

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P (CAA) No.41/BB/2020
Under Sections 230 to 232& other applicable
Provisions of Companies Act, 2013
R/w Companies (CAA) Rules, 2016

In the matter of:

M/s. Manuli PSI Hydraulics Private Limited,
A-111 & 112, 3rd Main, 2nd Stage
Peenya Industrial Estate
Bangalore - 560 058.

--- Petitioner Company No.1/
Transferor Company

AND

M/s. Manuli Hydraulics India Private Limited,
A-111 & 112, 3rd Main, 2nd Stage
Peenya Industrial Estate
Bangalore - 560 058.

--- Petitioner Company No.2/
Transferee Company

Order Delivered on: 06.12.2021

Coram: 1. Hon'ble Shri Bhaskara Pantula Mohan, (Acting President)
2. Hon'ble Shri Hemant Kumar Sarangi, Member (Technical)

Parties/Counsels Present through Video Conference:

For the Petitioner : Shri Parameshwar G Bhat
For the ROC/RD : Smt. Prema Hatti
For the IT : Shri Ganesh R Ghale

ORDER

Per: Hemant Kumar Sarangi, Member (Technical)

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1. C.P (CAA) No. 41/BB/2020 is filed by the M/s. Manuli PSI Hydraulics Private Limited (Petitioner Company No.1/Transferor Company) and M/s. Manuli Hydraulics India Private Limited (Petitioner Company No.2/Transferee Company) under Sections 230 to 232 of the Companies Act, 2013, and other applicable provisions of the companies Act, 2013 R/w Companies (CAA) Rules, 2016 by inter alia seeking to sanction the Scheme of Amalgamation of M/s. Manuli PSI Hydraulics Private Limited with M/s. Manuli Hydraulics India Private Limited and their respective Shareholders & Creditors etc.
2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) "M/s. Manuli PSI Hydraulics Private Limited" (hereinafter referred to as 'Petitioner Company No.1/ Transferor Company) was incorporated on 06th April, 1995 under the provisions of the Companies Act, 1956 as "PSI Hydraulics Private Limited" bearing CIN: U02413KA1995PTC017571. The name of the Transferor Company was subsequently changed to Manuli PSI Hydraulics Private Limited on 07.10.2016 having registered office situated at A-111 & 112, 3rd Main, 2nd Stage Peenya Industrial Estate Bangalore - 560 058. Its Authorised Share Capital is Rs.1,00,00,000 divided into 1,00,000 equity shares of Rs.100/-each and issued, subscribed and paid up capital is Rs.1,00,00,000/-divided into 1,00,000 equity shares of Rs.100/- each. Its main objects of the Transferor Company, inter alia, are to carry on the business of manufacturers, designer, assemblers, importers, exporters, buyers, sellers and dealers in all types of hoses, hose assemblies, fittings, hydraulic and Pneumatic Cylinders etc.,

(2) A Draft Scheme of Amalgamation of Petitioner Company are formulated in pursuant to Section 230 to 232 and other applicable provisions, if any,

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of the Companies Act, 2013 subject to approval of shareholders and confirmation by the Hon'ble National Company Law Tribunal (NCLT) and other concerned authorities. Accordingly, the Board of Directors of the Transferor Company at their meeting held on 15th July, 2019 approved the said scheme.

- (3) "M/s. Manuli Hydraulics India Private Limited (Petitioner Company No.2/Transferee Company) was incorporated on 08th August, 2007 with CIN No. U74999KA2007FTC111072 under the provisions of the Companies Act, 1956 having registered office situated at A-111 & 112, 3rd Main, 2nd Stage Peenya Industrial Estate Bangalore - 560 058. Its Authorized Share Capital is Rs.515,000,000/- divided into 5,15,00,000 Equity Shares of Rs.10/- each and issued, subscribed and paid up capital is Rs.48,65,85,940/- divided into 4,86,58,594 equity shares of Rs.10 each. The main objects of Transferee Company, inter alia, are to carry on the business in India of cash and carry wholesale trading, distributing, marketing, local sourcing, importing and the activities of job workers, stockists, brokers etc.
- (4) The Board of Directors of the Petitioner No.2/Transferee Company in their meeting held on 15th July 2019 has also provisionally approved the said Scheme of Amalgamation, however, subject approval concerned authorities under the extant Provisions of Act.
- (5) M/s. RCE & Co., Chartered Accountants, the Statutory Auditors of the Transferee Company has issued a Auditors Certificate dated 21.08.2019 has *inter alia* confirmed that the accounting treatment in the books of the company is in compliance with all the Accounting Standards specified by the Central Government in Section 133 of the Companies Act, 2013.
- (6) The benefits sought to be achieved by the Amalgamation inter-alia that the scheme will provide the benefit of operational synergies to the

