

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

**TP(HC)/115/CAA/2017**

**TP(HC)/116/CAA/2017**

Under Sections 230 to 232 of the Companies Act, 2013

**In the matter of Scheme of Amalgamation of**

Murugan Fabs Private Limited  
(Transferor Company)

**With**

Jayaam Galvanizers Private Limited  
(Transferee Company)

Order delivered on: 08.09.2017

**Coram:**

Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioners: Shri T.V. Vijaya Raghavan, Advocate

**ORDER**

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

1. Under consideration are two Company Petitions filed under the provisions of erstwhile the Companies Act, 1956 which have been transferred from the Hon'ble High Court of Madras to this Tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016 and renumbered as TP (HC)/115&116/CAA/2017. The purpose of the Company Petitions is to obtain sanction of the Scheme of Amalgamation (in short, '**Scheme**') by virtue of which Murugan Fabs Private Limited (hereinafter referred to as '**Transferor Company**') is proposed to be merged, amalgamated and vested in Jayaam Galvanizers Private Limited (hereinafter referred to as '**Transferee Company**') as a going concern.

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

<b>Particular</b>	<b>Authorised Capital</b>	<b>Issued, S&amp;P Capital</b>	<b>Equity Share-holders</b>	<b>Secured Creditors</b>	<b>Unsecured Creditors</b>
Transferor Company	Rs. 3,70,00,000	Rs. 3,60,00,000	2	Nil	5
Transferee Company	Rs. 2,00,000	Rs. 2,00,000	2	2	2

3. The Transferor Company and the Transferee Company are Private Limited Companies having registered office at S. no. 42/1, Ponneri Road, Madhavaram Village, Amoor post, Ponneri Taluk, Thiruvallur- 601204 and the Board of Directors of the petitioner companies vide its resolution dated 30<sup>th</sup> March, 2015 approved the said scheme of Amalgamation.
4. The Transferor Company is engaged in the business of fabricators, producers, importer, exporter & other allied products whereas the Transferee Company is engaged in the business of undertaking all kinds of galvanizing job, jobbers, exporter and importer. The Hon'ble Madras High Court has already completed the process. The Transferee Company has produced affidavits of secured creditors and the transferor company has produced consent affidavits of unsecured creditors consenting to the proposed scheme of amalgamation. Therefore, the meetings of creditor stand dispensed with under section 230(9) of the Companies Act 2013.
5. Shri T.V. Vijaya Raghavan, learned counsel appearing for the Petitioner Companies submitted that the rational, reasons 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.

6. Learned Counsel for the Companies has further submitted that the equity shares of the Petitioner companies are not listed with the stock exchange, thus the Companies do not require any compliance of Listing Agreement or any SEBI Rules/regulations.
7. The notices were issued to the statutory authorities viz. Official Liquidator, Regional Director, RoC and Income Tax Authority as per the procedure prescribed. However, there has been no objection/representation to the proposed scheme under reference.
8. The Regional Director, Southern Region (In short, '**RD**') in its Report Affidavit (for brevity, '**Report**') dated 02.09.2016 submitted that as per records of ROC, Chennai, the Transferor Company is regular in filing its statutory returns and no investigation is pending against the company. It is further submitted that Clause 8.1 of the scheme provides protection of the interest of all the employees of the Transferor Company. The RD decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits.
9. However, in Para 8 of the Report of RD, it has been submitted that Clause 15 of the scheme proposes to that the main object of the transferor company

will become part of the main object of the transferee company, therefore, the transferee company may be directed to file necessary e-form with RoC, Chennai intimating the change/amendment of object clause so as to update the records of RoC, Chennai.

10. With regard to the above observation made by the RD, the learned counsel submitted that the Transferee Company undertakes to comply with the provisions of the Act, 2013 and rules framed thereunder for filing necessary e-form with RoC, Chennai.
11. The Official Liquidator (In short, 'OL') in its report dated 18<sup>th</sup> July, 2017 submitted that M/s. Parthasarthy Kannan & Co., Chartered Accountants (Auditor) appointed by the Hon'ble Madras High Court vide its order dated 14.06.2016, have scrutinized the books and accounts of the Transferor Company. The said Auditor has broadly reviewed and observed that the Transferor Company has maintained and written up all the statutory books in accordance with normally accepted accounting principle and fulfilled the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or to the public interest.
12. The OL further submits that under Clause 8.1 of Part- II of the proposed scheme, the interest of all the workmen and employees in the service of the Transferor Company is safeguarded. As per Clause 11 of Part- III of the said Scheme, the assumption of net liabilities over the assets of the transferor company by the transferee company shall be the consideration

and there would be on issue of equity shares of the transferee company to the shareholders of the transferor company.

13. 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 31<sup>st</sup> March 2015.

14. 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 391 of the Companies Act, 1956. 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.

15. 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.

16. The Transferee Company is directed to comply with the provisions of the Companies Act, 2013 and rules framed thereunder as has been desired by the RD in its report dated 02.09.2016 for filing necessary e-forms intimating the change/amendment of object clause.
17. The Company 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.
18. 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.
19. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the RoC.
20. Upon receiving the certified copy of this order, the RoC, Chennai 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.
21. 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 14<sup>th</sup> December, 2016.
22. Accordingly, the Scheme stands sanctioned and TP (HC)/115&116/CAA/2017 stands disposed of.

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

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