

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH

CP No. 31/2016 Connected with CA NO. 15/2016

Quorum: Mr. H. P. Chaturvedi, Members-Judicial

IN THE MATTER OF COMPANIES ACT, 1956 / 2013

AND IN THE MATTER OF:

SCHEME OF Amalgamation

DIXON BHURJI MOULDING PRIVATE LIMITED (FIRST TRANSFEROR COMPANY)

AND

DIXON APPLIANCES PRIVATE LIMITED (SECOND TRANSFEROR COMPANY)

WITH

DIXON TECHNOLOGIES (INDIA) PRIVATE LIMITED (TRANSFeree COMPANY/ PETITIONER COMPANY – III).

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Present: PCS Shri S.K Gupta for Petitioners

Shri M.K Bagri, Official Liquidator for Central Government, through office of Regional Director

ORDER

(Per, Mr. H. P. Chaturvedi, Members-Judicial)

The present Company Petition is received as Second Motion Petition transferred from the Hon'ble Allahabad High Court for sanction of the proposed Scheme of Arrangement envisaging the amalgamation of two Transferor Companies with Transferee Company M/s Dixon Technologies (India) Pvt. Limited.

It is stated that the Company Petition 31/2016 (connected with CA 15/2016) the Petitioner Company (I) and Petitioner Company (II) are wholly owned subsidiary of Petitioner Company No.(III).

The present Joint Company Petition is filed under Section 391 to Section 394 of the Companies Act, 1956 read with Rules 67 to 87 of The Companies (Court)

Rules, 1959 and read with corresponding provisions of the Companies Act, 2013 and rules made thereunder. The Petitioners have prayed for sanction of the proposed Scheme of Amalgamation among Dixon Bhurji Moulding Private Limited (First Transferor Company) and Dixon Appliances Pvt. Limited (Second Transferor Company) with Dixon Technologies (India) Pvt. Limited (Transferee Company/ Petitioner Company – III).

Thus, Petitioners Companies have made prayer in the Prayer Clause (at Para 30) of the present Company Petition as such:

a) That the Scheme between Petitioner Companies as annexed herewith and marked as Annexure, may kindly be sanctioned by this Hon'ble Court with or without modification, so as to be binding on the said Petitioner Companies and on the shareholder, secured creditors and unsecured creditors of the Petitioner Companies and all concerned.

B) That the Petitioner Company –I and Petitioner Company II shall stand dissolved without the process of winding up, on filing a certified copy of the orders of this Hon'ble High Court with Registrar of Companies, Kanpur, Ministry of Corporate Affairs.

As per the matter available on record the Hon'ble Allahabad High Court before transferring the case, passed some interim orders /direction in the matter by dispensing with to convene the meeting of shareholder /equity shareholder of transferor and transferee companies and further ordered to issue notice to the Central Government in respect of the present Petition.

During the course hearing of the First Motion Petition CA 15/2016 by the Hon'ble Allahabad High Court, the High Court pleased to pass such order on 21 April, 2016 by directing the Petitioner Companies to convene a meeting of unsecured creditors and it also, appointed respective chairmen for such purposes. In compliance thereof it is reported that a meeting of secured/ unsecured has been convened on 6 June, 2016. The Learned Chairman's of respective meetings have submitted a report in form of their affidavit stating such the majority of secured and unsecured have accepted unanimously, the proposed sanction of Scheme as per the Board Resolution passed by Transfer & Transferee companies. Such Report has been annexed with the present CP as annexure no 5, 6, 7 which are perused.

The Hon'ble Allahabad High Court also pleased to issue a direction for publication of notice/s in Newspapers Pioneer (English) and Amar Ujala (Hindi) having wide circulation in Gautam Budh Nagar by fixing the date for hearing on Company Petition, as well as issued notice to Regional Director and the Official

proof of publication by inviting comments/ objection on the present Company Petition. It is reported such that in response to such publication no any kind of objection or comments have been received in the office of the representative of Petitioner Companies or before the registry of Hon'ble High Court or this Tribunal.

As per the matter available on record the Central Government through Regional Director (N/R) filed its affidavit Dated 19 October, 2016. The Official Liquidator further submitted its report on 24 Oct, 2016 wherein certain observation has been made to be considered by this Tribunal for sanctioning of Present Scheme.

The Petitioner Companies in response to the RD's affidavit and the report of the Official Liquidator has furnished their undertaking in form of the affidavit dated 17 march, 2017 deposing such that it would make all statutory compliances and follow up action as per the provision s prescribed in the Companies Act 2013, in case the proposed Scheme is Sanctioned. Therefore, the affidavit is taken on record.

