

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION Nos.44 & 45 OF 2016

COMMON ORDER:

C.P. No.44 of 2016 is filed by Rain Cements Limited under Sections 391 and 394 read with Sections 100 to 104 of the Companies Act, 1956 (for short, “the Act”) by Rain Cements Limited seeking approval of the scheme of arrangement between Moonglow Company Business Inc., (Transferor company), Rain Industries Limited (Transferee company) and Rain Cements Limited.

C.P. No.45 of 2016 is filed by Rain Industries Limited under Sections 391 and 394 read with Sections 100 to 104 of the Companies Act, 1956 (for short, “the Act”) by Rain Cements Limited seeking the same relief as sought in C.P.No.44 of 2016.

The Scheme of Arrangement envisages the amalgamation of Moonglow Company Business Inc. with Rain Industries Limited and the adjustment of an amount of Rs. 401.53 crores in the form of investment of Rain Cements Limited in Moonglow Company Business Inc. against its securities premium account and capital reserve account of Rain Cements Limited. The capital reserve account is sought to be reduced from Rs. 260.96 crores to nil and the securities premium account is sought to be reduced from Rs. 183.01 crores to Rs. 42.43 crores.

Moonglow Company Business Inc., (Transferor Company) was incorporated on 28.12.2005. The authorised share capital of the company is Rs.100,000,000/- divided into 100,000,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up capital of the transferor company is Rs.97,805,000/- divided into 97,805,000 equity shares of Rs.10/- each and the entire share capital is held by the transferor company and its nominees.

Rain Industries Limited (Petitioner in C.P. No. 45 of 2016) was incorporated on 15.03.1974. The authorised capital of the company is Rs.1,180,000,000/- divided into 590,000,000 equity shares of Rs2/- each and 4,900,000 preference shares of Rs.100/- each. The issued, subscribed and paid-up capital of the transferee company is Rs.672,691,358/- divided into 336,345,679 equity shares of Rs.2/- each. Rain Cements Limited (Petitioner in C.P.No. 44 of 2016) was incorporated on 04.05.1999. The authorised share capital of the company is Rs.500,000,000/- divided into 50,000,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up capital of the transferee company is Rs.298,050,000/- divided into 29,805,000 equity shares of Rs.10/- each and the entire share capital is held by the transferee company and its nominees.

The objects of Moonglow Company Business Inc., are to carry on the business of calcining of any metallic and non-metallic substances including petroleum coke and needle coke and for that purpose, carry on the business of importers, exporters, manufacturers, refiners, processors, buyers, sellers, dealers, brokers, agents of any of the raw materials pertaining to calcined products etc.

The objects of Rain Industries Limited are to produce, manufacture, purchase, refine, prepare, process, import, sell and generally to deal in Cement, portland cement, alumina cement, white and coloured cement, lime and limestone, kankar and etc.

The objects of Rain Cements Limited are to carry out the business of purchase or otherwise acquire, manufacture, refine, treat, sell or otherwise dispose of import, export trade or generally deal in all kinds of crude-petroleum, petroleum products etc.

C.A. No. 1768 of 2016 was filed by Rain Cements Limited seeking an order dispensing with the meetings of the shareholders and secured

creditors and for convening the meeting of the unsecured creditors of the said company. This Court by an order dated 12-11-2015 had dispensed with the meeting of the shareholders and secured creditors in view of the consents filed by them and had directed that a meeting of the unsecured creditors of Rain Cements Limited be convened on 30-12-2015 at 1pm. The meeting of the unsecured creditors was duly convened and the unsecured creditors present and voting had approved the Scheme of Arrangement unanimously.

C.A. No. 1769 of 2016 was filed by Rain Industries Limited seeking an order convening the meeting of the shareholders and dispensing with the meeting of the secured creditors of the said company in view of the consents filed by them. Rain Industries Limited does not have any unsecured creditors. This Court, by an order dated 12-11-2015 had dispensed with the meeting of the secured creditors of Rain Industries Limited and directed that a meeting of the shareholders of Rain Industries Limited be convened on 30-12-2015 at 11am. The meeting of the shareholders was duly convened and the Scheme of Arrangement by a majority of 99.99% in value and 92.75% in number.

