

(2009) 01 KAR CK 0038
In the Karnataka High Court
Case No : Co. P. No. 86 of 2008

Mysore Cements Limited

APPELLANT

Vs

NIL

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Companies Act, 1956 — Section 100, 16, 394, 81

Citation : (2009) 150 CompCas 623 : (2009) 4 KarLJ 388 : (2009) 4 KCCR 2707 : (2010) 97 SCL 290

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Amarchand, Mangaldas and Suresh, for the Appellant; Preeti Dayanand Naik, CGC, for the Respondent

Judgement

B.V. Nagarathna, J.—This company petition has been filed by M/s. Mysore Cements Ltd., (hereinafter referred to as transferee company) having its registered office in the State of Karnataka, seeking sanction of a scheme of amalgamation with two other companies.

2. The petitioner which is a Transferee Company which is sought to be amalgamated with two other companies viz., M/s. Indorama Cement Ltd. (Transferor Company No. 1) and M/s. Heidelberg cement India Pvt. Ltd.. (Transferor Company No. 2). The scheme of amalgamation is annexed as Annexure-A to this petition.

3. According to the petitioner, Transferor Company No. 1 has its registered office in the State of Maharashtra and has tiled a separate petition u/s 394 of the Companies Act before the High Court of Judicature at Bombay and Transferor Company No. 2 having its registered office in the State of Haryana, has filed a separate petition under the said section before the High Court of Punjab and Haryana seeking approval and sanction of the scheme.

4. The petitioner, which is a Transferee Company, was incorporated on 13.5.1958

having its registered office at Ammasandra, Tumkur District, Karnataka. and its Memorandum and Articles of Association of the company are produced as Annexure-B. The main objects for which the petitioner-company has been established are to produce, manufacture and trade and generally to deal in cement and its by-products and building materials and in that connection to acquire, erect, construct, establish, operate and maintain cement factories, limestone quarries, workshops and other works and also to take on lease or otherwise acquire any company or companies carrying out business as manufacturers of cement in India or elsewhere to deal in the business of manufacture and sale of other allied products of cement and to carry out the business of metallurgy and deal in metals, minerals and its by-products and to work in mines and quarries and generally to carry over the business of mining in all its branches. Clause III 18(h) of the Memorandum of Association enables the petitioner to acquire or merge with other companies.

5. The authorised, issued, subscribed and paid-up share capital of the Petitioner Company as on 31.12.2007 is as follows:

Share Capital Amount in Rs.

Authorised: 2,15,00,00,000 -16,50,00,000 equity shares of Rs. 10 each
1,65,00,00,000 -50,00,000 preference shares of Rs. 100 each 50,00,00,000

Issued: 1,71,52,13,180

- 15,80,27,958 equity shares of Rs. 10 each 1,58,02,79,580 -13,49,336 9% cumulative redeemable preference shares of Rs. 100 each 13,49,33,600

Subscribed and paid up 1,71,51,21,250 -15,80,09,765 equity shares of Rs. 10 each paid up 1,58,00,97,650 -Amount of Rs. 90,000 was forfeited on forfeiture of 18,193 equity shares of

Rs. 10 each 90,000

-13,49,336 - 9% cumulative redeemable preference shares of Rs. 100 each 13,49,33,600

The certified copy of the audited balance sheet as on 31.12.2007 is produced as Annexure-C.

6. Transferor Company No. 1 was originally incorporated on 12.9.1996 under the provisions of Companies Act as Indo Kama Cement Limited with the Registrar of Companies in the State of Maharashtra. Subsequently, the name of the said company was changed to its present name i.e., indorama Cement Limited and a fresh certificate of incorporation was issued on 28.11.2000 by the Registrar of Companies, Maharashtra. The Registered Office of the Transferor Company No. 1 is situated at Village: Khar Kharavi, P.O. Gadab, Taluka-Pen, District, Raigad-402 107, Maharashtra and Anenxure-D is the certified copy of the Memorandum and Articles of Association of the Transferor Company No. 1.

