

IN THE NATIONAL COMPANY LAW TRIBUNAL,
SIGNAL BENCH, CHENNAI

CP/154/CAA/2017

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation

between

M/s. Dynacon Equipments Private Limited

(Transferor Company)

AND

M/s. Kalavakuru Estates Private Limited

(Transferee company)

Order delivered on 8th of December, 2017

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CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Applicant(s) : Mr. T.K. Bhaskar, Advocates

ORDER

Per : CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under consideration is Company Petition No. CP/154/CAA/2017 filed by the Transferor Company under Sections 230 to 232 of the Companies Act, 2013. Since the Transferor Company is wholly owned subsidiary of the Transferee Company, there was no

legal requirement to file the Petition by the Transferee Company. The purpose of the Company Petition is to obtain sanction of the Scheme of Amalgamation (in short, 'Scheme') between M/s. Dynacon Equipments Private Limited (Transferor Company) with M/s. Kalavakuru Estates Private Limited (Transferee Company).

2. The Company Applications seeking dispensation of meeting of equity shareholders and unsecured creditors of the Transferor and Transferee Companies were filed under Section 391 of the Companies Act, 1956. After establishment of NCLT and bifurcation of jurisdiction, the Applications were transferred to this Bench. This Bench has ordered notices and directed to the Official Liquidator to appoint Chartered Accountant to scrutinise the books of accounts of the Transferor Company. The Petitioner submitted that there are no secured creditors in the Applicant Companies. Therefore, this Bench was pleased to dispense with the meeting of the shareholders and


unsecured creditors. In short, the preliminary procedure with regard to the sanction of the Scheme under consideration has been complied with by the Petitioner Companies.

3. The Official Liquidator has submitted the report on 01.11.2017 stating that the Transferor Company is the wholly owned subsidiary of the Transferee Company. Therefore, upon the Scheme being sanctioned, all the equity shares held by the Transferee Company and its nominees in the Transferor Company shall get cancelled and extinguished as on the "Appointed Date". Further, it is submitted that the interests of all the employees in the service of the Transferor Company is safeguarded. The statutory books of accounts, records and other Registers maintained by the Transferor Company are in accordance with the requirements of the Companies Act as applicable and no discrepancies were noticed. It is also stated that the files containing the correspondence of the Transferor Company at the office of the Registrar of Companies were verified and found

nothing adverse or objectionable affecting the interests of the Transferor Company or its members or prejudicial to the public interest. Finally, it is stated that the affairs of the Transferor Company have not been conducted in the manner prejudicial to the interest of its members or its creditors or to the public interest. The report of the Official Liquidator finds placed on record.

4. The Regional Director (SR), Ministry of Corporate Affairs, Chennai has filed report on 30.10.2017, which finds placed on record. In the report submitted by the RoC, under para 8, it has observed as follows.

“in clause 10.3 of the Scheme it is stated that the filing fee and stamp duty already paid by the transferor company on its authorized capital shall be deemed to have been so paid by the transferee company on the combined authorised share capital. This is not correct. As provided under clause (i) to Sub section (3) of Section 232 of the Companies Act, 2013 the transferee company has to pay the fees, if any, for the enhanced authorised capital subsequent to the amalgamation after setting off the fees paid by the transferor company. In the light of the above the transferee company may be directed to comply with the above provisions of the Act by making an Application with the RoC, Chennai for payment of the balance fee as applicable under the provisions of the Act and Rules framed thereunder.”



In relation to the above observation, the Transferee Company has given an undertaking to duly comply with the requirements as set out under Section 232(3) (i) of the Companies Act, 2013 and pay the required fees on the increase of its authorised capital after setting off the fees already paid by the Transferor Company on becoming the Scheme of Amalgamation effective.

5. Perusal of the Scheme provides that with effect from the 'Appointed Date', in relation to the mode of transfer and vesting of the undertaking, the entire businesses and all the movable and immovable properties (including land and building) real or personal, corporeal or incorporeal, including fixed assets, capital assets, capital work in progress, current assets, investments of all kinds, lease and hire purchase contracts, lending contracts, sanctioned limits, benefits of any security arrangements reversion, powers, authorities, allotments, approvals, consents, licenses including engagements, arrangements, rights title, interest, quotas, benefits and advantages of

whatsoever nature and whosoever situated, belonging to or in the ownership, power or possession and/ or in the control of or vested in or granted in favour of and enjoyed by the Transferor Company including all patents, trademarks, copyrights, trade names and other intellectual property rights of any nature and all other interests arising of the Transferor Company and any accretions or additions thereto on and from the 'Appointed Date' shall be transferred to and vested in and /or deemed to be transferred to and vested in the Transferee Company without any further act or deed or instrument, pursuant to the provisions of Section 394 of the Companies Act, 1956 and other applicable provisions of the said Act from the 'Appointed Date'.

6. Further, para 4.2 of the Scheme provides that the Scheme shall be subject to existing charges/hypothecations/mortgage (if any as may be subsisting) over or in respect of the said assets or any part thereof in favour of the Bank and Financial

Institutions, to which the Transferor Company is a party, to such assets of the Transferor Company offered or agreed to be offered as security for any financial assistance, shall not extend or be deemed to extend subject to the consents and approvals of the existing secured creditors of the Transferee Company.

7. Para 4.4 of the Scheme provides that the assets as are movable in nature or are otherwise capable of transfer by manual or constructive delivery and/or by endorsement and delivery, the same shall be so transferred by the Transferor Company and shall become the property of the Transferee Company. Para 4.6 of the Scheme provides that the Transferee Company shall under the provisions of the Scheme be deemed to be authorised to execute any such writings on behalf of the Transferor Company implement or carry out all such formalities on the part of the Transferor Company to be carried out or performed.

8. Para 5.1, the Scheme provides that with effect from the 'Appointed Date', all debts, liabilities, loans, borrowings, bills, payable, duties and obligations of the Transferor Company including debentures and contingent liabilities in its books and any accretions and additions or reductions thereto shall stand transferred to the Transferee Company.

9. Para 14.1, the Scheme provides that the Transferor Company shall be dissolved without the process of winding up, in accordance with the provisions of the Act and the Rules made thereunder from the 'Appointed Date'. The 'Appointed Date' is 1st of April, 2016 and the 'Effective Date' means the last of the following dates, namely (a) date on which certified copy of the order of the Tribunal passed under the relevant provisions of the Companies Act, 2013 is filed with the Registrar of Companies, Tamil Nadu, Chennai and (b) date on which the last of all such consents, approvals, permissions, resolutions, agreements,

sanctions and orders necessary thereto have been obtained or passed.

10. The Applicant Companies are private limited. Therefore, there is no requirement to make any compliance of the listing agreement or any SEBI Rules/Regulations.

11. Para 12.1(a) of the Scheme provides that the Transferee Company shall account for the Amalgamation of the Transferor Company as per the method prescribed under Accounting Standard 14 prescribed by the Institute of Chartered Accountants of India for Amalgamation and any amendment thereto.


12. Save as mentioned, there is no additional requirement for any modification in the Scheme as the same does not appear to be contrary to the public policy or violative of any provisions of Companies Act, 2013. Therefore, the Scheme of Amalgamation annexed with the Petition stands sanctioned which

shall be binding on the Companies its members, creditors and employees.

13. However, the sanction of the Scheme will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charged if so 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.

14. 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.

15. 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.

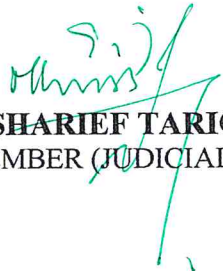
16. The Transferor Company shall be dissolved without winding up from the date of the filing of the 

certified copy of this Order within Registrar of Companies.

17. Upon receiving the certified copy of this Order, the RoC is directed place all documents relating to the Transferor Company with that of the Transferee Company and the file relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.

18. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

19. Accordingly, the Scheme stands sanctioned and CP/154/CAA/2017 stands disposed of.


CH.MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)

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