SREI

SIFL\SECT\SKC\10-11\370
January 20, 2011

The Secretary
Bombay Stock Exchange Limited
Phiroze Jeejeebhoy Towers
Dalal Street, Mumbai - 400 001
Fax: 022-2272 2037, 2272 2039, 2272 2041

The Secretary
National Stock Exchange of India Limited
Exchange Plaza, 5th Floor, Plot no. C/1,
G Block, Bandra-Kurla Complex
Bandra (E), Mumbai - 400 051
Fax : 022 - 2659 8237/38; 6641 8125/26

The Secretary
The Calcutta Stock Exchange Limited
7 Lyons Range
Kolkata - 700 001
Fax: 033-2220 2514, 2221 4664, 2210 4492,
2210 4500

London Stock Exchange
10 Paternoster Square
London EC4M7LS

Dear Sir,

Sub: Updates on Scheme of Amalgamation of Quippo Infrastructure Equipment Limited into and with Srei Infrastructure Finance Limited

Pursuant to Listing Agreement with the Stock Exchanges, please note that the Scheme of Amalgamation ("the Scheme") of Quippo Infrastructure Equipment Limited ("**Transferor Company**") into and with Srei Infrastructure Finance Limited ("**Transferee Company**") has been sanctioned by the Hon'ble High Court at Calcutta on January 18, 2011. A copy of the Order obtained from Hon'ble High Court at Calcutta is enclosed herewith for your perusal.

The Scheme shall become effective on receipt and filing of the Certified Copies of Order of the Hon'ble High Court at Calcutta with Registrar of Companies, West Bengal, Kolkata.

This is for your information.

Thanking you,

Yours faithfully,
For Srei Infrastructure Finance Limited

Sandeep Kr. Lakhotia

Sandeep Lakhotia
Company Secretary

Encl.: as above

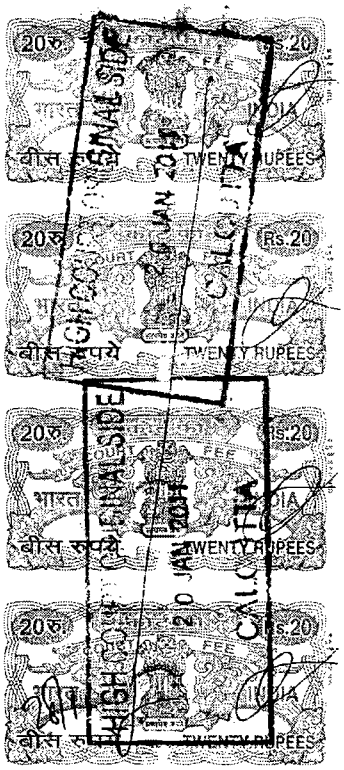
COMPANY PETITION NO. 208 OF 2010

CONNECTED WITH

COMPANY APPLICATION NO. 311 OF 2010

IN THE HIGH COURT AT CALCUTTA

ORIGINAL JURISDICTION



In the matter of:

The Companies Act, 1956;

And

In the matter of:

Application under Section 394 of the Companies Act, 1956;

And

In the matter of:

Scheme of Amalgamation of Quippo Infrastructure Equipment Limited with Srei Infrastructure Finance Limited;

And

In the matter of:

Quippo Infrastructure Equipment Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Plot No. 32, Mirania Gardens, Ground Floor, 11 IC, East Topsia Road, Kolkata - 700 046, within the aforesaid jurisdiction

And

In the matter of:

Srei Infrastructure Finance Limited, a company incorporated under the Companies Act, 1956, having

its registered office at "Vishwakarma", 86C, Topsia Road (South), Kolkata – 700 046, within the aforesaid jurisdiction.

And

In the matter of:

1. Quippo Infrastructure Equipment Limited

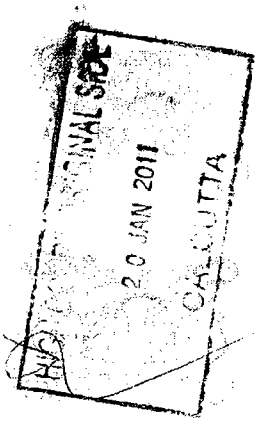
2. Srei Infrastructure Finance Limited

... ... **Petitioner Companies**

C.P. No. 208 of 2010.
C.A. No. 311 of 2010

IN THE HIGH COURT AT CALCUTTA

Original Jurisdiction



PRESENT :

THE HON'BLE MR. JUSTICE

I. P. Mukerji

18th January.....2011...

