

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

COMPANY PETITION NO.175/2008

Date of decision: 22nd October, 2008.

In the matter of
The Companies Act, 1956:

And

Petition under Sections 391 and
394 of the Companies Act, 1956

Scheme of Amalgamation of:

M/s.HPL Protection Technologies Ltd... Petitioner/Transferor
Company

WITH

M/s. HPL Socomec Pvt.Ltd. Petitioner/Transferee
Company

Through Mr. Rajeev K.Goel, Adv.

for the petitioners Ms. Manisha Tyagi, Advocate for
the Official Liquidator Mr. Raisuddin, Asstt. Registrar of
Companies

GITA MITTAL, J (Oral

1. This joint petition has been filed under section 391 and 394 of the Companies Act, 1956 by the Transferor and Transferee Companies seeking sanction of the Scheme of Amalgamation of M/s.HPL Protection Technologies Ltd (hereinafter referred to as the 'transferor company') with M/s.HPL Socomec Pvt.Ltd.(hereinafter referred to as the 'transferee company').
2. The registered offices of the transferor company and the transferee company are situated at New Delhi, within the jurisdiction of this court.
3. The transferor company was incorporated under the provisions of Companies Act, 1956 as a private limited company with the name and style as 'HPL Protection Technologies Pvt.Ltd.' vide certificate of Incorporation No.55- 107001 dated 27th July,

2000 issued by the Registrar of Companies, Delhi and Haryana at New Delhi. The Company was converted into a public limited company and its name was changed to 'HPL Protection Technologies Ltd.' vide Fresh Certificate of Incorporation consequent upon change of name on conversion to public limited company dated 5th January, 2005 issued by the aforesaid Registrar of Companies.

4. The transferee company was incorporated under the provisions of Companies Act, 1956 vide Certificate of Incorporation No.55-48945 dated 28th May, 1992 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name and style of M/s.HPL Socomec Pvt.Ltd.

5. The authorized share capital of the transferor company is Rs.6,50,00,000/- divided into 65,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the transferor company is Rs.6,40,64,500/- divided into 64,06,450 equity shares of Rs.10/- each.

6. The authorized share capital of the transferee company is Rs.3,50,00,000/- divided into 35,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the transferee company is Rs.3,48,23,520/- divided into 34,82,352 equity shares of Rs.10/- each.

7. Copies of Memorandum and Articles of Association of the transferor and the transferee companies have been filed on record. The audited balance sheets as on 31st March, 2007 of the transferor and the transferee companies, their profit and loss accounts along with the report of the auditors have also been placed on record.

8. The Scheme of Amalgamation has been filed alongwith the petition. The salient features of the scheme are also detailed in the petition and in the accompanying affidavit. It is submitted that the transferee company and the transferor company are engaged in similar business activities and that the proposed Scheme of Amalgamation will result in leveraging the human and physical resources of both the companies which will enhance their profitability and long term viability. It will also result in usual economies of a centralized and a larger company including reduction in overheads, better and more productive utilization of various resources and reduction in procedural and administrative work costs. It is further submitted that the said Scheme will contribute in furthering and fulfilling the objects of the companies concerned and in facilitating further expansion, growth and development of their business. It would also enable pooling of managerial, financial and human resources of the concerned companies for the most beneficial utilization of these factors in the amalgamated company and lead to the emergence of a single large company with a strong financial base which will be able to withstand competition and achieve economies of scale.

9. So far as the share exchange ratio is concerned, the Scheme provides that upon coming into effect of this Scheme, the transferee company shall issue 702 equity shares of Rs.10/- each for every 1,000 equity shares of Rs.10/- each held in the transferor company.

10. The Board of Directors of the Transferor and Transferee Companies in their separate meetings held on 6th February, 2008 have approved the proposed Scheme of Amalgamation. A copy each of the said Board Resolutions has been placed on record.

11. It has been submitted by the petitioners that the Scheme of Amalgamation is beneficial to the companies, its shareholders and creditors and no person is prejudicially affected by the proposed scheme. It is further claimed that no proceedings are pending under Sections 235 to 251 of the Companies Act, 1956 against the petitioner companies.

12. The petitioner companies had earlier filed CA (M) 90/2008 seeking directions from the court to dispense with the requirement of convening the meetings of equity shareholders, secured and unsecured creditors, which are statutorily required for sanctioning the Scheme of Amalgamation. Written consents obtained from the equity shareholders, secured and unsecured creditors had been placed on record. In view of the said written consents, vide order dated 23rd May, 2008, the court allowed the application and dispensed with the requirement of convening and holding the meetings of equity shareholders and secured and unsecured creditors of the transferor and transferee companies to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Notices in the petition were directed to be issued to the Official Liquidator and Regional Director, Northern Region vide order dated 29th July, 2008. Citations were also directed to be published in 'Financial Express (English)' and 'Jansatta (Hindi)' in terms of the Companies (Court) Rules, 1959. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also publication of citations in the above said newspapers on 12th October, 2008. Copies of the newspaper clippings containing the publications have been filed alongwith the affidavit of service in the petition.

