

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO 136 OF 2017
IN
HIGH COURT COMPANY SCHEME PETITION NO 637 OF 2016

SCM Soilfert Limited ...Petitioner

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 (corresponding
sections 230 to 231 of the Companies Act
2013);

AND

In the matter of Scheme of Amalgamation
between SCM Soilfert Limited (“the
Amalgamating Company”) and Deepak
Fertilisers And Petrochemicals
Corporation Limited (“the Amalgamated
Company”) and their respective
Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners.

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date : 22nd June 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Company. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between SCM Soilfert Limited and

Deepak Fertilisers And Petrochemicals Corporation Limited and their respective shareholders.

3. Learned Counsel for the Petitioner states that the Amalgamating Company is presently engaged in the business of manufacturing and trading of fertilisers, petroleum and their byproducts. The Amalgamated Company is presently engaged in the business of fertilisers, agri services, bulk chemicals, mining chemical and value added real estate.
4. The rationale for the scheme is that all the equity shares of the Amalgamating Company are held by the Amalgamated Company. With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate the Amalgamating Company into the Amalgamated Company. The amalgamation of the Amalgamating Company into the Amalgamated Company will facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.
5. The Amalgamating Company and Amalgamated Company have approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.
6. Learned Advocate for the Petitioner further states that since the Petitioner Company is a 100% wholly owned subsidiary of the Amalgamated Company and there is no re-organisation of share capital of the Amalgamated Company and no new shares are being issued as all shares will be cancelled as per Clause 12.1 of the Scheme and rights of creditors of Amalgamated Company are not affected as mentioned in paragraphs 20 to 23 of the Affidavit in support of Summons for Direction and also in view of the judgment of the High Court of Judicature at Bombay in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases page 21 to 24, filing of a separate Company Summons for Direction and Company Scheme Petition by Deepak Fertilisers and Petrochemicals Corporation Limited, the Amalgamated Company was dispensed with, by the High Court of Judicature at Bombay by an order dated 1st July, 2016 passed in CSD No. 546 of 2016
7. Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply

with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies is accepted.

8. The Official Liquidator has filed his report on 12th day of April, 2017 stating that the affairs of the Amalgamating Company have been conducted in a proper manner and that Amalgamating Company may be ordered to be dissolved.
9. The Regional Director has filed his Affidavit on 17th day of November, 2016 stating therein, save and except as stated in paragraph 6 (i) to (iii), it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraphs 6, of the said affidavit it is stated that:-

- i. *Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and the approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the Amalgamation. The decision of Income Tax Authority is binding on the Petitioner Companies.*
- ii. *In addition to the compliance of AS-14, the transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable accounting standard such as AS -5 etc as notified under the Companies Act, 2013 and ensure that the transferee company would not impair true and fair view of the financial statement of the company post-merger.*
- iii. *BSE vide its letter dated DSC/AMAL/MN/IP/319/2015-16 dated 04.03.16 and NSE vide its letter dated NSE/LIST/63940 dated 03.03.16 "Exhibit D-1 & D-2" inter alia informed that as per the directions of SEBI the company has to comply with various provisions of the circular. And that they have no observations with limited Reference to those matters having a bearing on listing requirements. Upon the sanction of the Scheme the company to submit stock exchange such documents as mentioned in the letter and the exchange reserves the right to withdraw its "no adverse observation".*

Deponent prays that the Hon'ble Court to direct the company to make compliance of directions issued by the Exchanges vide above referred letters.

10. As far as the observations made in paragraph 6(i) of the affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. In so far as observations made in paragraph 6(ii) of the Affidavit of Regional Director is concerned, the Amalgamated Company through its Counsel undertakes that in addition to accounting treatment given in the Scheme, the Amalgamated Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
12. In so far as observations made in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Amalgamated Company through its Counsel undertakes to comply with the directions issued by the Exchanges vide above referred letters.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 10 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 136 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.
16. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
17. The Petitioner Company to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
18. The Petitioner Company to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.
19. Costs to be paid within four weeks from the date of receipt of order.

20. All authorities concerned to act on a copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-
V. Nallasenapathy, Member (T)

Sd/-
B.S.V. Prakash Kumar, Member (J)