Cecippo Infrastructure & Equipment Ltd.

versus - and -

Saci Infrastructure Finance Ltd.

The Court :

C.P. NO. 208 OF 2010
Connected with
C.A. NO. 311 OF 2010

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

PRESENT
Hon'ble Justice I.P. Mukerji

In the matter of :
QUIPPO INFRASTRUCTURE EQUIPMENT LIMITED

- And -

In the matter of :
SREI INFRASTRUCTURE FINANCE LIMITED
..... Petitioner Companies

For applicants	:	Mr. Ranjan Deb, Sr. Adv. Mr. S.N. Mukherjee, Sr. Adv. Mr. Debal Banerjee, Sr. Adv Mr. Ratanko Banerjee, Sr. Adv. Ms. Neelina Chatterjee, Adv. Mr. S. Ganguli, Adv. Mr. A. Basu, Adv.
For the Central Government	:	Mr. S. D. Banerjee, Sr. Adv. Mrs. Mamata Bhargava, Adv.
For Bombay Stock Exchange	:	Mr. D. Basak, Adv. Mr. A. Roy, Adv. Mr. R. Rai, Adv.
For Calcutta Stock Exchange	:	Mr. D. Basak, Adv. Mr. Satyabrata Chakraborty, Adv.

Heard on: 05.01.2011

Judgment on: **18th January, 2011**

I.P. MUKERJI, J.

This is an application for sanction of a scheme of amalgamation between the petitioner companies and their respective shareholders and for consequential orders.

It was seriously contested by the Central Government represented by the Registrar of the Companies and by the Calcutta and Bombay Stock Exchanges.

Before dealing with their objections, the facts have to be noted.

FACTS:

Each of the petitioners took out an application under section 391 of the Companies Act 1956 (hereinafter 'the Act') asking the court to convene a meeting of the shareholders of each company to consider their approval of the proposed scheme. By orders dated 29th April 2010 and 6th May 2010 in those applications such meetings were directed to be convened according to the Act and the Companies Court (Rules) 1959.

Prior to that the respective Boards of Directors of the petitioners passed resolutions on 28th January 2010 approving the scheme. On 26th February 2010 such resolution of the Board was filed with interalia the Calcutta and Bombay Stock Exchanges in accordance with the listing agreement between the petitioner no. 2 and them. The petitioner No. 1

was not a listed company. After the above two orders were passed by the court the petitioner company No. 2 by its letter dated 8th May 2010 also served notices convening the meetings on inter alia these two Stock Exchanges.

The meeting of each of the companies was held on 31st May 2010 at the auditorium of the building 'Vishwakarma', at 86C Topsia Road (S), Kolkata – 46. The meeting of the petitioner No.1 was held at 10.30 A.M. and of the petitioner No. 2 at 11 A.M. After each meeting, a poll was conducted by the chairperson.

The seven equity shareholders of the petitioner No. 1 representing 100% in value of the shareholders voted unanimously in favour of the resolution. 250 equity shareholders of the petitioner No. 2 representing 85.875% in value of the shareholders voted in favour of the resolution; 17 equity shareholders representing 14.125% of such value voted against. 17 votes were declared invalid.

The approval made by the shareholders of the petitioner-companies No. 2 was conveyed inter alia to the said two Stock Exchanges on 31st May 2010.

THE SCHEME:

Before proceeding further with this judgment the scheme of amalgamation between these two companies is to be considered.

In the scheme the petitioner No. 1 is referred to as the amalgamating company; the petitioner No. 2 as the amalgamated company. The 'appointed date' is mentioned as 1st April 2010. The "effective date" for coming into effect of the scheme is the day when certified copies of the orders of the High Court are filed with the Registrar of Companies West Bengal at Kolkata by the amalgamated and amalgamating companies (see paragraph 1.3.1 (vi) read with clause 5.5 of the Scheme). 'Record date' is defined in clause 1.3.1 (ix). It says it shall have the same meaning as given to it in clause 5.7. Clause 5.7 says that a 'record date' is to be determined by the Board of Directors of the amalgamating company for issue and allotment of shares of the amalgamated company to its members in terms of clauses 4.4 and 4.5. Clause 4.4 says that upon the scheme becoming effective the shareholders of the amalgamating company as on the 'record date' shall receive equity shares of the amalgamated company in the ratio of 3:2, 3 of amalgamated company for 2 shares of the amalgamating company. There is a qualification, namely, that in the event of issuance of bonus shares prior to amalgamation the above share exchange ratio will stand modified. Such issue of bonus share is contemplated in clause 4.11. 4.11 says that upon the scheme becoming effective the amalgamated company will issue 9,29,15,839 number of additional equity shares of Rs.10 each, fully paid-up in it to the equity shareholders as on the 'record date'. 'Record

date' in this case would be a date prior to the 'record date' referred to in clause 5.7.

I am not dealing with any other aspect of the scheme because only the above aspects are contentious in this application.

OBJECTIONS AGAINST THE SCHEME:

First, I will deal with the objections of the Central Government. Their first objection is that according to the balance sheet of the petitioner No.1 as at 31.03.2010 its net worth or net assets were Rs.109.02 crores. Its paid-up capital was Rs. 106.84 crores with reserves and surplus of Rs. 2.18 crores. Shares of petitioner no. 2 of market value of 2659.46 crores are proposed to be allotted to the shareholders of the petitioner No. 1 against such net worth. Therefore, according to them the share exchange ratio is "unrealistic". Secondly, the share valuation of petitioner No.1 is doubted. According to the Central Government the fair exchange ratio should have been one equity share of petitioner No.2 for 9 equity share of petitioner no.1. The next objection of the Central Government is with regard to bonus shares. It quotes correspondence from the Bombay Stock Exchange addressed to them and tries to argue that the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2009 framed under Section 30 of the Securities and Exchange Board of India Act 1992 is being violated. The petitioner No.1 is not a listed company whereas the petitioner No. 2

is. The effect of the amalgamation would be that petitioner No. 1 would also be treated as a listed company. Comments are made about Accounting Standard 14 not being followed.

Further, the meeting of the petitioner No.2 was attended by a small percentage of shareholders.

Now, I will consider the objections of the Bombay and Calcutta Stock Exchanges.

Their first point is that there is violation of the listing agreement between them and the petitioner No.2. They refer to clause 24(f). They say that no approval of the Stock Exchange was taken as provided in that clause. The second submission is the same as that made by the Central Government. It is to the effect that the petitioner No.1 is not a listed company whereas the petitioner No. 2 is. By virtue of this amalgamation the petitioner No.1 also would enjoy the same status as the petitioner No.2. That is why there is an additional requirement to take the permission of these Stock Exchanges before this scheme is filed in this court for approval.

Then they refer to the said Regulations. They argue that there is violation of chapter IX of these Regulations. A specific reference is made to violation of regulation 95. I set out this regulation below:

> **"95. (1) An issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors.**
> **Provided that where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue; the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.**
> **(2) Once the decision to make a bonus issue is announced, the issue can not be withdrawn."**

It is said that such bonus issue was not implemented within two months from the date of the decision in this behalf by the board of directors of the petitioner No.2. Hence, there is violation. Although, it is not pleaded in the affidavit, submission was sought to be made that such scheme if approved would lead to destabilizing the stock market or causing unnecessary price fluctuations.

Reference has been made to the case of **Miheer H. Mafatlal - v - Mafatlal Industries Ltd., reported in AIR 1997 SC 506** to inter alia argue that it is the duty of the court to see before passing any scheme that it is free from any illegality or is not against public policy. I will note the submissions of the learned counsel for the petitioners while I deal with these objections in the discussion below.

DISCUSSION:

I will first deal with the objections of the Central Government. It tries to make a market valuation of the shareholding of the petitioner No.2 Then it says that the petitioner No.1 is not a listed company. It also tries to value the net assets of the petitioner No.1 at Rs.109.02 crores. It arrives at the finding that the shares of the petitioner No2 valued at Rs. 2659.46 crores are proposed to be transferred to the shareholders of the petitioner No.1 with a net asset value of Rs.109.02 crores. Then it doubts the share valuation of the petitioner No.1. It comes to the ultimate conclusion that the share valuation is erroneous and consequently the share exchange ratio.

Thereafter, it goes further it says that the meeting of the petitioner No. 2 was attended by 284 shareholders and approved by 250 shareholders. These 250 shareholders constitute less than .5% of the total number of shareholders.

Then it tries to comment on the issue of bonus shares. It adopts the objection of the Bombay Stock Exchange without specifically saying how there is violation of any law.

Thereafter, the usual comment about not complying with Accounting Standard 14.

It is nobody's case that shareholders' meeting was held without notifying the shareholders or the public at large.

The statute provides for a quorum for holding such meeting. If such meeting is held and a resolution passed in it by the requisite majority that majority binds all the shareholders (See section 391 of the Act). From the Chairperson's report which is not challenged it is plain that the resolution of the petitioner No.1 was passed with unanimity and the resolution of the petitioner No.2 was passed with a majority representing 85.875% in value of the shareholders.