7. The details of the share capital structure of the "transferor Company No. 1 as on 30.6.2007 is as under:

Rs.	Share Capital	Amount in
50,00,00,000	5,00,00,000 equity shares of Rs. 10 each	Authorised: 50,00,00,000
50,00,00,000	5,00,00,000 equity shares of Rs. 10 each	Issued, Subscribed and Paid-up: 50,00,00,000

8. It is stated that there is no material change in the share capital structure of Transferor Company No. 1 and at present, the entire paid up share capital of the said company is held by Cementum 1. B.V. which holds 4,99,99,930 equity shares and the balance 70 shares are being held by resident Indian individuals. The certified copy of the latest audited Balance Sheet of the Transferor Company No. 1 as on 30.6.2007 is produced as Annexure-E to the company petition.

9. The objects of Transferor Company No. 1 as per its Memorandum of Association is to carry on the business as manufacturer and dealer and establish various kind of premixed cement concrete and allied products and by-products and to construct, acquire, run, operate any factory for manufacturing cement and allied products.

10. Clause III (B)(22) of the objects of Transferor Company No. 1 contemplates and authorises amalgamation of the said company with the other companies.

11. Transferor Company No. 2 (Heidelberg cement India Pvt. Ltd.) was incorporated on 9.11.2006 in Gurgaon, Haryana state, under the provisions of the Act, having its registered office at 9th Floor, Tower C, Infinity Towers, DLF Cyber City, Gurgaon-122002. The certified copy of the Memorandum and Articles of Association of the Transferor Company No. 2 is produced as Annexure-F. The main objects for which Transferor Company No. 2 has been established as per the Memorandum of Association are, to produce, manufacture, purchase, trade and generally to deal in cement and various kinds of cement products and to acquire and establish and maintain cement factories and limestone quarries, workshops and other works. To take on lease or otherwise acquire undertakings business and property or any part thereof of any company or companies carrying on business of manufacturing of cement in India or elsewhere to deal in the business of manufacture and sale of other allied products of cement and to carry out the business of metallurgy and deal in metals, minerals and its byproducts and to work in mines and quarries and generally to carry on the business of mining in all its branches. As per Clause ill (B)(7) of the objects of the Transferor Company No. 2 it is authorised to amalgamate or merge with other companies.

12. The details of the share capital structure of the Transferor Company No. 2 as on 31.12.2007 is as under:

Share Capital	Amount in Rs.
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60,00,000	equity	shares	of	Rs. 10	each	6,00,00,000
-----						Issued, Subscribed and Paid-up
6,00,00,000	60,00,000	equity	shares	of	Rs. 10	each 6,00,00,000

13. It is stated that presently the entire equity share capital of Transferor Company No. 2 is held by Cementrum 1. B.V., which holds 59,99,999 equity shares and ENC1 Holding N.V. which holds one equity share as nominee of Cementrum 1. B.V. The certified copy of the latest audited Balance Sheet of the Transferor Company No. 2 as on 31.12.2007 is produced as Annexure-G.

14. According to petitioner-Transferee Company, its Board of Directors as well as Board Directors of Transferor Company No. 1 and "Transferor Company No. 2 have approved and adopted the scheme of merger (Annexure-A) at their respective meetings held on 9.5.2008. by virtue of which. the entire business and undertaking of the Transferor Companies shall be transferred to and vested in the petitioner-company, subject to approval and sanction of this Court within whose jurisdiction the Transferee Company is situated as well as the approval and sanction of the High Court of Judicature of Bombay and High Court of Punjab and Haryana within whose jurisdiction the Registered Offices of the Transferor Company No. 1 and Transferor Company No. 2 respectively are situated i.e., the State of Maharashtra and Haryana. Annexures-H, J and K are the Board Resolutions of the said companies respectively dated 9.5.2008.