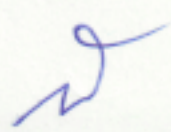
We also heard submission of PCS/ representative of both the parties Mr. S. K Gupta for Petitioner and Mr. M.K Bagri for Central Government on sanction of the proposed Scheme. It is also brought to our notice that the salient features the proposed scheme is incorporated in well Para 19 onward of the present and Company petition whole scheme has been annexed to Company Petition which take care of for compliance of all statutory obligation regarding the Tax, pending litigation and service condition of workmen and employees of the Transferor Companies and the interest of worker and employee is adequately protected.

Further any Liability and obligation with regard to taxation, worker's service condition and business dealing of transferor companies would be responsibility of the Transferee company after the sanction of the proposed Scheme.

It is also clarified by the PCS Shri S.K Gupta that no investigation proceeding is pending against petitioner companies under the provision of Companies Act, 2013 and rules made thereunder.

He further contends that the proposed Scheme does not meant for grant of any direct or indirect material benefit to directors or key managerial person of Petitioner Companies.

As the present Scheme has been duly approved and recommended by the respective Boards of Director of each of the Petitioner Companies hence there is no opposition from any angle against the proposed Amalgamation.



The present Scheme of Amalgamation is in the interest of the Shareholders and the creditors of the Companies. The rationale of the proposed Scheme has been incorporated well in Para 18 and 19 of the Company Petition.

That apart the Learned Official Liquidator also submitted that although his office is having no objection on Amalgamation on dissolution of the Company being wound up, Yet the observation made by Regional Director be complied with and to be assured by the Petitioners. Further this Tribunal to consider the comments made in the R. D's affidavit and may ensure the compliance there of while sanctioning the present Scheme.

At this stage the Learned PCS for Petitioners companies has submitted that necessary undertaking in response to the RD's affidavit has already been filed. He further assured that all statutory compliances to be made by Petitioner Companies.

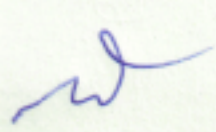
In the light of above discussion and by perusal of the Company Petition along with documents annexed therewith. We are of the view that sanction of the present scheme is not against the public policy nor prejudicial to its shareholders and detrimental to the interest of public at large. Thus proposed scheme appears to be reasonable.

Further, all the Statutory compliance seems to have been complied with or further undertaken to be complied with by the Petitioner Companies as per their Affidavit and Memo of Undertaking given. Therefore, the present Company Scheme Petition deserved to be allowed. Hence it is allowed. The Prayer made therein is made absolute in terms of its Prayer Clause. Accordingly, the Company Scheme of Arrangement annexed to Company Petition is hereby approved and is sanctioned.

Further a cost of Rs. 15,000/- is awarded in favour of the Central Government, payable through the office of Regional Director (N.R.) towards Legal Expenses incurred. That is payable by the Petitioner Company within four weeks from the receipt of authentic copy of this order.

The Petitioner company to lodge a copy of this order along with a copy of sanctioned scheme to the office of Registrar of Companies. The Petitioner Company is directed to communicate copy of this order to the office superintendent of stamp of the UP State Government, within 60 days of receipt of this order for the purpose of adjudication of stamp duty if payable.

The counsel for the company to furnish a copy of draft order of sanction in Scheme in the prescribed format under Companies Compromises, Arrangement

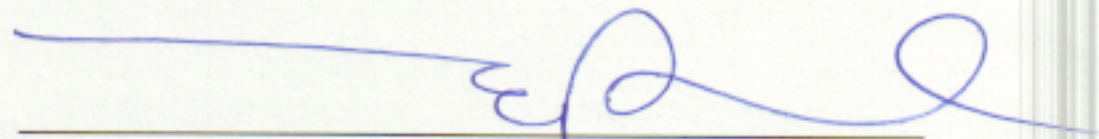


and Amalgamations) Rules, 2016 read with other rules for the purpose of scrutiny and authentication to be made by the Registry of this Tribunal.

The parties may act upon as per this order and to take necessary steps in accordance with the provisions of Companies Act and Rules.

All Concerned Regulatory Authorities to act on a copy of this order along with the Scheme duly authenticated by the Asst. Registrar, National Company Law Tribunal, Allahabad Bench.

Accordingly, the Petition stands disposed of.



H.P. CHATURVEDI, MEMBER-JUDICIAL

Dated: 13 April, 2017