Our Division Bench in **Bengal Tea Industries Limited and others –v – Union of India and another reported in 93CWN 542** has pronounced the following dictum:

> **"59. The proposed ratio of exchange was specifically placed before the members of the transferor company and was accepted. It is nobody's case that the majority of the shareholders of the transferor company has coerced the minority in any manner in accepting the said ratio of exchange. It is also not the case that the shareholders of the transferor company would not get anything in lieu of their shares of the transferor company. If the contention of the regional Director is accepted, the shareholders of the transferor company would no doubt get a little more on the basis of a more favourable ratio. Valuation is ultimately a matter of expert opinion.**

There are more than one method of valuation and a valuation would vary if different methods are adopted. The shares are the properties of the shareholders and they are the ultimate and the best judge of the value which they would put on their shares. There is no requirement in the Companies. Act in such a case. The ratio of exchange has to be determined on a valuation made by a chartered accountant or an auditor though we feel that in the best interest of all concerned and to prevent controversy a proper basis of valuation should be recorded."

I respectfully follow it.

It is to be presumed that shareholders of a company are prudent businessmen. They had scrutinised the scheme in detail and presumed to have clearly understood what they had to give and what they would receive from the scheme and how the scheme was likely to promote the business interests of the company and of themselves. Therefore, the court should not ordinarily interfere with their decision. I do not know what prompted the Central Government to embark on this kind of an enquiry without any complaint whatsoever from any shareholder or creditor or any other person likely to be affected by the scheme. The Act gives the Central Government power to object to a scheme if it is prejudicial to the shareholders or to public interest. The Central Government ought to know when to exercise such powers. If it finds that the notice or advertisement has not been properly issued or circulated or the resolution improperly recorded or the will of the shareholders so stifled that the agreed resolution could not be theirs or a fraud has been

practised by some people controlling the company on a group of shareholders which could not be discovered by them or the resolution is oppressive for the minority or violative of any law or policy of the government or against public interest, then the Central Government can come forward with its objection that the scheme is prejudicial to the members or some of them or to the public. No such cause exists, in my opinion. The resolution adopting the scheme has been taken by such overwhelming majority of shareholders of the petitioner No. 2 and unanimously by shareholders of petitioner No.1, in their commercial wisdom. I find no substance in the objection of the Central Government which is overruled. I only direct the petitioners to comply with accounting standard 14 while implementing the scheme and which they have undertaken to do during the course of hearing of this application.

Now, I propose to deal with the objections of the Bombay and Calcutta Stock Exchange. I doubted the locus of the stock exchanges to come forward with any objection. But I was shown one passage in **Miheer H. Mafatlal - v - Mafatlal Industries Ltd., (supra)** to the following effect:

> **".....This is implicit in the very concept of compromise or arrangement which is required to receive the imprimature of a Court of law. No court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. Consequently it**

> **cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got the requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the concerned company, has to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme. It is trite to say that once the scheme gets sanctioned by the Court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme qua them also has to be kept in view by the Company Court while putting its seal of approval on the concerned scheme placed for its sanction. It is, of course, true that so far as the Company Court is concerned as per the statutory provisions of Sections 391 and 393 of the Act the question of voidability of the scheme will have to be judged subject to the rider that a scheme sanctioned by majority will remain binding to a dissenting minority of creditors or members, as the case may be, even though they have not consented to such a scheme and to that extent absence of their consent will have no effect on the scheme. It can be postulated that even in case of such a Scheme of Compromise and Arrangement put up for sanction of a Company Court it will have to be seen whether the proposed scheme is lawful and just and fair to the whole class of creditors or members including the dissenting minority to whom it is offered for approval and which has been approved by such class of persons with requisite majority vote."**

Hence, I permitted them to participate.

Clause 24(f) of the Listing Agreement is pointed out by the learned counsel for the Calcutta and Bombay Stock Exchange. Clause 24(f) reads as follows:

> **"(f) The company agrees that it shall file any scheme/petition proposed to be filed before any Court or Tribunal under sections 391, 394 and 101**

of the Companies Act, 1956, with the stock exchange, for approval, at least a month before it is presented to the Court or Tribunal."

It is submitted that since these stock exchanges did not approve the scheme, it could not be presented before the court and for that reason the application for sanction of the scheme should be dismissed.

