinafter referred to as ‘proposed scheme’) between the Transferor Company and the Transferee Company.

2. The Transferor Company and the Transferee Company are hereinafter collectively referred to as ‘Petitioner Companies’.

3. The registered offices of the Petitioner Companies are situated at Delhi, within the jurisdiction of this court.

4. The Transferor Company was incorporated under the provisions of the Act, vide certificate of incorporation dated 26.05.1998, under the name and style of ‘HASKONING INDIA PRIVATE LIMITED’. Thereafter, the name of the Transferor Company was changed to its present name and a fresh Certificate of Incorporation dated 06.06.2013 was issued by the Registrar of Companies, N.C.T. of Delhi and Haryana in this behalf.

5. The Transferee Company was originally incorporated under the provisions of the Act, under the name and style of ‘M.D.P. CONSULTANTS PRIVATE LIMITED’, vide certificate of incorporation dated 23.03.1993 issued by the Registrar of Companies Kanpur, Uttar Pradesh. Thereafter, the registered office of the Transferee Company was shifted from the State of Uttar Pradesh to N.C.T. of Delhi and a certificate dated 29.07.1997 was

issued by Registrar of Companies, Kanpur, Uttar Pradesh, in this behalf. Thereafter, the name of the Transferee Company was changed to 'DHV India PRIVATE LIMITED' and a fresh certificate dated 16.09.2006 was issued by the Registrar of Companies, N.C.T. of Delhi and Haryana, in this behalf. Subsequently, the name of the Transferee Company was changed to its present name and a fresh certificate of incorporation dated 11.06.2013 was issued by the Registrar of Companies, N.C.T. of Delhi and Haryana, in this behalf.

6. Copies of the Memorandum and Articles of Association of the Petitioner Companies have been filed on record alongwith the joint application, being Company Application (M) No.26/2016, earlier filed by the Petitioner Companies. The audited balance sheets as on 31.03.2015 along with the report of the auditors; and the provisional balance sheets as on 30.10.2015, of the Petitioner Companies, have also been placed on record.

7. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and detailed in the present petition. It is stated on behalf of the Petitioner Companies that the proposed scheme will result in focused approach towards customers as collective services shall be rendered by a single consolidated entity; reduction of

operating/administrative costs, thereby improving overall profitability; reduction in number of legal entities and regulatory compliances thereof; and pooling of financial resources in a single consolidated entity for effective treasury function and centralised management of funds to supplement future growth opportunities.

8. So far as the share exchange ratio is concerned, the proposed scheme provides that in consideration of the proposed amalgamation of the Transferor Company into the Transferee Company, the Transferee Company shall issue and allot fully paid up equity shares to the shareholders of the Transferor Company, whose names are recorded in the register of members of the Transferor Company as holding equity shares, in the following ratio:

“227 (Two Hundred and Twenty Seven) equity shares of HaskoningDHV Consulting Private Limited of Rs.1000 (Rupees Thousand Only) each fully paid up for every 100 (One Hundred) equity shares of HaskoningDHV India Private Limited of Rs.1000 (Rupees Thousand Only) each fully paid up.”

9. The Board of Directors of the Transferor Company and the Transferee Company in their separate meetings held on 04.12.2015 and 10.12.2015, respectively, have unanimously approved the proposed scheme. Copies of the resolutions passed at the meetings of the Board of Directors of the

Transferor Company and the Transferee Company have been placed on record.

10. The Petitioner Companies had earlier filed a joint application being Company Application (M) No. 26/2016, seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors. Vide order dated 12.02.2016, this Court allowed the said application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the Petitioner Companies, there being no secured creditors of the Petitioner Companies, to consider and, if thought fit, approve, with or without modification, the proposed scheme.

11. The Petitioner Companies have thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 21.03.2016, notice in the present petition was directed to be issued to the Regional Director, Northern Region; and the Official Liquidator. Further, notice of hearing was directed to be published in the newspapers, namely, 'Financial Express' (English) and 'Jansatta' (Hindi); and uploaded on the website of the Petitioner Companies, OL and the Ministry of Corporate Affairs. Affidavit of service and publication dated 03.08.2016 has been filed by the Petitioner

Companies showing compliance regarding service of the petition on the Official Liquidator and the Regional Director; publication of notice of hearing in the aforesaid newspapers on 01.04.2016; service of notice of hearing on the Regional Director and the Official Liquidator for publication on their respective websites; and regarding notice of hearing being uploaded on the website of the Petitioner Companies.

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 its report dated 10.08.2016 stating that no objection has been received against the proposed scheme from any interested person/party and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of their members or public interest, as per second proviso of Section 394(1) of the Act.

13. Further, in response to the notices issued in the present petition, the Regional Director, Northern Region, Ministry of Corporate Affairs has filed its representation/affidavit dated 17.08.2016 not raising any objection to the grant of sanction to the proposed scheme.

14. It has been noted that no objections have been received to the proposed scheme from any other party. The counsel for Petitioner Companies, in its affidavit dated 22.08.2016, has stated that neither the petitioner companies nor their counsel have received any objection to the proposed scheme pursuant to publication of citations in the newspapers on 01.04.2016.

15. In view of the above and considering the approval accorded by the equity shareholders and creditors of the Petitioner Companies to the proposed scheme; the affidavit filed by the Regional Director, Northern Region and the report filed by the Official Liquidator, not raising any objection to the proposed scheme, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme. The Petitioner Companies will comply with the statutory requirements in accordance with law. Upon the sanction becoming effective from the Appointed Date of the proposed scheme, i.e. 1st April, 2015, the Transferor Company shall stand dissolved without undergoing the process of winding up.

16. Notwithstanding the above, if there is any deficiency found or, violation committed *qua* any enactment, statutory rule or regulation, the

sanction granted by this Court to the proposed scheme will not come in the way of action being taken, *albeit*, in accordance with law, against the concerned persons, directors and officials of the Petitioner Companies.

17. It is made clear, that this order shall not be construed as an order granting exemption, *inter alia*, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

18. A certified copy of the order, sanctioning the proposed scheme, be filed with the Registrar of Companies, within 30 days of its receipt.

19. The Petitioner Companies shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) by way of costs with the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi, within a period of two weeks from today.

20. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.

SIDDHARTH MRIDUL, J

JANUARY 31, 2017

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