

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI**

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

COMPANY PETITION NO. 21 OF 2016

CONNECTED WITH

COMPANY APPLICATION (MAIN) NO. 179 OF 2015

(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)

IN THE MATTER OF SECTION 391 & 394 OF

THE COMPANIES ACT, 1956

(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

AMONGST

JYOTI KNITS PRIVATE LIMITED

Company Incorporated under Companies Act, 1956

Having registered office at:

40-41, Community Centre, New Friends Colony

COMPANY PETITION NO. 21 OF 2016
JYOTI KNITS PRIVATE LIMITED

New Delhi-110025

...TRANSFEROR/ PETITIONER NO.1 COMPANY

AND

MAYUR KNITS PRIVATE LIMITED

Company Incorporated under Companies Act, 1956

Having registered office at:

40-41, Community Centre, New Friends Colony

New Delhi-110025

...TRANSFEROR / PETITIONER NO.2 COMPANY

AND

ESSAY MARKETING COMPANY LIMITED

Company Incorporated under Companies Act, 1956

Having registered office at:

40-41, Community Centre, New Friends Colony

New Delhi-110025

...TRANSFEROR / PETITIONER NO.3 COMPANY

AND

RAGHAV KNITS AND TEXTILES PRIVATE LIMITED

Company Incorporated under Companies Act, 1956

Having registered office at:

40-41, Community Centre, New Friends Colony

New Delhi-110025

...TRANSFEROR / PETITIONER NO.4 COMPANY

AND

ARSHIA TRADE MART PRIVATE LIMITED
Company Incorporated under Companies Act, 1956
Having registered office at:
40-41, Community Centre, New Friends Colony
New Delhi-110025 ...TRANSFEROR / PETITIONER NO.5 COMPANY

WITH

AGARWAL FINESTATE PRIVATE LIMITED
Company Incorporated under Companies Act, 1956
Having registered office at:
40-41, Community Centre, New Friends Colony
New Delhi-110025 ... TRANSFEREE / PETITIONER NO.6 COMPANY

AND

Their respective Shareholders and Creditors

ADVOCATE FOR THE PETITIONERS: Mr. Anil Goel, Advocate

FOR REGIONAL DIRECTOR, (NR), MCA: Mr. Manish Raj, Company

Prosecutor

FOR OFFICIAL LIQUIDATOR: Ms. Chetana Kandpal, Company Prosecutor,

Office of Official Liquidator, Delhi

ORDER

Order Delivered on:

11.10.2017

1. This petition filed by the companies above named is coming up finally before us on 10.08.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor/ Petitioner Companies No.1 to 5 with the Transferee/ Petitioner Company No.6. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors were filed before the Hon'ble High Court of Delhi in CA (M) 179/2015. The Hon'ble High Court of Delhi vide its order dated 23rd December, 2015, was pleased to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the Petitioner Companies in view of their consents having been obtained and produced before it or there was none therefore the necessity of convening the meeting did not arise as the case may be.

2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Arrangement before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meeting ordered by the Hon'ble High Court of Delhi on 23rd December, 2015.



3. On 13.01.2016 the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in C.P. No.21/2016 moved by the petitioners under Sections 391 to 394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director and the Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspapers "Business Standard" in English (Delhi Edition) and in Hindi (Delhi Edition).
4. While the joint petition in C.P.No. 21 of 2016 was pending disposal since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 27.02.2017, for our consideration.
5. In view of the above, the petition of Second Motion as above filed by the petitioners jointly before the Hon'ble High Court and subsequently transferred is taken up for final consideration by us. The petitioners, it is seen from the records have filed an affidavit dated 19.04.2016 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 13.01.2016 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of the 'Business Standard' in English edition and



'Hindi edition on 14.04.2016. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Regional Director, Northern Region as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 13.01.2016 and in proof of the same acknowledgement made by the respective offices have also been enclosed.

6. Further, it is also seen that pursuant to the directions from Regional Director, Northern Region, a copy of the Company Petition has also been served on the jurisdictional Income Tax Officer of the Petitioner Companies. The representative of the Official Liquidator has filed an affidavit dated 21.04.2016 stating that the office of Official Liquidator does not have any objection to the scheme being approved. Further, Regional Director, Northern Region has also filed the Affidavit dated 22.04.2016 before the Hon'ble High Court, New Delhi and have stated that there is no objection to the sanction of the Scheme. However Regional Director has stated in the affidavit of his that the Registrar of Companies has made few observations in para 7 which is to the following effect:

*"Para 7
It has been mentioned in para 5.3 of the scheme that all debts, liabilities, duties and obligations of the Transferor Companies shall without any further act or deed be and stand transferred to the transferee Company. All inter se loans between the Transferor Companies and the Transferee Company, if any, shall stand nullified. All other loans (except the loans from Anderson Dealtrade Pvt Ltd and Agarwal Trademart Private Limited) shall*



be converted into the equity shares of face value of Rs. 10 each/- of Transferee Company. In this regard it is submitted that the proposed scheme of Arrangement neither disclosed the parties/ lenders interested in the said debt restructuring nor the petitioners have submitted any resolution/ agreement entered into between the petitioners and such lenders.

7. In response to this observation the petitioner companies have filed affidavit dated 7th May, 2016 stating that the observation of Registrar of Companies is not correct as all the parties/ lenders whose loan shall get converted into equity shares on approval of the scheme have already given their respective consents to the scheme of Arrangement supported by their respective board resolutions.
8. Further observation made in para 7 (ii) is that AOC-4 filed by the Transferee Company shows that the Transferee Company is an NBFC and also Balance Sheet of the Transferor Companies shows that all these companies are engaged in investment and/ or granting loans and advances so they should be asked whether they are an NBFC and if so whether they have acquired the prior permission of RBI.



9. In response to this observation, the petitioner companies has submitted that they admit that Transferee Company is an NBFC duly registered with RBI and RBI vide its letter dated 10th April, 2017 has given the permission to the Transferee Company for scheme of Amalgamation with Non-NBFC five petitioner Companies.

Hence the observations of the RD in the above circumstances does not carry much conviction and hence are not treated as material and the above undertaking given by the Petitioner Companies are taken on record and the said objection is closed.

10. A perusal of the representation of Regional Director shows that notice to the Principal Commission of Income Tax, Delhi had been duly sent and that no specific comments/ observation have been received raising any objections to the scheme for which sanction is sought presently.

11. That the Petitioner Companies have complied with proviso to Section 230 (7) proviso/ Section 232 (3) by filing the certificate of the Company's Auditor's.

12. The counsel for Petitioners have filed an affidavit dated 23.04.2016 stating that they have not received any objections from third party and public at large for the purpose of



sanction to the present Scheme of Amalgamation. The above statement is taken on record. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as Annexure -A-2 with the Company Petition as well as the prayer made therein.

13. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

14. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER

(1) That all the property, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same; and



- (2) That all the liabilities and duties of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and
- (3) That all proceedings now pending by or against the Transferor Companies be continued by or against the Transferee company; and
- (4) That as per clause 7 of the scheme, all the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service.
- (5) That the Transferee Company do without further application allot to the persons entitled of the Transferor Company, as have not given such notice of dissent, as is required by clause 6 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION;
- (6) That Transferor Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee

company and the files relating to the said both companies shall be consolidated accordingly;

(7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

Sd/- 11/10/17
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta