



Regulatory Alert Tracking change

No independent process required for change of name of Transferee Company in a Court approved Scheme of Amalgamation

Issue no: RA/17/2015

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Synopsis

Where scheme of amalgamation provided that name of transferee company would be deemed to have been changed to name of transferor company, (the said scheme being passed by requisite majority as laid down under section 391 of the Companies Act, 1956) there does not exist any necessity to follow the procedures and rules laid down for such change of name in section 21 of Companies Act, 1956 (as amended by section 13 of Companies Act, 2013).

Facts

- Michelin India Private Ltd (MIPL or Transferor Company) and Michelin India Tamil Nadu Tyres Private Limited (MITTPL or Transferee Company) approached the Honorable High Court of Madras for sanctioning a Scheme of Amalgamation between them (Scheme).
- Upon sanctioning, as per the Scheme, the name of the Transferee Company was to be deemed to have been changed to the name of the Transferor Company i.e. MIPL.

Issue

The Regional Director raised objection to the proposed change of name of Transferee Company on the ground that as per General Circular No. 45/2011 dated 8 July 2011 of Ministry of Corporate Affairs on Name Availability Guidelines, 2011, a proposed name is considered to be undesirable if it is identical with or too nearly resembles with name of a company in existence and names already approved by the Registrar of Companies.

Further, the Regional Director stated that the Transferee Company should follow the procedures and rules laid down in section 21 of the Companies Act, 1956 (as amended by section 13 of the Companies Act, 2013) for such change of name.

Decision

The Honorable High Court of Madras made the following observations:

- Circular of the Department of Company Affairs referred to by the Regional Director does not have any mandatory effect and it is merely advisory in character.
- Normally, to effect a change in the name of a company, the procedure prescribed under Section 21 of the Companies Act, 1956 (as amended by Section 13 of the Companies Act, 2013) have to be complied with.
- These Sections requires special resolution to be passed on the proposed change of name of the company and the approval of the Central Government to be sought thereupon for changing the company's name.
- However, in terms of the Scheme passed by the requisite majority as laid down under Section 391 of the Companies Act, 1956 complying with the procedure laid down thereon, there does not exist any necessity to have a repeat exercise of the same in terms of Section 21 of the Companies Act, 1956 (as amended by Section 13 of the Companies Act, 2013).
- Amalgamation is principally an internal arrangement of the company for a mutual benefit in enlarging its capital base. In the scheme of things to emerge on an amalgamation, a Transferor Company is united with the Transferee Company.
- It may be noted that Chapter V of the Companies Act, 1956 (which contains Section 391) is a complete code by itself on the subject of arrangement / compromise and reconstruction and comprehensive enough to include a change in the name consequent on the amalgamation or arrangement.
- Court is given wide powers under Section 391 of the Companies Act, 1956 to frame a Scheme. Section 391 is a complete Code under which the Court can sanction a Scheme containing all the alterations required in the structure of the Company for the purpose of carrying out the Scheme. In considering a Scheme under Section 391, the Court should be satisfied :
 - (i) that the statutory provisions are complied with,
 - (ii) that the class affected by the Scheme has been properly represented and
 - (iii) that the arrangement is such that a man of business would reasonably approve.

- Similar view was taken by other High Courts as well.

Based on the above, the objection raised by the Regional Director was not accepted.

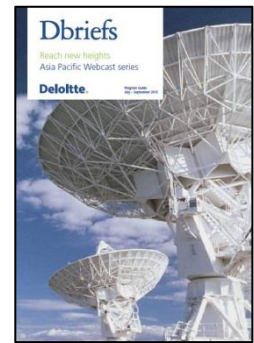
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On 10 September 2015 from 11:30 AM to 12:30 PM IST

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