

**In the National Company Law Tribunal
Division Bench, Chennai**

**CP/103/CAA/2017
[CA/27&28/CAA2016]**

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of

Sara Elgi Arteriors Limited (Transferor Company 1)

And

Elgi Building Products Limited (Transferor Company 2)

With

Super Spinning Mills Limited (Transferee Company)

Order delivered on: 04.09.2017

Coram:

Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioners: Mr. Ramakrishnan Viraraghavan, Sr. Advocate

G. Sivashankaran, Advocate

For the Transferee Company: S. Sathyaganesh, Advocate

ORDER

Per: Ch. Mohd Sharief Tariq, Member (J)

1. Under consideration is a Company Petition no. CP/103/CAA/2017 filed under section 230 of the Companies Act, 2013 r/w the Companies (Amalgamation, Arrangement and Amalgamation) Rules, 2016. The purpose of the Company Petition is to obtain sanction of the Scheme of Amalgamation (in short, 'Scheme') by virtue of which Sara Elgi Arteriors Limited (hereinafter referred to as 'Transferor Company 1') and Elgi Building Products Limited (hereinafter referred to as 'Transferor Company 2') are proposed to be merged, amalgamated and vested with

Super Spinning Mills Limited (hereinafter referred to as ‘**Transferee Company**’) as a going concern.

2. The details of Share Capitals, shareholders, Secured & Unsecured creditors of the Companies are as under:

Particular	Authorised Capital	Issued, S&P Capital	Equity Shareholders	Secured Creditors	Unsecured Creditors
Transferor Company 1	Rs. 2,50,00,000	Rs. 2,50,00,000	7	Nil	1
Transferor Company 2	Rs. 15,00,00,000	Rs. 14,69,60,000	7	Nil	Nil
Transferee Company	Rs. 10,00,00,000	Rs. 5,50,00,000	9,867	Nil	Nil

3. The Transferor Company 1 and the Transferor Company 2 are Unlisted Public Limited Companies whereas the Transferee Company is a Listed Public Limited Company. Transferor Company 1 is a wholly owned subsidiary of the Transferee Company whereas Transferor Company 2 is a step down subsidiary of the Transferee Company and also a subsidiary of the Transferor Company 1. Transferor Company 1 and Transferee Company hold 58.32% and 41.68% equity share capital of the Transferor Company 2 respectively. No shares are proposed to be issued by the Transferee Company to the members of both the Transferor Companies. Transferor Company 1 and Transferor Company 2 are engaged in the business of manufacturing and dealing in building materials such as doors, windows and similar articles used in buildings whereas the Transferee Company is engaged in the business of manufacturing and dealing in

cotton yarn, cotton fibre and other fabrics. The Board of Directors of the petitioner companies vide its resolution dated 24.11.2016 approved the said scheme of Amalgamation.

4. This Bench vide its order dated 18.04.2017, in CA No. 27 of 2017 dispensed with the convening and holding of the meeting of the equity shareholders and secured creditors of the Transferor Company 1 whereas in CA No. 28 of 2017 dispensed with the convening and holding of the meeting of the equity shareholders and Preference Shareholders Transferor Company 2. The Transferor Company 2 have produced affidavits of one Preference Shareholders consenting to the proposed scheme of amalgamation. The petitioner companies complied with all the orders passed by this bench.
5. The Transferee Company, being a listed company conducted a separate postal ballot/e-voting as required under the SEBI (LODR) Regulations, 2015 read with SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30.11.2015 and in total 98 equity shareholders participated in the said voting and 97 of them have casted their votes in favour of the scheme.
6. Mr. Ramakrishnan Viraraghavan, learned senior counsel appearing for the Petitioner Companies submitted that the rational and circumstances that have necessitated the proposed scheme are that the amalgamation will enable consolidation of the business of the two entities into one entity which will facilitate in focused growth,

operational efficiency, resulting in more productive utilization of said resources and cost & operational efficiency which would be beneficial to all stakeholders. The learned counsel further submits that no investigation proceedings are pending against the Companies under the provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