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combined entity, which can be put to the best advantage of the stakeholders; Enable optimum utilization of funds and resources; Generate/raise additional funds and diversify and expand into other profitable ventures with larger resources.

- (7) Upon this Scheme becoming effective, the entire Equity share capital of the Transferor Company is held by the Transferee Company. Therefore, the Transferee Company shall not be required to issue shares and allot any shares to the Shareholders of the Transferor Company. The shares held by the Transferee Company shall stand cancelled and extinguished pursuant to the implementation of the Scheme of Amalgamation.
- (8) The Transferor Company is in sound financial position and is able to meet all its liabilities as and when they accrue. No compromise or arrangement is proposed with any creditors of the Transferor Company. No reduction in the quantum or change in terms and conditions of the liabilities, debts, duties and obligations owned by the Transferor Company to its creditors is proposed or will result consequent to the Scheme.
- (9) The Petitioner Companies have filed C.A. (CAA) No.22/BB/2020 before this Tribunal and the Tribunal, vide its Order dated 03.06.2020 dispensed with the meetings of the Equity Shareholders of the Applicant Companies and directed to convene the meeting of Unsecured Creditors of the Applicant Companies. Thereafter all the said meetings were duly held and the Chairperson and Scrutinizer appointed by the court for the meetings of the Petitioner Companies submitted their report of meeting in Form CAA-4 on 14.08.2020 and scrutinizer report on 06.08.2020.

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- (10) It is also stated that no investigation proceedings are pending against the Petitioner Company under Sections 235 to 251 or any other provisions of the Companies Act, 1956 or Sections 206 to 229 of Companies Act, 2013 or any other provisions of the Companies Act, 2013.
3. The Tribunal vide its Order dated 04.11.2020, directed the Petitioner Companies to issue notice to the Regional Director (SER), Hyderabad, ROC Karnataka, Principal Chief Commissioner of Income Tax, Competition Commission of India and the Office of the Official Liquidator and also directed to cause paper notification one in 'Financial Express' English Newspaper Bangalore edition as well as in 'Samyuktha Karnataka', Kannada Newspaper and to file proof of the same. It is affirmed that the Petitioner Company have caused appropriate notifications as per the above order and they have not received any objection from any party about the acceptance of Scheme.
4. The Registrar of Companies, Karnataka, vide letter bearing No. ROCB/Legal/CP(CAA)No. 41/BB/2020 dated 11.12.2020 and Regional Director vide their report dated 26.03.2021 have filed a Report by inter-alia pointed out following observations:
- (1) *The Transferor Company is the wholly owned subsidiary of the Transferee Company*
 - (2) *Clause 13 of Part B of the Scheme provides for Clubbing of Authorised Capital. As per provisions of Section 232(3)(i) of the Companies Act, 2013 the Transferee Company shall comply with provisions of the aforementioned section and pay the difference fee, after setting off the fee already paid by the Transferor Company on its respective capital.*
- In case the Transferee Company intend to club the Authorised Capital of Transferor Company, a separate application to be made to ROC for clubbing*

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within one month from the order or else interest will be levied as per the provisions of Section 403 of the Companies Act, 2013.

