

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

NEW DELHI

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

CAA (141) ND/ 2017

CONNECTED WITH

CA (CAA)-58(PB)/2017

IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

AMONGST

MEMO OF PARTIES:

BATRA OIL COMPANY LIMITED

A COMPANY REGISTERED UNDER THE PROVISIONS OF COMPANIES ACT,
1956

THROUGH ITS AUTHORIZED REPRESENTATIVE: MR. DAVINDER KUMAR
GUPTA

REGISTERED OFFICE AT:
SATYAM CINEMA BUILDING, RANJIT NAGAR,
COMMUNITY CENTER, PATEL NAGAR,
NEW DELHI -110008

CIN:U74899DL1990PTC041235

**...AMALGAMATING COMPANY-I /
PETITIONER COMPANY-I**

SUPERIOR CRAFTS PRIVATE LIMITED

A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES
ACT, 1956

THROUGH ITS AUTHORIZED REPRESENTATIVE: MR. DAVINDER KUMAR
GUPTA

REGISTERED OFFICE AT:
SATYAM CINEMA BUILDING, RANJIT NAGAR,
COMMUNITY CENTER, PATEL NAGAR,
NEW DELHI -110008
CIN:U74899DL1995PTC072551

**...AMALGAMATING COMPANY-II /
PETITIONER COMPANY-II**

SUPERIOR CLOTHING PRIVATE LIMITED

A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES
ACT, 1956

THROUGH ITS AUTHORIZED REPRESENTATIVE: MR. DAVINDER KUMAR
GUPTA

REGISTERED OFFICE AT:
SATYAM CINEMA BUILDING, RANJIT NAGAR,
COMMUNITY CENTER, PATEL NAGAR,
NEW DELHI -110008
CIN:U18101DL2005PTC140034

**...AMALGAMATING COMPANY-III /
PETITIONER COMPANY-III**



WITH

SUPERIOR FILMS PRIVATE LIMITED

A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES
ACT, 1956

THROUGH ITS AUTHORIZED REPRESENTATIVE: MR. DAVINDER KUMAR
GUPTA

REGISTERED OFFICE AT:
SATYAM CINEMA BUILDING, RANJIT NAGAR,
COMMUNITY CENTER, PATEL NAGAR,
NEW DELHI -110008
CIN:U74899DL1980PTC010218

**...AMALGAMATED COMPANY/
PETITIONER COMPANY-IV**

WITH

Their respective Shareholders and Creditors

ADVOCATE FOR THE PETITIONERS: Mr. N.P.S.Chawla, Advocate

**FOR REGIONAL DIRECTOR, (NR), MCA: Mr. Manish Raj, Company
Prosecutor**



ORDER

Order Delivered on:
18.09.2017

1. This petition filed by the companies above named is coming up finally before us on 6.09.2017 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 Amalgamating Companies I,II,III/ Petitioner Companies I,II,III with the Amalgamated Company/ Petitioner IV. 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 Tribunal in CA (CAA)-58(PB)/2017. The Tribunal vide its order dated 02.06.2017 was pleased to dispense with the requirement of convening the meetings of the equity shareholders, secured creditors and unsecured creditors, in view of their consents having been obtained and produced before it or there being none which obviates the necessity of convening a meeting.
2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Amalgamation before the Tribunal under the present provisions, subsequent to the order of dispensation of the meeting ordered by the Tribunal on 02.06. 2017.



3. On 26.07.2017, the Tribunal ordered Notice in the Second Motion petition in CA(141)ND/2017 moved by the petitioners under Sections 230 to 232 of the Companies Act, 2013 in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director, Official Liquidator and the Income Tax Department. The Petitioners were also directed vide said order to carry out publication in the newspapers "Business Standard" and "Jansatta" (Delhi Edition).
4. The petitioners, it is seen from the records have filed an affidavit dated 28th August, 2017 in relation to the compliance of the orders passed by the Tribunal dated 26.07.2017 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Tribunal in one issue of the 'Business Standard' (English Edition) and 'Jansatta' (Hindi Edition) on 12th August, 2017. 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 on 31st July, 2017, Registrar of Companies on 31st July, 2017, Deputy Commissioner of Income Tax on 3rd August, 2017 and to the Official Liquidator on 31st July, 2017 in compliance with the order dated 26.07.2017 and in proof of the same acknowledgement made by the respective offices have also been enclosed.
5. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner company and based on the information received, the Official Liquidator has filed a report dated 29.08.2017, wherein it has been stated that it has not received any

complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner, and that they have no objection to the scheme. Further, Regional Director, Northern Region has also filed the Affidavit dated 31st August, 2017 and have stated that there is no objection to the sanction of the Scheme. However, Regional Director in para 10 of the report have stated that RoC has made one observation in relation to the Objects clause of the Amalgamated/ Petitioner Company IV and that any change in main objects of the Transferee Company shall not be automatic and compliances are required to be made under Companies Act, 2013 and the rules made there under shall be required to be adhered to.

In this regard, Petitioner Companies have filed a detailed reply affidavit dated 5th September, 2017 wherein reference had been made to Re PMP Auto Industries Ltd [1994] 80 Comp Cas 289 (Bom) and which is a settled position and not required to be regurgitated. In any case the petitioners represented by their Learned Counsel during oral submissions have also categorically stated that they will comply with law in this respect.

6. Further a perusal of the affidavit of service filed by the Petitioners shows that notice to the Deputy Commissioner of Income Tax, Income Tax Department had been duly sent and served on 03.08.2017 and this matter was heard on 06.09.2017 after the expiry of 30 days period for filing any objections/ representations as given under the provisions of section 230 (5) of Companies Act, 2013 that no specific comments/ observation have been received raising any objections.



7. The counsel for Petitioners had filed the Affidavit of Compliance dated 05th September, 2017 stating that they have not received any objections from the third party and public at large for the purpose of sanction to the present Scheme of Amalgamation. The above statement is taken on record. In view of absence of any other material objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as Annexure-A with the Company Petition as well as the prayer made therein.
8. 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 will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
9. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment is due in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER



- (1) That all the property, rights and powers of the Amalgamating Companies be transferred without further act or deed to the Amalgamated Company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the Amalgamated Company for all the estate and interest of the Amalgamating Companies therein but subject nevertheless to all charges now affecting the same; and
- (2) That all the liabilities and duties of the Amalgamating Companies be transferred without further act or deed to the Amalgamated Company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Amalgamated Company; and
- (3) That all proceedings now pending by or against the Amalgamating Companies be continued by or against the Amalgamated Company; and
- (4) That as per clause 2.14.1 of the scheme, all the employees of the Amalgamating Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Amalgamated Company without any break or interruption in their service.
- (5) That the Amalgamated Company do without further application allot to such members of the Amalgamating Company I, as have not given such notice of dissent, as is required by clause 2.6 of the SCHEME OF AMALGAMATION

herein the shares in the Amalgamated company to which they are entitled under the said SCHEME OF AMALGAMATION and not to the Amalgamating Companies II and III as they are wholly owned subsidiaries of the Amalgamated Company;

- (6) That Amalgamating Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Amalgamating Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Amalgamating Companies and registered with him on the file kept by him in relation to the Amalgamated company and the files relating to the said both companies shall be consolidated accordingly.
- (7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

Sd- /18.09.17
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta