

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 06.12.2016
Judgment Pronounced On: 30.01.2017

CO.PET.268/2016

NALIAN ENGINEERS PRIVATE LIMITED

.....Petitioner/Transferor Company

AND

SUNRAYS ENGINEERS PRIVATE LIMITED

.....Petitioner/Transferee Company

Through: Mr. Dilip Singh, Advocate for
the Petitioners.
Ms. Aparna Mudiam, Assistant
ROC, Mr. Rajiv Bahl, Advocate
for the OL.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present petition has been filed jointly under Sections 391(2) and 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') by Nalian Engineers Private Limited (hereinafter referred to as 'Transferor Company') and Sunrays Engineers Private Limited (hereinafter referred to as 'Transferee Company'), seeking sanction of the scheme of amalgamation

(hereinafter referred to as 'the Scheme') of the Transferor Company with the Transferee Company.

2. The registered offices of each of the Petitioner Companies are situated at Delhi, within the jurisdiction of this Court.

3. The Transferor Company was incorporated under the Act and a certificate in this behalf was issued on 27.04.2010 by the Assistant Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

4. The Transferee Company was incorporated under the Act vide certificate of incorporation dated 28.07.2005, issued by the Assistant Registrar of Companies, NCT of Delhi and Haryana.

5. The authorized share capital of the Transferor Company as on 31.03.2015 is Rs.1,00,000/- divided into 10,000 shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferor Company as on 31.03.2015 is Rs.1,00,000/- divided into 10,000 shares of Rs.10/- each.

6. The authorized share capital of the Transferee Company as on 31.03.2015 is Rs.1,00,00,000/- divided into 5,00,000 equity shares of Rs.10/- each and 5,00,000 preference shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferee Company as on 31.03.2015 is

Rs.56,87,500/- divided into 5,00,000 equity shares of Rs.10/- each and 68,750 preference shares of Rs.10/- each.

7. Copies of the Memorandum of Association and Articles of Association, the audited annual accounts for the year ended 31.03.2015, alongwith the reports of the Auditors, pertaining to the Transferor Company and the Transferee Company have been enclosed with the application that earlier came to be filed by the Petitioner Companies, being Company Application (Main) No.175 of 2015.

8. Learned Counsel appearing on behalf of the Petitioner Companies has stated that no proceedings under sections 235 to 251 of the Act (or corresponding provisions of the Companies Act, 2013) are pending against them as on the date of institution of the present petition.

9. It has further been stated on behalf of the Petitioner Companies that the scheme has been approved by their respective Board of Directors (BOD). Copies of the resolutions dated 05.10.2015 of the Petitioner Companies, whereby the scheme has been approved have been filed with the present petition.

10. A copy of the Scheme has been enclosed with the petition and its salient features have been incorporated in the petition. The rationale of the Scheme as set out in detail in the Petition is reproduced as hereunder:

- a) Both the Transferor Company and the Transferee Company are closely held Private Limited Companies. Both the Transferor Company and the Transferee Company are under the same management and presently carrying out business in the field of engineering goods and machined components in India or abroad. Thus the proposed Scheme of Amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base.
- b) The proposed amalgamation would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity.
- c) The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction of overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating

strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

- d) The said Scheme of Amalgamation will contribute in fulfilling and furthering the objects of the Transferor and the Transferee Companies. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario.
- e) The proposed amalgamation would enhance the shareholders' value of all the Transferor Company and the Transferee Company.
- f) The said Scheme of Amalgamation will have beneficial impact on all the Transferor Company and the Transferee Company, their shareholders, employees and other stakeholders and all concerned.

11. So far as the share exchange ratio is concerned, the same has been stated to be as follows:

52 equity shares of Rs.10/- each of the Transferee Company for every 100 equity shares of Rs.10/- each held in the Transferor Company.

12. The Petitioner Companies by way of Company Application (Main) No. 175 of 2015 sought directions of this Court for dispensation of meetings of the equity and preference shareholders, secured creditors and unsecured creditors of the Petitioner Companies. This Court vide order dated 25.02.2016 dispensed with the requirement of convening meetings of the equity and preference shareholders, secured & unsecured creditors of both the Petitioner Companies.

13. Thereafter, the present petition came to be filed by the Petitioner Companies. Notice in the present petition was issued to the Official Liquidator, Regional Director and the Registrar of Companies vide order dated 29.03.2016. Further, this Court by way of the said order directed that the citations be published in the Delhi editions of 'Business Standard' (English Edition) and 'Jansatta' (Hindi Edition); citations to be uploaded on the websites of the Petitioner Companies, OL and Ministry of Corporate Affairs.

14. An affidavit dated 26.08.2016 has been filed by the Petitioner Companies showing service of notice upon the OL, Regional Director & the Registrar of Companies and showing that citations were published in the said newspapers on 12.08.2016. The said affidavit is on record.

15. Pursuant to issuance of notice, the OL filed its report dated 22.08.2016 stating that no complaint has been received from any person/party to the proposed scheme and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interests of its members or public interest.

16. Therefore, the OL is stated to have no objections if this Court were to grant sanction to the proposed Scheme.

17. Pursuant to the notice being issued in the Petition, the Regional Director has filed its representation/affidavit dated 26.08.2016, not raising any objections to the grant of the proposed Scheme.

18. An affidavit dated 26.08.2016 showing that no objections have been received by the Petitioner Companies or their counsel, from any person/party to the proposed Scheme, has been filed by the Transferor Company and the same is on record.

19. In view of the foregoing and in view of the approval accorded by the shareholders and creditors of the Petitioner Companies and the representation/affidavit filed by the Regional Director, and the report of the OL, raising no objections to the proposed Scheme; there appears to be no impediment to grant of sanction to the Scheme. Consequently, sanction is

hereby granted to the Scheme the provisions of section 391 to 394 of the Act.

20. 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.

21. 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.

22. Resultantly, it is hereby directed that the Petitioner Companies will comply with all the provisions of the proposed scheme and, in particular, those which are referred to hereinabove. The petitioner companies shall also comply with the statutory requirements in accordance with law.

23. A certified copy of this order be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

24. The Petitioner Companies are directed to deposit a sum of Rs.25,000/- with the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi within a period of two weeks from today.

25. The Petition is allowed in the above terms and is accordingly disposed of.

JANUARY 30, 2017
sb/mk

SIDDHARTH MRIDUL, J