15. According to the petitioner, Transferor Company No. 1 is a subsidiary of Cementrum I. B.V., a company incorporated and organised under the laws of Netherlands having its principal place of business at Sint Teunislaan 1. NL-5231 BS, "Hertogenbosch, the Netherlands (Cementrum for short) and Transferor Company No. 2 is a 100% wholly-owned subsidiary of (Cementrum. In view of the common business prospects, the management has considered it appropriate to merge the Transferor Companies into the petitioner-company. The scheme of amalgamation has been considered so as to achieve consolidation of cement business and to the benefit of interest of the shareholders, creditors and employees of all the three companies and the interest of the general public at large so as to create greater synergies between the businesses of all companies which would enable them to have access to better financial resources, increase the managerial efficiencies, effectively pooling the technical, distribution and marketing skills and enable Cementrum to consolidate its cement business in India. Therefore, as per the scheme, the entire undertaking the business of the Transferor Companies shall be transferred to and vested in the petitioner-company (Transferee Company) and the Transferor Companies are collectively referred to as the "Amalgamating Companies". It is stated that if approval and sanction is accorded by this Court, the scheme will take effect from the appointed from 1.4.2008.

16. That the Petitioner-Company is a listed company with the stock exchange where its shares are listed and has received no objection certificates from the Bombay Stock Exchange and the National Stock Exchange as well as Bangalore Stock Exchange as per Annexures-L, M and N respectively and that the equity shares of the Transferor Company are not listed on any stock exchange.

17. That, upon the scheme being sanctioned and becoming effective and in consideration of the transfer and vesting of all assets and liabilities of the Transferor Companies in the Petitioner-company, the members of the respective Transferor Companies shall receive equity shares of the Petitioner-company in the following share exchange ratio:

(i) Every Equity Shareholder of the Transferor Company No. 1 as on the Record Date (as defined in the Scheme) shall receive 1.3544 Equity Shares of the face value of Rs. 10/- each of the Transferee Company for every one fully paid Equity Share of Rs. 10/- each held in the Transferor Company No. 1;

(ii) Every Equity Shareholder of the Transferor Company No. 2 as on the Record Date (as defined in the scheme) shall receive 0.1469 Equity Shares of the face value of Rs. 10/- each of the Transferee Company for every one fully paid Equity Share of Rs. 10/- each held in the Transferor Company No. 2.

In terms of the above exchange ratio, 6,77,21,681 and 8,81,670 Equity Shares of the face value of Rs. 10/- each of the Transferee Company shall be issued in total to the Equity Shareholders of the Transferor Company No. 1 and Transferor Company No. 2 respectively.

18. That the issue and allotment of equity shares to the shareholders of the Transferor Companies would be in accordance with the procedure laid down under the Companies Act and the said shares shall be on par with the shares of the Transferor Company insofar as declaration of dividend, voting rights etc., is concerned.

19. In company application No. 611/08, this Court by its order dated 26.6.2008 dispensed with the meetings of the preference shareholder and unsecured creditors of the petitioner-company and directed it to convene and hold meeting of the Equity Shareholders for the purpose of considering and approving the scheme of amalgamation and accordingly directed Mr. Ashish Guha or in the alternative Mr. Amitabha Ghosh, to act as the Chairman of the said meeting and file a report to this Court. Subsequently, notice of the said meeting is said to have been sent individually to each of the shareholders to the petitioner-company and the meeting of the equity shareholders was also advertised as directed by this Court in one edition of "The Hindu" and "Udayavani" dated 02.15.7.2008 as per Annexure-P. The meeting of the equity shareholders of the petitioner-company was convened on 6.8.2008 at Mysore Cements Ltd., Auditorium, Ammasandra and chaired by Mr. Amitabha Ghosh and the Chairman's report is produced at Annexure-Q.

20. In the meeting of the equity shareholders, out of 68,607 equity shareholders, 254 shareholders were present in person or through their authorised representatives or by their duly constituted proxies and out of the said 234 shareholders, 253 of them voted in favour of the scheme and one ballot was declared as invalid and no equity share holders objected against the scheme and according to the petitioner, the scheme has been approved by the equity shareholders of the petitioner-company by requisite majority. That the meeting of the equity shareholders was shared by Mr. Amitabha Ghosh one of the Directors of the company and the Chairman's report was filed before this Court on 12.8.2008 and the same was accepted by this Court on 14.8.2008 and subsequently, on 19.8.2008, this petition was filed and notice of this petition was published in The Hindu" and Udayavani" two daily newspapers on 9.9.2008n and that there is no impediment to grant sanction of the scheme.