On 10.02.2016, this Court, in the instant company petitions, ordered notice to the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad. Notices were published about the scheme of arrangement in 'Business Standard' (English) and 'Andhra Bhoomi' (Telugu) daily newspapers of Hyderabad editions on 17.02.2016. Notices were also served on the statutory authorities. Necessary proofs as required were filed before this Court evidencing the above aspects.

When the matter was taken up for hearing, the learned counsel for the petitioner has reiterated the contents in the petition. No objections were received from any quarter. There was compliance of the convening of the shareholders and unsecured creditors meetings respectively and

there being no objections received from any quarter, the Petitioner has satisfied the required parameters as noticed by the Supreme Court in **MIHIR H.MAFATLAL V. MAFATLAL INDUSTRIES LIMITED¹**.

Learned counsel appearing for the statutory authorities have reported no objections for the proposed scheme of arrangement.

Except that Transferor Company (Moonglow Company Business Inc.) is an entity registered and having its business operations in Pasea Estate, Road Town, Tortola, British Virgin Islands, placed at foreign land in all respects and for all the practical purposes, the same is required to be treated as a body corporate registered and functioning within India. Subject to the Laws, Rules and Regulations governing a body corporate which is registered outside India and such rules and regulations permitting and not prohibiting the corporate action of the nature of amalgamation with another corporate entity either within the said country or outside the country, the same is required to be allowed especially in the present context of the globalisation. In the case on hand, the rules and regulations permit and do not prohibit the corporate action of the nature of amalgamation with another corporate entity either within the country or outside the country. The law governing this issue is no longer *res integra*. A reference may be made to the following case law:

- 1) In Re: Moscip Semiconductor Technology Limited²**
- 2) In Re: Zenta P. Ltd³**
- 3) Unreported judgment of High Court of Delhi in In Re: Ginni Energy Pvt. Ltd., in Co.Appl.(M) 36/2001 dated 22.02.2011.**

I have considered the material available on record, the principles of law enunciated by the Apex Court in

¹ 1996(87) Company Cases 792

² 2003(5) ALD 827

³ (2009) 149 CompCas 413 (Bombay)

Miheer H.Mafatlal's and judgments referred supra and the conclusions/recommendations of the statutory authorities through their reports.

The Scheme of Arrangement further envisages the adjustment of an amount of Rs. 401. 53 crores in the form of investment of Rain Cements Limited in Moonglow Company Business Inc. against its securities premium account and capital reserve account wherein the capital reserve account is proposed to be reduced from Rs. 260.96 crores to nil and the securities premium account is proposed to be reduced from Rs. 183.01 crores to Rs. 42.43 crores. Moonglow Company Business Inc. is a wholly owned subsidiary of Rain Cements Limited. Rain Cements Limited is, in turn, a wholly owned subsidiary of Rain Industries Limited. The shareholders, secured and unsecured creditors of Rain Cements Limited have approved the Scheme of Arrangement. No objection has been raised by any other party. The reduction is not going to adversely affect the liability or obligation of Rain Cements Limited in any manner.

Having regard to the above material/reports, this Court is of the opinion that the proposed scheme of arrangement is in conformity with the provisions of the Act. The scheme does not affect the interest of stakeholders and the public or public interest and is intended to further develop the business interests of transferee and transferor companies for more profit and maximum utilization of the available resources. Therefore, the scheme of arrangement which was approved by Board of Directors of Rain Cements Limited and Rain Industries Limited held on 05.06.2015 and 11.06.2015 respectively is sanctioned with effect from the date appointed i.e., 01.04.2015. The Petitioner companies are directed to communicate the certified copy of this order to the Registrar of Companies for the State of Telangana and the State of Andhra Pradesh, Hyderabad within 30 days from the date of receipt of a copy of

this order. The form of minute under Section 103 of the Act as set out in para 33 of the petition in C.P. No. 44 of 2016 be approved and registered. The Petitioners in both the Company Petitions are further directed to take all consequential and statutory steps as required in pursuance of the approved scheme of arrangement under the provisions of the Act.

Both the Company Petitions are allowed accordingly.

CHALLA KODANDA RAM,J

Date:29.07.2016.

Gk.



HON'BLE SRI JUSTICE CHALLA KODANDA RAM



COMPANY PETITION Nos.44 & 45 OF 2016

Date:29.07.2016.

Gk.