- (3) *Both Transferor Companies and Transferee Company has related party transactions. Necessary compliance under section 188 of the Companies Act 2013 may be called for to the satisfaction of the ROC.*
- (4) *100% shares of the Transferee Company is held by foreign entities viz, Fluiconnecto Holding B.V. and Fluiconnecto UK Ltd. Hence the Transferee Company may be directed to comply with FEMA/RBI regulations, if any.*
- (5) *The paid up share capital of Transferee Company has been increased from Rs.2,16,21,620/- to Rs.9,43,60,980/- in the year 2015-16 but the Company has appointed Whole time Company Secretary only from 01/12/2018 and the said Company Secretary resigned on 31/5/2019. As per the provisions of Section 203(4) of Companies Act, 2013 the Company needs to fill up the vacancy of Company Secretary within 6 months from 31/5/2019. However, till date the company has not appointed the Company Secretary. Hence the Transferee Company may be advised to comply with the provisions of Sec 203 read with Rule 8A of the Companies (Appointment and remuneration of Managerial Personnel) Rules 2014 and be directed to file compounding application with the Registrar of Companies and adjudicate the offence.*
- (6) *It has been reported by the Statutory Auditor of Transferor Company that a fraud has been committed by one of the employees of the Company to the tune of Rs.8.84 lakhs. It is now known when the fraud has happened and its outcome.*
- (7) *There are no prosecutions, complaints, technical scrutiny/inspections pending in this office against the Petitioner Companies.*

5. In pursuant to the above observations made by the ROC and RD, the Petitioner Company has filed an affidavit dated 12.04.2021 by explaining as

below:

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- (1) It is submitted that the Transferee Company shall comply with the provisions of section 232(3)(i) of the Companies Act, 2013 for payment of differential fees if any.
 - (2) As per the proviso of Section 188 sub-section (1) of the Companies Act, 2013, the provisions of related parties do not apply in case the transaction is in Ordinary course of business and at arm's length. Further, the Transferee Company confirms and undertakes that the related party transactions as entered are in compliance with section 188 of the Companies Act, 2013.
 - (3) The present Scheme of Amalgamation involves merger of wholly owned subsidiary into Holding Company (Transferee Company). Therefore, no shares are being issued by the Transferee Company. Since no shares are being issued to any party, the compliance of FEMA/RBI regulations does not arise. However, the Transferee Company further undertakes to comply with the applicable FEMA/RBI regulations, if any.
 - (4) It is further submitted that the Transferee Company could not find suitable candidate for the post of Company Secretary during the period of default. However, the Transferee Company undertakes to file appropriate compounding application with the Registrar of Companies.
6. The Official Liquidator has filed OLR No.10/2021 dated 25.01.2021 by inter alia stating that the Official Liquidator for scrutiny of the books of accounts and records of the Transferor Company has engaged M/s. SBMY & Co LLP, Chartered Accountant, and the said Chartered Accountant after examining the affairs of the Transferor Company, has inter alia concluded in their report dated 15.01.2021 inter-alia stated as under:

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- a) *The Company has maintained proper books of accounts, papers, statutory registers, minutes and other related records as required by the law.*
- b) *The affairs of the Company have not been conducted in a manner prejudicial to the interests of its members of the Company or public interest.*
7. The Competition Commission of India vide its letter No.N-20(13)/NF-619/2020/CD/7571 dated 04th December, 2020 has *inter-alia* stated that the Scheme has not been filed with the Commission under the provisions of the Act, and before passing an appropriate order, the Tribunal may seek an undertaking from the companies involved that CCI approval is not required for the said scheme.
8. Heard ShriParameshwar G Bhat, learned PCS for the Petitioner Company and Smt. Prema Hatti, learned Standing Counsel for the ROC/RD and Mr. Ganesh R Ghale, learned Counsel for the IT through Video Conference. We have carefully perused the pleadings of the Parties and the extant Provisions of Companies Act, 2013 and various Rules made thereunder and the Law on the issue.
9. Shri.Parameshwar G Bhat, Learned PCS for the Petitioner Company while reiterating various averments already placed on record, as briefly stated supra, as further submitted that the scheme is framed in accordance with law and the petition is filed as per law. Therefore, he urged the Tribunal to allow the application as prayed for.
10. Smt. Prema Hatti, learned Standing Counsel for the ROC/RD, has again pointed out various observations made in their Affidavits, as briefly stated supra, and submit that the Tribunal may consider the Scheme as per merits.
11. As facts narrated above, the instant Petition has been filed U/s 230 and 232 of Companies Act, 2013 r/w extant provisions of Rules, after duly following prerequisite as prescribed under the extant provisions of Companies Act, 2013 and

the Rules made thereunder. In terms of sub-section (3) of Section 232 of Companies, the Tribunal is empowered to sanction the scheme of amalgamation, if it is satisfied that sub-section (1) and (2) of the above section, however, subject to filing a Certificate by the Company's Auditor with Tribunal to the effect that the accounting treatment, if any, proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133, etc.