7. Learned Counsel for the Companies has further submitted that the equity shares of both the transferor companies are not listed with the stock exchanges, thus the Companies do not require any compliance of Listing Agreement or any SEBI Rules/regulations. However, the equity shares of the Transferee Company are listed with the stock exchanges, thus the Transferee Company requires any compliance of Listing Agreement or any SEBI Rules/regulations.
8. The notices were issued to the statutory authorities viz. Official Liquidator, Regional Director, RoC, Income Tax Authority and CCI as per the procedure prescribed. However, there has been no objection to the proposed scheme under reference.
9. The Regional Director, Southern Region (In short, '**RD**') in the Report Affidavit (for brevity, '**Report**') dated 30.06.2017 submitted that as per records of ROC, Coimbatore, the Transferor Companies are regular in filing its statutory returns and no investigation is pending against them. It is further submitted that Part II of Clause 6.1 of the

scheme provides for the protection of the interest of the employees of the Transferor Companies. However, the RD submitted that Clause 9.1 and 9.2 of the scheme proposes to merge the authorised capital of the transferor companies with that of the transferee company, therefore, the transferee company may be directed to file the amended MoA and AoA with the RoC, Coimbatore for records. The RD has decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits.

10. With regard to above observation made by the RD, the counsel for the petitioner companies submitted that the transferee company undertakes to file the amended MoA and AoA with the RoC, Coimbatore.

11. The Official Liquidator (In short, 'OL') in its report dated 5th July, 2017 submitted that M/s. Siv. Ram & Raj, Chartered Accountants (Auditor) appointed by this Bench vide its order dated 18.04.2017, have scrutinized the books and accounts of the Transferor Companies. The said Auditor has broadly reviewed and observed that the Transferor Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principles and fulfilled the requirements of the Companies Act, 2013 and also the affairs of the companies have not been conducted in a manner prejudicial to the interest of its members, creditors or the

public. The OL further submits that under Clause 6.1 of Part- II of the proposed scheme, the interest of all the workmen and employees in the service of the Transferor Companies are safeguarded. Therefore, the OL submitted that the petition may be decided appropriately.

12. The Competition Commission of India (in short, 'CCI') vide its letter dated 22.05.2017 submitted that before passing an appropriate order, the NCLT may seek an undertaking from the companies involved in the merger/amalgamation that CCI approval is not required for the said scheme.

13. With regard to the above observation made by the CCI, the petitioner companies have furnished an affidavit dated 23.06.2016 wherein it has been stated that the proposed amalgamation aforesaid does not fall within the ambit of section 5 and 6 or any of the provisions of the Competition Act, 2002.

14. The BSE vide its Observation Letter dated 08.03.2016 has given 'No Adverse Observations' with limited reference to those matters having a bearing on listing requirements within the provisions of Listing Agreement whereas the NSE in its Observation Letter dated 10.03.2016 also conveyed 'No Objection' in terms of regulation 94 of the SEBI (LODR) Regulations, 2015. However, both the stock exchanges have directed the Transferee Company to duly comply with various provisions as required under SEBI Circular.

- 15.** With regard to the observations made by the BSE & NSE, the learned counsel for the Transferee Company submitted that the Transferee Company undertakes to comply with the relevant provisions as required under the SEBI Circulars.
- 16.** Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation 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. The Appointed date of the said Scheme is 1st April, 2016.
- 17.** There is no additional requirement for any modification and the said 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. Taking into consideration the above facts, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on the members, creditors and shareholders.
- 18.** While approving the scheme as above, we further clarify 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.

19. The Transferee Company is directed to file the amended MoA and AoA with the RoC, Coimbatore for records.
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 Companies 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 Companies with that of the Transferee Company and the files relating to the Transferor Companies 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 format provided under the Companies

(Compromises, Arrangements and Amalgamations) Rules, 2016
notified on 14th December, 2016.

25. Accordingly, the Scheme stands sanctioned and CP/103/CAA/2017
stands disposed of.

S. Vijayaraghavan.
(S. Vijayaraghavan)
Member (T)

Shariq
(Ch. Mohd. Sharief Tariq)
Member (J)

RLS