

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
NEW DELHI**

**Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**COMPANY PETITION NO. 125 OF 2016**

**CONNECTED WITH**

**COMPANY APPLICATION (MAIN) NO. 183 OF 2015**

**(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)**

**IN THE MATTER OF SECTION 391 & 394 OF**

**THE COMPANIES ACT, 1956**

**(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)**

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**BETWEEN**

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**COOPER BARRELS PRIVATE LIMITED**

**Having registered office at:**

**X-25, 1<sup>ST</sup> Floor, Loha Mandi, Narayana,**



New Delhi-110028 .....TRANSFEROR COMPANY/ PETITIONER

WITH

D.S DUCTOFAB SYSTEMS PRIVATE LIMITED

Having registered office at:

X-25, 1<sup>ST</sup> Floor, Loha Mandi, Narayana,

New Delhi-110028 .....TRANSFeree COMPANY / PETITIONER

AND

Their respective Shareholders and Creditors

ADVOCATE FOR THE PETITIONERS: Mr. Himanshu Gupta, Advocate  
Mr. Vinay Shukla, Advocate

FOR REGIONAL DIRECTOR, (NR), MCA: Mr. C. Balooni, Company

Prosecutor

FOR OFFICIAL LIQUIDATOR: Ms. Chetana Kandpal, Company Prosecutor,  
Office of Official Liquidator, Delhi

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Order Reserved on: 24<sup>th</sup>, July, 2017

Order Delivered on: 16.08.2017

ORDER

1. This petition filed by the companies above named is coming up finally before us on 24.07.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor Company/ Petitioner with the Transferee Company/ Petitioner. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors were filed before the Hon'ble High Court of Delhi in CA (M) 183/2015. The Hon'ble High Court of Delhi vide its order dated 23<sup>rd</sup> December,2015 was pleased to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of both the Petitioner Companies, in view of their consents having been obtained and produced before it.
2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Amalgamation before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meeting as ordered by the Hon'ble High Court of Delhi on 23<sup>rd</sup> December, 2015.
3. On 17.02.2016 the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in C.P. No.125 /2016 moved by the petitioners under Sections 391 to 394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme of



amalgamation, to the Registrar of Companies, Regional Director and the Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspapers "Business Standard" in English edition and "Jansatta" in Hindi Edition.

4. While the joint petition in C.P.No. 125 of 2016 was pending disposal, since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 17.03.2017, for our consideration.
  
5. In view of the above, the petition of Second Motion as above filed by the petitioners jointly before the Hon'ble High Court and subsequently transferred is taken up for final consideration by us. The petitioners, it is seen from the records have filed an affidavit dated 12.07.2016 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 17.02.2016 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of the 'Business Standard' in English edition and 'Jansatta' in Hindi edition on 04.07.2016. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Regional Director, Northern Region, Registrar of Companies as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 17.02.2016 and in



proof of the same acknowledgement made by the respective offices have also been enclosed.

6. The representative of the Official Liquidator vide affidavit dated 18.07.2016 represents that the office of Official Liquidator does not have any objection to the scheme being approved.
  7. Further, Regional Director, Northern Region has also filed an Affidavit dated 15.07.2016 in which it has been stated that there is no objection to the sanction of the Scheme.
  8. Upon further perusal of the representation of Regional Director it discloses that notice to the Principal Commission of Income Tax, Delhi had been duly sent and that no specific comments/ observation have been received raising any objections. Further, it is also represented that the jurisdictional ROC from whom report has been sought has not made any adverse comment.
  9. That petitioner companies have filed the certificate from the respective Company's auditor dated 24.05.2017 in compliance of provisos to sections 230 (7) and 232 (3) of Companies Act, 2013.
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10. The Learned counsel for the petitioners have further stated that the Petitioner Companies through Board resolution from time to time including the one dated 28<sup>th</sup> March, 2017 have extended the scheme of Amalgamation till 31<sup>st</sup> December, 2018.



11. However, reference to the Scheme of Amalgamation annexed as Annexure A-1 discloses the following in relation to "Appointed Date" as defined in Definition Clause as follows: "**APPOINTED DATE OR TRANSFER DATE** means first day of April 2014 or such other date as the Hon'ble High Court may determine".

**"Effect of Non-Receipt of Approvals/ Sanctions"** as given under clause 17 of the scheme is to the following effect: *"In the event of any of the aforesaid sanctioned and approvals not being obtained and/ or the scheme not being sanctioned by the High Court at Delhi and / or the orders not being passed as aforesaid on or before 31<sup>st</sup> day of March, 2014 or within such further period or periods as may be agreed upon between the Transferor Company and the Transferee Company through their respective Board of Directors, the scheme shall stand revoked, cancelled and be of no effect, save and except in respect of any act or deed prior thereto as is contemplated hereunder or as to any right, liability or obligation which has arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as may otherwise arise in law."*

It is evident from the above that due diligence has not been observed before filing the scheme before the Hon'ble High Court or before this Tribunal as obviously there is a conflict in relation to the "Appointed date" and the date as specified in clause 17 of the scheme.

12. In order to provide an opportunity to the Petitioner Companies to clarify on the above aspect (even though the same was reserved for orders on 24<sup>th</sup> July, 2017), the CP was listed twice on 08.08.2017 and 09.08.2017 but however none appeared.

13. Since this Tribunal does not have any power to amend the scheme on its own supplanting its wisdom to that of shareholders and also taking into



consideration that the scheme cannot be sanctioned in the present state and form as accompanying the petition, this Tribunal is perforce required to dismiss the petition.

No order as to costs.



(R.VARADHARAJAN)  
MEMBER (JUDICIAL)

U.D Mehta