12. As stated supra, the Scheme in question is framed in the larger interest of all stake holders of the Company, by keeping in mind, the principle of ease of doing business. And the Scheme was put to notice to all stake holders and broadly consented by all Shareholders and Creditors of the Company. There are no investigations stated to be pending against the Companies. The Auditor of the Petitioner Company has furnished respective certificate by inter-alia certifying that the accounting treatment contained in the proposed Scheme of Amalgamation is in conformity with accounting standards notified by Central Government under Companies Act, 2013.
13. It is a settled position of law that any Scheme of Amalgamation or Arrangement, under the extant provisions of Companies Act, would not contemplate to waive any liability or legal action for any violation of provisions of Companies Act, so as to prevent Statutory Authorities from initiating any action against violation of provisions of Companies Act, in respect of the Companies involved, in accordance with law. In the instant case also, the Transferee Company would inherit all the liabilities/Responsibilities of Transferor Company and it is not being exempted from complying with all statutory requirement by virtue of this order. The Tribunal, in the instant proceedings, cannot examine every alleged violation committed by the
^ Petitioner Companies, since the issue here is only to sanction of the Scheme,

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subject to compliance of extant provisions of Companies Act and to make them to comply all terms and conditions as mentioned in the proposed Scheme in question, and other consequential actions, after sanction of the Scheme..

14. By perusal of Scheme in question, we are of considered opinion that the Scheme in question is comprehensive one complying with the provisions of Sections 230 to 232 of the Companies Act, 2013 and the Rules made thereunder and the Petition/Application is filed in accordance with law. It covers all the issues relating to legal proceedings, continuation of contracts, deeds, therefore, the Scheme in question and thus prima facie eligible to be sanctioned, however, subject to compliance of various undertakings as mentioned in the Scheme and to follow/comply various observations made by the Statutory Authorities as detailed supra. It is also appears to be fair, reasonable and it is not detrimental against the Members or Creditors or contrary to public policy. Therefore, we are inclined to sanction the scheme, however, subject to complying with various conditions/undertakings, post sanctioning the Scheme.
15. In view of the above facts and circumstances of the case, C.P. (CAA) No.41/BB/2020 is disposed of with the following directions:

(1) The Scheme of Amalgamation (which is enclosed to the instant Company petition) of M/s. Manuli PSI Hydraulics Private Limited (Transferor Company/Petitioner company No.1) with M/s. Manuli Hydraulics India Private Limited (Transferee Company/Petitioner Company No.2) is provisionally sanctioned and appointed date shall be 1st April 2019 prayed for, however subject to complying all undertakings, extant statutory provisions.

(2) The sanction of Scheme will not waive any violation or liability, if any, committed by the Companies prior to sanction of the scheme, and the Statutory Authorities are entitled to initiate appropriate Action in accordance with law, and they are also at liberty to approach this Tribunal by filing

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Miscellaneous Applications in the instant application by seeking appropriate direction(s);

- (3) *It is hereby dissolved the M/s. Manuli PSI Hydraulics Private Limited(Petitioner Company No.1/Transferor Company) without adopting winding up procedure;*
- (4) *The Company shall within thirty days of the date of the receipt of this Order cause a certified copy of this Order along with a copy of Scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25(7) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;*
- (5) *Any person(s) who is aggrieved by this order is/are at the liberty to apply to this Tribunal by filing miscellaneous application in the instant Application itself by seeking any directions that may be necessary.*

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(BHASKARA PANTULA MOHAN)
ACTING PRESIDENT

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(HEMANT KUMAR SARANGI)
MEMBER, TECHNICAL

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