I think this is a bad argument. First of all, the Act and Rules do not provide for approval of any stock exchange being taken before the scheme is to be presented before the court. There is neither any requirement in the SEBI Act or any Rule or regulation thereunder. Any stock exchange cannot be allowed to argue that because it has not approved the scheme, the court loses its power to consider it for approval. This stipulation in the agreement is to be read as furnishing a copy of the proposed scheme to the stock exchange for its information and objection.

The next argument on behalf of the stock exchanges is that the scheme is in violation of the said Regulations. Regulations 92 to 95 have been shown to me. But the emphasis was placed on regulation 95 set out above.

In this case shareholders' approval was required. Therefore, according to regulation 95 the bonus issue should have been implemented within two

months from the resolution of the board of directors, inclusive of the time taken to take shareholders' approval. Since the bonus shares were not issued within that time, there is an illegality in such bonus issue which the court should notice and refuse to sanction the scheme. Sub regulation (2) of 95 is most important, as pointed out by the learned counsel for the petitioners. Once the decision to make a bonus share is announced, the issue cannot be withdrawn. I accept his contention that since bonus issue was once announced it could not be withdrawn. Therefore, delay to implement it is not fatal to the issue.

In any case, I accept the submission that this regulation 95 cannot cover a situation where such bonus issue is part of a scheme of compromise or arrangement. The opening words of Chapter IX make the Regulation relating to the issue of Bonus shares subject to the Act. So this regulation has to be so interpreted that it applies only in case of bonus shares made without the intervention of the court. When a bonus issue contained in a scheme is before the court, it is for the court to see how such issue is to be implemented after its adoption by the shareholders after the decision of the Board of Directors to make such issue. In any event, a regulation under the Act cannot take away the substantive powers given to the court to sanction a compromise or arrangement involving sanction of issue of bonus shares. Therefore, this is also a bad point and is rejected.

But there is some substance in one argument of the said learned counsel. He argues that clause 4.11 says that from the effective date, that is, filing of a certified copy of the sanction order with the Registrar of Companies, West Bengal, free reserve in the petitioner No.2 amounting to Rs.92,91,58,390/- would stand converted into 9,29,15,839 number of additional equity shares of Rs.10/- each fully paid-up, and allotted to the equity shareholders of the amalgamated company as on the 'record date' which according to the definition clause in 1.3.1 (ix) read with 5.7 is a date to be determined by the Board of Directors of the amalgamating company for issue and allotment of equity shares of the petitioner no. 2 to shareholders of the amalgamating company in terms of clause 4.4 and 4.5. This record date in 4.11 should however be a date prior to the record date in 5.7. According to them if all these 'record dates' are left to the board of directors then the issue of bonus shares would be in their hands and would create fluctuations and uncertainty in the stock market.

I think his submission is correct.

Therefore, subject to allowing that objection, I allow this application for sanction of the scheme. I pass orders in terms of prayers (a) to (g) of the petition subject to the petitioners undertaking to comply with Accounting

Standard 14. However, the Boards of Directors of the two petitioners are to determine the 'record dates' according to the scheme within seven days of issuance of a copy of this order and to issue bonus shares and shares in terms of Clause 4.4 within a period of a fortnight from the effective date. In default, the application for sanction of the scheme would stand dismissed, upon the same being applied for in this court.

In the event the petitioners supply a legible computerized print out of the scheme and the schedule of assets in acceptable form to the department, the department will append such computerized print out, upon verification, to the certified copy of the order without insisting on a handwritten copy thereof. The Central Government will be entitled to costs assessed at 500 GMS.

Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

Xerox 20/01/2011

Sd/- I. P. Mukerji - J.

(I.P. MUKERJI, J.)

CERTIFIED TO BE A TRUE COPY

Authorised under Section 76 of the Indian Evidence Act, 1872 (Act-1 of 1872)

C.P. No. 208 of 2010
CA No. 311 of 2010

IN THE HIGH COURT AT CALCUTTA

Original ..... Jurisdiction

i) Date of application on for Copy..18.1.11.....
ii) Date of notifying the charges. .....20.1.11.....
iii) Date of putting in the charges. .....20.1.11.....
iv) Date on which the copy is ready for delivery. .....20.1.11.....
v) Date of Making over the copy to the applicant. .....20.1.11.....

Bimal Pal 20/1/11
Superintendent,
Copyists' Department
High Court, O.S.

20/1/11

Caldyne Infrastructure Equipment Ltd
versus
Sneh Infrastructure Projects Ltd

Judgment delivered by the Hon'ble Mr. Justice D. P. Mukherji this 15th day of January 2011.

Filed this 20th day of January 2011.

Assistant Registrar.

Anuroy Basu
(Adv).