

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.750 OF 2013.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.598 OF 2013.

MAN TURBO INDIA PRIVATE LIMITED,
....Petitioner/ Transferor Company.
WITH

COMPANY SCHEME PETITION NO.751 OF 2013.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 599 OF 2013.

MAN DIESEL & TURBO INDIA LIMITED
....Petitioner/ Transferee Company.

In the matter of Companies Act, 1956

AND

In the matter of section 391 to 394
read with section 100 to 103 of the
Companies Act, 1956

AND

In the matter of scheme of
amalgamation

between

MAN Turbo India Private Limited ("MT
India" and / or "Transferor Company")

AND

MAN Diesel & Turbo India Limited
("MDT India" and / or "Transferee
Company")

AND

Their respective shareholders

Called for hearing

Mr. Sagar Divekar a/w Ms. Jyoti Krishnan, Advocate for the Petitioner
Companies in both Petitions.

Mrs. R. N. Sutar, Asstt. Official Liquidator, present in CSP No. 750 of
2013.

Mr. C.J. Joy with Mr. D.A. Dubey i/b. Dr. H.P. Chaturvedi for Regional
Director in both Petitions.

CORAM: G. S. Patel, J.

DATE : 28th March, 2014

PC:

1. Heard learned counsel for the parties. No objector has come before the Court to oppose the Scheme and to controvert any averments made in the Company Scheme Petitions.
2. The sanction of the Court is sought to a Scheme of Amalgamation between MAN Turbo India Private Limited, the Transferor Company with MAN Diesel & Turbo India Limited, the Transferee Company, under Sections 391 to 394 read with section 100 to 103 of the Companies Act, 1956.
3. Learned Counsel for the Petitioners states that the Transferor Company is carrying on business of *inter alia* repairing and servicing turbines and industrial engines. It is also engaged in manufacturing of Blades. The Transferee Company is carrying on business of diesel engines for use in ships and power stations, and supply of turbo machines. The Counsel for the Petitioner states that proposed Scheme of Amalgamation will have the benefit of consolidation of the activities by way of an amalgamation and will lead to synergies of operations and a stronger and wider capital and financial base for future growth/expansion. The combined entity will have a bigger portfolio of products/services targeted at a wider array of customers, which will strengthen its competitive position in the

related markets. The Transferor Company has skills to service the products manufactured and supplied by the Transferee Company. Accordingly merging the operations of the Transferor Company and the Transferee Company will result in an entity that is more vertically integrated and has significantly improved operational flexibility, thereby enabling the Transferee Company to provide newer, better and more cost effective solutions and services to its customers and to the Transferor Company's customers and that the amalgamation will result in economies of scale, reduction in overheads, administrative, managerial and other expenditure, operational rationalisation, organisational efficiency, and optimal utilisation of various resources and the managerial expertise of the Transferor Company and Transferee Company will be combined giving additional strength to the Transferee Company. Consequently, the Transferee Company will offer a strong financial structure to all its creditors including the creditors of the Transferor Company, facilitate resource mobilisation and achieve better cash flows. This would also contribute substantially towards enhancement of shareholder's value of the Transferee Company and the amalgamation will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor

Company and the Transferee Company. The Transferor Company and Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The learned Advocate for the Petitioners further states that Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.
5. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Company and the Transferee Company have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 and the Rules made there under. The said undertaking is accepted.
6. The Official Liquidator has filed his report on 14th March, 2014 in Company Scheme Petition Nos. CSP No. 750 of 2013 stating that the affairs of the Transferor Company have been

conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

7. The Regional Director has filed an Affidavit on 20th March, 2014 stating therein, save and except as stated in paragraph 6(a), (b) and (c), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, it is stated as under.

“(a) Shareholders of Transferor Company are foreign body corporate. Hence, for allotment of new shares to the shareholders of Transferor Company, the Transferee Company may be directed to comply with FEMA/ RBI regulations as applicable in this regard.

(b) Deponent further submits that, as there is reduction in the paid up capital of Transferee Company held by Foreign body corporate, copy of the order approving the reduction of capital/ scheme be filed with RBI by Transferee Company.

(c) As per the Ministry of Corporate Affairs’ General Circular No 1/2014 dated 15/01/2014, notice was issued to concerned Income Tax authority through the Advocate for the petitioner company on 05/02/2014 and again reminder letter issued by the deponent to the Income Tax Authority on 11/02/2014 to offer his/ her comments/ views/ remarks on the tax aspects if any on the scheme to this Directorate within 15 days of time. In this regard the Assistant Commissioner of Income Tax vide his Letter No. BRD/ACIT Cur-4/Scheme of Amalgamation/MTIPL/2012-142013-14 dated 04/02/2014 (copy of the letter is annexed hereto and

marked as Exhibit 'D-1') has informed the deponent inter-alia stated therein that:-

Demand made against Transferor Company for Rs. 3,12,572 are due, further assessment proceeding are in progress. In this regard it is submitted that the sanction of the scheme by Hon'ble High Court will not deter the Income Tax Authority examining the Tax Returns filed by the Company and the decision of Income Tax Authority shall be binding on the Transferee Company."

8. The Counsel appearing on behalf of the Petitioner Companies has tendered an Affidavit in reply to the Affidavit of Regional Directors, which is taken on record. So far as the observation in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner / Transferee Company in the said Affidavit has undertaken to comply with the applicable regulations of Foreign Exchange Management Act and Reserve Bank of India regarding allotment of new shares in the Transferee Company, to the shareholders of the Transferor Company.
9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner / Transferee Company in the said Affidavit has undertaken to file a copy of the order approving the proposed Scheme of Amalgamation and the consequent reduction in the share capital of the

Transferee Company held by foreign body corporate through the Transferor Company, with the Reserve Bank of India.

10. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company in the said Affidavit acknowledges that the demand made against Transferor Company for Rs. 3,12,572/- is due and further assessment proceedings are in progress. In this regard, the counsel states that and undertakes that the Sanction of the Scheme by Court will not deter the Income Tax Authority examining the Tax Returns filed by the Company and upon the Scheme of Amalgamation coming into effect, the decision of the Income Tax Authority shall be binding on the Transferee Company.
11. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director - Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Companies. The above undertakings are accepted.
12. 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. None of the parties concerned have come forward to oppose the Scheme in the court.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 750 of 2013 is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 751 of 2013 is made absolute in terms of prayer clauses (a) to (d).
14. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, 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 the order.
15. Petitioners are 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 21, in addition to physical copy, as per the provisions of the Companies Act, 1956.
16. The Petitioner Companies in both Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition No. 750 of 2013 to pay costs of Rs 10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.
17. Filing and issuance of the drawn up order is dispensed with.

18. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(G. S. Patel, J.)