14. Pursuant to the notices issued, the Official Liquidator has filed a report dated 25th September, 2008 stating that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest as per the second proviso of Section 394(1) of the Companies Act, 1956.

15. In response to the notices issued in the petition, Shri Dhan Raj, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report on 25th September, 2008. Relying on Clause 7 of the proposed Scheme of Amalgamation, it is submitted that all the employees of the Transferor Company shall become the employees of the transferee company without any break or interruption in their service upon sanctioning of the Scheme of Amalgamation. The Regional Director in para 4.1 of his report has submitted that the balance sheet of the petitioner companies as on 31st March, 2008 was not available when the Board of Directors as well as shareholders of these companies

approved the Scheme of Amalgamation. It is, therefore, submitted that as to observed that the Board of Directors and shareholders of these companies could not have taken a decision for transfer of the assets and liabilities of the transferor company to the transferee company without knowing the details thereof.

16. The petitioners have filed the affidavit dated 26th September, 2008 of Mr. Lalit Seth, Director of the Petitioner Transferee Company pointing out that a scheme of amalgamation, if approved by the court, becomes effective only when the copy of the court order is filed with the concerned Registrar of Companies. However, a cutoff date/appointed date is fixed to give effect to the scheme of amalgamation in the Books of Accounts of the Transferor and the Transferee Companies. The relevance of the Appointed Date is limited to giving effect to the Scheme of Amalgamation in the books of accounts of the Transferor and the Transferee Companies. The appointed date has no relevance for the valuation exercise which is essentially done on the date of negotiation or as per the mutual agreement.

17. My attention is also drawn to the decisions of the Andhra Pradesh High Court in the matter of Sumitra Pharmaceuticals and Chemicals Ltd. (1996) 5 Comp LJ 202 (AP) and of the Delhi High Court in Amici India Ltd. in Co.P.No.22.2007 dated 30th April, 2007. In Sumitra Pharmaceuticals (supra) the Central Government had objected that whereas the appointed date was 1st April, 1995, the valuation of the share was taken as on 31st August, 1995. The Andhra Pradesh High Court had held that there is no substance in the objection of the Central Government because if the valuation of one company is taken as on one date and the other company as on a different date, then there may be a valid objection but if the valuation of transferor and transferee companies are taken as on the same date for the purpose of determining the share exchange valuation, there cannot be any objection merely because the appointed date is different. A similar view was also taken by the Delhi High Court in Amici India Ltd. (supra).

18. In the affidavit the petitioner has submitted that the valuation exercise was undertaken in the month of February, 2008. The transferor and the transferee companies prepared provisional balance sheets as on 31st January, 2008. Accordingly, Net Assets Value (NAV) of the shares of the transferor and the transferee companies was calculated on the basis of such provisional balance sheets as on 31st January, 2008, whereas the Price Earning Capacity Value (PECV) of the shares was calculated on the basis of future maintainable profits based on projected profits of both these companies for the financial years ending 31st March, 2009, 31st March, 2010 and 31st March, 2011. Since the merger process was initiated in the month of February/March, 2008, it was not feasible to complete the whole process before July/August, 2008, when the accounts of 31st March, 2008 are to be audited and Annual General Meeting is required to be held and returns to be filed with the Income-tax Department and the Registrar of Companies. Therefore, the appointed date was fixed as 1st April, 2008, to have sufficient time for giving effect to the merger in the books of accounts of the transferee company in the next financial year. It has been pointed out that the appointed date is merely a cut-off date fixed for the purpose of giving effect to the Scheme of Amalgamation in the Books of Accounts of the Transferee Company. There is no linkage or relevance between the date of share

valuation and the appointed date. Consequently, the objection taken by the Regional Director cannot be sustained and approval to the Scheme of Amalgamation cannot be denied on this ground.

19. No other objection has been received to the Scheme of Amalgamation from any other party.

20. In view of the approval accorded by the equity shareholders, secured and unsecured creditors of the petitioner companies and the Official Liquidator to the proposed Scheme of Amalgamation and there remaining no surviving objection to the same by the Regional Director, Northern Region, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation of transferor company with the transferee company, under section 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within five weeks. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance to law. Upon the sanction becoming effective from the appointed date of amalgamation, that is 1st April, 2008, the transferor company shall stand dissolved without undergoing the process of winding up.

21. Learned counsel appearing on behalf of the petitioners submits that petitioner companies would pay an amount of Rs.5.00 Lakhs towards costs, which would be deposited in the Common Pool Fund maintained by the Official Liquidator. It is directed accordingly. Petitioners to deposit the costs, as aforesaid, within four weeks. Copy of the directions with respect to the costs be communicated to the Office of the Official Liquidator. Proof of deposit to be filed in the Registry. In case of non-deposit of costs, the petition be placed before court for appropriate directions.

22. The petition is allowed in the above terms. Dasti.

Sd./-
GITA MITTAL, J

October 22, 2008