21. According to the petitioner, on sanction of the scheme and with effect from the date authorised, share capital of the petitioner-company is to be enhanced by an amount of Rs. 56.00 crores on account of transfer and vesting of the authorised share capital of Transferor Company No. 1 and Transferor Company No. 2 under the scheme and accordingly, the total authorised share capital of the Transferee Company would be Rs. 271 crores divided into 22.10 crores equity shares of Rs. 10/- each and 50.00 lakhs preference share of Rs. 100/- each. Further with effect from the appointed date, the unabsorbed depreciation amounting to Rs. 6238.32 lakhs which forms part of the debit balance of the Profit and Loss Account of the petitioner-company for the period ending 31.3.2008, is to stand adjusted against the amount lying to the credit of the securities premium account of the Transferee Company as on that date which has been approved by the body of the shareholders of the Transferee Company. Though there would be a reduction of the securities premium account as per Section 100 of the Companies Act, the same has been approved by the shareholders of the transferee company and is further subject to the order of sanction by this Court That the deemed reduction is only by way of set-off against the equivalent amount from the securities premium amount of the "Transferee Company and that the Transferee Company has no secured creditor and the rights of the unsecured creditors is adequately safeguarded and protected. That according to the petitioner from the effective date, the petitioner company is to have a changed name of "HEIDELBERGCEMENT INDIA LIMITED". Under the circumstances, the petitioner has sought for sanction of the scheme of amalgamation and other ancillary reliefs.

22. I have heard Sri. Udaya Holla, learned Senior Counsel for the petitioner and Smt. Preeti Dayanand Naik, learned Counsel for the HOC.

23. Learned Senior Counsel for the petitioner while taking me through the documents annexed to the petition and on highlighting the main objects of the three companies and the salient features of the scheme of amalgamation, has submitted that the existing authorised share capital of Transferor Company No. 1

and Transferor Company No. 2 would stand transferred to the Transferee Company and with the consent of the shareholders to the scheme is sufficient for the purpose of effecting this amendment under Sections 16, 81 and 94 - 97 of the Companies Act and it is not necessary to pass further resolutions in this regard and that no registration fee or stamp duty can also be chargeable against the Transferee Company. He further submits that when once the sanction of the scheme is accorded by this Court, it would be a sanction for all purposes and compliance that has to be made under the Companies Act i.e., Sections 100 - 102 as well as Section 21. He further submits that there is no investigation which has been instituted or pending under Sections 235 - 251 of the Act against the petitioner-company and that the proposed scheme of amalgamation will be beneficial to the Transferor Companies as well as the petitioner-company which would result in better and efficient operation of all the three companies after amalgamation. That Transferor Company No. 1 had applied for sanction and has been granted approval and sanction by the High Court of Judicature at Bombay which has been sanctioned by order dated 5.9.2008 and Transfer Company No. 2 has applied for sanction and approval before the Punjab and Haryana High Court and that there is no impediment for this Court to accord its sanction of the scheme of amalgamation and grant other incidental reliefs sought in this company petition.

24. The Regional Director, Ministry of Corporate Affairs. Southern Region Chennai was served with a notice of this petition and has raised the following objections through the Registrar of Companies, Karnataka:

- a) The authorised capital of a company is a notional limit upon which a company can increase its paid up capital. Hence, two notional limits cannot be clubbed together.
- b) The authorised capital of the company is not a liability like other liabilities, which are to be returned or refunded. Hence, the authorised capital will not come within the purview of transfer of liabilities under the scheme of Amalgamation.
- c) The Transferor Company and the Transferee Company are separate legal entities. On amalgamation, the Transferor Company will be dissolved and only the Transferee Company exists. At this stage, if the Transferee Company on account of the scheme of amalgamation increases its authorised capital, it has to comply with the provisions of Sections 94 and 97 of the Companies Act, 1956, by filing relevant returns with the Registrar of Companies with registration fee/filing fee.
- d) The Companies Act does not specifically exempt the Transferee Company on account of scheme of amalgamation from payment of Registration fee for increase of its authorised capital pursuant to the scheme of amalgamation. Hence, if the Transferee Company is allowed to increase its authorised capital by clubbing the authorised capital of the Transferor Company without any further act or deed as contemplated in the scheme, it will be not only against the

provisions of the Companies Act, 1956, but it will also involve substantial loss to the Central Government Revenue, and to the State Government.

e) Clubbing of the authorised capital of the Transferor Company to that of the Transferee Company cannot be a part of the scheme since Section 97 of the Companies Act, 1956 is only a procedural compliance requiring filing of the prescribed return and payment of registration fee to the Registrar of Companies and payment of Stamp duty to the State Government, which has to be statutorily complied with. In this connection, it is also respectfully submitted that the Original Side Appeal No. 26/2007 filed by the Regional Director against the decision of this Hon"ble Court overruling the objections raised by the Regional Director in a similar case is pending before the Division Bench of this Hon"ble Court.

25. Learned Counsel for the Regional Director has relied upon a decision of the Hon"ble Supreme Court in the case of Ratnabali Capital Markets Ltd. v. Securities and Exchange Board of India and Ors. (2007) 140 Comp. Case 677(SC) in support of her submission with regard to payment of registration fee to the Registrar of Companies and for payment of stamp duty to the State Government.

26. In response, the petitioner has tiled an affidavit of the authorised representative of the company to contend that the objections raised by the Regional Director are without substance.

27. Learned Senior Counsel has made his submissions on each of the objections raised by the Regional Director. He submits that Transferor Company Nos. 1 and 2 have the registered office in the State of Maharashtra and Haryana respectively and that Company Petition No. 688/2008 was filed by Transferor Company No. 1 before the High Court of Judicature at Bombay and the Bombay High Court has accorded sanction to the scheme subject to the sanction of the scheme by this Court and by the High Court of Punjab and Haryana with regard to Transferor Company No. 28 would also be obtained.

28. Learned Senior Counsel submits that it is not necessary to once again obtain approval u/s 21 of the Companies Act from the Registrar of Companies, Karnataka for the change of name as proposed in the scheme, since Section 394 of the Act is a complete code in itself and consequently all questions with regard to compliance of various provisions of the Act, including Section 21 would not arise, particularly when the scheme has been approved by the overwhelming majority of shareholders of the petitioner-company and when this Court which is vested with wide powers accords its sanction to the scheme, there cannot be a separate compliance u/s 21 of the Act and therefore, the said objection raised is futile.

29. In support of this contention reliance is placed on the decision of the Bombay High Court in the case of PMP Auto industries Ltd., in re 1994 80 Company Cases 289 (Bom) wherein it has been held that sanction of scheme of amalgamation under Sections 391-394 is a single window clearance for all changes necessary

for implementing the scheme and that the company need not carry out each change separately, alter referring to several decisions and particularly, Maneckchowk and Ahmedabad Mfg. Co. Ltd. In re reported in (1970) 40 Comp. Case. 819 (Guj), wherein, it has been held that the whole purpose of Section 391 is to reconstitute the company without the company being required to make a number of applications under the Companies Act for various alterations which may be required in its Memorandum and Articles of Association for functioning as a reconstituted company under the scheme. If there is any other thing to be done for effectuation of amalgamation or arrangement, which is for the benefit of the company and which requires a special procedure to be followed, except reduction of capital, the court has the power to sanction them while sanctioning the scheme itself, Section 391 is a complete code and is intended to be in the nature of "single window clearance" system to ensure that the parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated applications to the court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme, whose overall fairness and feasibility has been judged by the court u/s 394 of the Act.

30. In view of the said decision, it can be held that before sanctioning any amalgamation, notice to the Registrar of Companies is issued for the purpose of taking into consideration the objection, if any, made to it by the Registrar of Companies before passing any order of sanction. There is no reason why the Registrar of Companies cannot raise all its objections at this stage. It would then be possible for the court to appreciate the objections, if any, and adjudicate thereupon. If the court is satisfied that the objection based on the alteration of the memorandum has no substance, the court itself can decide it then and there. Under the circumstances, the objection raised with regard to the Transferee Company requiring to obtain a separate approval u/s 21 of the Act is not necessary. Further the name of the Transferor Company No. 2 being "Heidelberg Cement India Private Limited" on merger. the name adopted would be from "Mysore Cements Limited" to "Heidelberg Cement India Private Limited" which name is already on the record of the Registrar of Companies. Moreover, since the majority of the shareholders of the Petitioner-company have given their approval to the scheme including changing the name and in the absence of there being any other objection with regard to the change in name, it is unnecessary to once again file an application u/s 21 of the Act by the petitioner.

