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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
SINGLE BENCH, CHENNAI**

**CP/179 & 180/CAA/2018**

**In**

**CA/76 & 77/CAA/2018**

Under Section 230 to 232 of the Companies Act 2013

In the matter of Scheme of Amalgamation

Between

**M/s. Sun Spintex India Limited**

(Transferor Company)

And

**M/s. Harshni Textiles Limited**

(Transferee Company)

And

**THEIR RESPECTIVE SHAREHOLDERS & CREDITORS**

Order delivered on: 6<sup>th</sup> September 2018

**CORAM**

**CH. MOHD SHARIEF TARIQ, MEMBER (J)**

For the Petitioner(s): Mr. M.R. Thiagarajan, PCS

**ORDER**


**Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)**

1. Under Consideration are Company Petition Nos.179 & 180/CAA/2018 filed under Section 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016. The instant Petitions pertain to the proposed Scheme of Amalgamation

by virtue of which M/s. Sun Spintex India Limited (hereinafter referred to as '**Transferor Company**') is proposed to be transferred, amalgamated and vested with M/s. Harshni Textiles Limited (hereinafter referred to as '**Transferee Company**') as a going concern.

2. The Transferor Company was originally incorporated as a private limited company on 10.02.2011 under the Companies Act 1956 having name and style as M/s. Sun Spintex India Private Limited. Later, company was converted into public company under the name M/s. Sun Spintex India Limited and obtained a fresh certificate of Incorporation on 18.08.2011. The registered office of the Transferor Company is situated at 504, Avinashi Road, Peelamedu, Coimbatore-641004, Tamilnadu. The Transferee Company was originally incorporated on 08.10.2003 under the Companies Act 1956 having name and style as M/s. Harshni Spinners Limited. The name of the Company was changed to M/s. Harshni Textiles Limited on 26.03.2004. The registered office of the

company is situated at 34A, Kamaraj Road, Coimbatore-641018, Tamilnadu.

3. The objects of the Transferor Company are to carry on the business of generation of electricity by wind mills, generators, or any other means and to sell electricity to State Electricity Board, Companies or to any other person. The objects of the Transferee Company is to carry on the business of spinners, doublers, twisters, combers, finishers, bleachers, dyers, printers, mercers, processors, weavers, manufactures, traders, dealers etc.
4. This Bench vide its Order dated 10.04.2018, in CA/76/CAA/2018 and CA/77/CAA/2017 dispensed with the convening and holding of the meeting of the Equity Shareholders, Secured and Unsecured Creditors of the Transferor Company and the Transferee Company. The Petitioner Companies have complied with all the Orders passed by this Bench.
5. The Counsel appearing for the Petitioner Companies submitted the reasons and circumstances leading to and 

justifying the proposed Scheme of Amalgamation. He has submitted that the scheme is beneficial for both the Companies concerned, including their members and creditors. The Amalgamation will enable consolidation of the Transferor Company into one entity which will facilitate in focused growth, operational efficiency, business synergy, better supervision of the business of the group and more productive utilization of resources.

6. The Scheme provides that the whole of the undertakings of the Transferor Company comprising their entire business, all assets and liabilities of whatsoever nature and wheresoever situated, including the immovable properties, if any, shall be transferred to and vested in the Transferee Company as a going concern.
7. The Regional Director, Southern Region (for short, '**RD**') in his Affidavit dated 16.05.2018 submitted that Clause 3.26 of Part III of the Scheme of the Companies provides for the protection of the interest of the employees/staff/workmen of the Transferor Company.

8. The RD further submitted that as per report of the RoC, Coimbatore, the Transferor and Transferee Companies are regular in filling the statutory returns. No prosecution is filed, no complaints pending and no inspection/investigation has been conducted in respect of the petitioner companies.
9. In Para 9 of its report, RD has submitted that clause 12 of the scheme has proposed to amend the main objects of the Transferee Company by inserting clause (3) to the main objects and the Transferee Company may be directed to file the amended MOA/AOA with RoC, Coimbatore for records. Accordingly, the Transferee Company shall file the amended MOA and AOA to the Registrar of Companies, Coimbatore.
10. The Official Liquidator (In short, '**OL**') in his Report dated 24.07.2018, submitted that as per Order dated 25.09.2017 he has nominated M/s. N. R. Krishnamoorthy and Company, Chartered Accountants, Chennai, who is one of the empanelled Auditors by the Hon'ble High Court of Madras to look into the Scheme of Amalgamation and to

scrutinize the books and accounts of the Transferor Company and to file their report on the affairs of the Transferor Company. The Auditor has broadly reviewed and observed that under Clause 8.1 of Part-III of the proposed Scheme, the interest of all the executives, staff, workmen and other employees in the service of the Transferor Company is safeguarded. As per clause 13.3 of part III of the Scheme, upon scheme becoming effective, the Board of Directors of the Transferee Company shall determine the Record Date and on determining of the Record Date as aforesaid, the Transferee Company shall issue and allot the shares towards consideration "for every 1 fully paid up equity shares(s) of Rs. 10/- each held in the Transferor Company, the shareholders of the Transferor Company shall be entitled to receive 47 fully paid-up equity shares of Rs. 10/- each of the Transferee Company."