31. In the case of In re You Telecom India P. Ltd. & in Re You Broadband Networks India P. Ltd. in (2008) 141 Comp Cas 43 (Bom), the Regional Director had raised a similar objection that as there was a change in the name of the "Transferee-Company, it had to comply with the provisions of Section 21 of the Act by filing necessary forms with the Registrar of Companies. It was held that furnishing of the notice to the Registrar of Companies of the scheme as sanctioned will in any way constitute the substantial compliance with the provisions of Section 21 of the Act. Similarly in the case of In Re: Norfolk Infotech P. Ltd., the decision in in re PMP Auto industries Ltd., was relied upon to

hold that a separate formality need not be followed u/s 21 of the Act for change of name or the objection clause of Memorandum of Association of the resulting company. However, a direction was given to file necessary forms as prescribed under law in the office of the Registrar of the Companies to place on record these changes. In the case of *in re Sun Metals and Alloys P. Ltd. & in re Sunmet Holding India P. Ltd.*, the objection of the Regional Director that the change in the name of the company in the proposed scheme of amalgamation could not be given effect to without obtaining necessary approvals from the Registrar of Companies as required u/s 21 of the Act were held to be only formal in nature and the same could not come in the way of sanctioning of the scheme. As the petition filed under Sections 391-394 of the Act is like a "single window clearance" system and the petitioner cannot be burdened with taking various applications which are cumbersome in nature,

32. Hence, the petitioner in the instant case is directed to file necessary forms as prescribed in law in the office of the Registrar of Companies to place on record the changes with regard to the name of the company.

33. The other objection of the Regional Director is that Clause 4.1 of the scheme contemplates merger of Transferor Company with that of the Transferee Company without making payment of Registration fee and Stamp Duty, but in the event of the authorised capital of the transferee company being increased, then it (petitioner company) has to comply with the provisions of Section 94 and 97 of the Act by filing necessary returns with the Registrar of Companies along with Registration fee. The answer of the petitioner-company to this objection is that authorised capital of the Transferor Company is being combined with that of the Transferee Company under the scheme, which is legally permissible and for which separate compliance under Sections 94 and 97 of the Companies Act is not necessary as per ratio of several decisions. It is further submitted by the learned Senior Counsel by placing reliance on the decision of this Court in the case of *Mphasis Limited* reported in ILR 2007 Kar. 3375, that against the said decision OSA. No. 26/2007 has been filed by the Regional Director, but there is no stay of the operation of the judgment in the aforesaid case, however, in the event of the Division Bench holding in favour of the Regional Director in the said appeal, the petitioner company undertakes to pay the requisite stamp duty and registration fee on the increased authorised share capital of the transferee company as per clause 4.1 of the amalgamation on receipt of notice from the Registrar of Companies.

34. In the case of *Mphasis Limited*, this Court has held that in the event of an increase in the share capital on account of amalgamation, the increase would come into effect after the court passes an order according sanction to the scheme of amalgamation and when the said scheme is approved in the general meeting of the shareholders, there is substantial compliance of Section 94 of the Act and a certified copy of the order of the court is to be filed before the Registrar within 30 days from the date of the order which would operate as a

notice contemplated under Sub-section (1) of Section 95 and 97 of the Act and that Sections 391 - 394 which deal with amalgamation do not provide for compliance of Section 94 - 97 separately, and therefore, there is no infraction of the said provisions. Similarly, in the case of *Areva T and D India Ltd. v. Union of India* (2008) 144 Comp Cas 311 (cal), it is held that it is not necessary to pay any fee for giving effect for increase in the share capital of the transferee company pursuant to the scheme. In the case of *The Regional Director, Ministry of Company Affairs and The Registrar of Companies Vs. Cavin Plastics and Chemicals (P) Ltd.*, it is stated that Section 391 is a complete code in itself, but it is intended to be in the nature of a "single window clearance" and therefore,, what is intended u/s 391 is to reconstitute the company without the company being required to make a number of applications under the Companies Act for various alterations and once the sanction is accorded by the High Court, it would be a comprehensive clearance and therefore, no separate fees is required to be paid to the Registrar.