11. The OL has stated that the Chartered Accountant have examined the audited Balance Sheet, Profit and Loss Account and other relevant books and records of the

transferor company for the year ending 2014-15, 2015-16 and 2016-17. The Transferor Company closes its Books of Accounts every year on 31<sup>st</sup> March. It has further been submitted that, the Chartered Accountants have also scrutinized all the statutory registers, books of accounts, records and documents maintained by the Transferor Company and found that they have maintained proper books of accounts with generally accepted accounting principles and that all entries have been duly made in the statutory registers in accordance with the requirements of the Companies Act, 2013 and no discrepancies were noted.

12. The OL has stated that the Chartered Accountants also scrutinized the various records of the Transferor Company maintained at the office of the Registrar of Companies, Coimbatore, Tamil Nadu and found that the Transferor Company has filled all the returns.

13. The OL has submitted that the Chartered Accountants have concluded that the business of the Transferor Company has not been carried on with intent to defraud

the creditors of the Transferor Company or any other person, or for any fraudulent purpose attracting the provisions of Section 339 of the Companies Act, 2013 and they have not come across any act within the meaning of Section 339 of the Companies Act, 2013, wherein the Directors have misapplied or retained or become liable or accountable for any money or property of the Transferor Company or have been guilty of any misfeasance or breach of trust in relation to the Transferor Company or have been involved in diversion of funds prejudicial to the interests of the Transferor Company. Further, the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or to public interest.

14. The Assistant Commissioner of Income Tax, Corporate Circle-2, Coimbatore has filled a memo dated 05.09.2018 stating therein that company is liable to pay TDS demand of Rs. 54,440/-under TAN. It has been further submitted that the requirement to send the notice to the concerned department is a procedural requirement and as such does

not impact the right of the Department to proceed in accordance with the provisions of the Income Tax Act, 1961. Therefore, the representation by way of this submission, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Comprise, Arrangement and Amalgamation) Rules 2016, may please be taken on record without prejudice to the rights of the department to take all appropriate proceedings under the provisions of the Income Tax Act, 1961 to protect the interest of the Government revenue including the right to reopen the assessment. Further it is submitted that by filling of this Memo and the report of the Assessing Officer, the income tax department shall not have deemed to waive its rights to undertake all proceedings under the Income Tax Act, 1961 and the Department has all the rights to proceed de hors this scheme in terms of the Income Tax Act, 1961 and as per law.

15. The Authorised signatory of the Transferor Company has sent a letter to the Assistant Commissioner of Income Tax, Corporate Circle-2, Coimbatore stating that the Company has paid Rs. 4940/- for TAN and the proof for

the same was also attached with the letter. He has further submitted in the letter that the TDS Demand of Rs. 49,500/- is not related to the Transferor Company. The said amount is related to an erstwhile dissolved/amalgamated company by the same name M/s. Sun Spintex India Limited, which was amalgamated with M/s. Lakshmi Electrical Drives Limited vide order dated 10.09.2008 of Hon'ble High Court of Madras.

16. As per Clause 14, Part III of the Scheme of Amalgamation, all the proposed accounting treatment is in conformity with the accounting principles laid down under Section 133 of the Companies Act, 2013, and to this effect the Statutory Auditor's Certificate is annexed to the Petition as Annexure 8B.

17. The Scheme will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. There is no requirement to modify the proposed Scheme. The Scheme of Amalgamation appears to be fair and

reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under section 230 to 232 of the Companies Act, 2013.

18. Therefore, the Scheme annexed with Petition stands sanctioned which shall be binding on all the Equity Shareholders, the Creditors of the companies and their respective employees. The Scheme shall become effective from the Appointed Date viz., 01.04.2017.

19. However, it is further clarified that this Order will not be construed as an order granting exemption 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.


20. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any

direction that may be necessary with regard to the working of the said Scheme.

21. The Petitioner Companies shall file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.

22. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.

23. Upon receiving the certified copy of this order, the RoC, Coimbatore is directed to place all documents relating to the Transferor Company with that of the transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.

24. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and )

Amalgamations) Rules, 2016 notified on 14<sup>th</sup> December, 2016.

25. Thus, the Scheme stands sanctioned and CP/178/CAA/2018 and CP/179/CAA/2018 stand **disposed of.**

  
**(CH. MOHD SHARIEF TARIQ)**  
MEMBER (JUDICIAL)

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