35. However, the learned Senior Counsel has fairly submitted that in the event of the decision of this Court in *Mphasis Ltd.*, being reversed by the Division Bench in appeal, then, the petitioner would undertake to pay the requisite stamp duty. To the same effect it is also stated in para 9 of the affidavit of the authorised representative of the petitioner company dated 17.10.2008. Therefore, recording the undertaking of the petitioner for the present, the payment of the requisite stamp duty and registration fees is held to be not required by the petitioner-company.

36. As per the proposed scheme, 6,77,21,681 and 8, 81,670 equity shares of the face value of Rs. 10/- each of the transferee company shall be issued in total to the equity shareholders of the Transferor Company No. 1 and Transferor Company No. 2 respectively. The same is based on the recommendation of M/s. BMR Advisors Pvt. Ltd., Chartered Accountants which was appointed as the valuer for the purpose of amalgamation based on the valuation report, the share exchange ratio was determined by taking into consideration all relevant factors which has been approved by the Transferor Companies as well as the Transferee Company. Since the exchange ratio of the shares have been determined by the Chartered Accountants and the same has been approved by the respective shareholders, it would not be proper for this Court to sit in judgment over the collective commercial wisdom of the shareholders. Further the interest of the employees of the transferor companies is envisaged as per Clause 3.2 (VI) of the Scheme which are not in any way disadvantageous to them. Further by an order dated 26.6.2008, the meetings of the preference shareholders, unsecured creditors and secured creditors of the petitioner-company were dispensed with and at the meeting, majority of the shareholders present have approved the scheme of amalgamation. it is also noticed that there is no investigation proceedings instituted or pending under Sections 235 - 251 of the Companies Act against the petitioner-company. The objects and benefits of the scheme are given in Clause 1.2 as follows:

1.2 Objects and Benefits of the Scheme:

1.2.1 The Amalgamating Companies and the Amalgamated Company propose through this Scheme to merge/amalgamate the Amalgamating Companies into and with MCL in accordance with the terms thereof.

1.2.2 Amalgamation of the Amalgamating Companies into the Amalgamated Company shall result in:

(a) consolidation of the cement business presently being carried on by the Amalgamating Companies and the Amalgamated Company which shall be beneficial to the interests of the shareholders, creditors and employees of such companies and to the interests of public at large, as such amalgamation would create greater synergies between the businesses of all such companies and would enable them to have access to better financial resources, as well as would increase the managerial efficiencies, while effectively pooling the technical, distribution and marketing skills of each other; and

(b) this Scheme would also enable Cementum to consolidate its cement business in India.

37. The broad terms of the scheme as per Clause 3 are that the entire business of amalgamating companies viz., Transferor Company No. 1 and Transferor Company No. 2 shall be transferred and vested with the Transferee Company i.e., the petitioner herein. By virtue of which the share capital of the petitioner company would be enhanced and the interest of all the shareholders is fully taken care of. There has also not been any opposition to the proposed scheme from the side of the employees. The scheme does not contravene any of the provisions of law and the affairs of the transferee company has not been conducted in any manner detrimental to the interest of the shareholders and creditors of the company. Under these circumstances, a case for according sanction for the scheme of amalgamation proposed by the petitioner is hereby made out. Company petition is accordingly allowed.

38. The office is directed to draw up a decree in Form No. 42. The petitioner-company shall file the certified copy of the order with the Registrar of Companies within 30 days from the date of receipt of a copy of this order.

39. Since the petitioner has undertaken to pay the requisite stamp duty and registration fee in the event of the Division Bench reversing the decision of the learned Single Judge in the case of Mphasis Ltd. reported in ILR 2007 Kar. 3375, the Regional Director is at liberty to issue notice and collect the stamp duty and registration fee from the petitioner in case he succeeds in OSA. No. 26/2007.