

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **COMPANY PETITION 147/2006**

M/s GWM INDUSTRIES PRIVATE LIMITED.....Transferee Company
Through Mr. J.K. Chawla, Advocate
for the applicant.

WITH

M/S PANKAJ TRAVELS PRIVATE LIMITED Transferor Company
Through Mr. B.S. Pradhan, Deputy ROC.
Mr. Rajiv Bahl, Advocate for
Official Liquidator.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% 11.11.2010

This second motion under Sections 391(2) and 394 of the Companies Act, 1956 (Act for short) has been filed by M/s GWM Industries Private Limited (transferee company) and M/s Pankaj Travels Private Limited (transferor company) for sanction/approval of the proposed scheme of amalgamation enclosed as annexure A-5.

2. The transferee company have enclosed with the petition copy of the order dated 16th September, 2005 passed in Company Application (M) No.135/2005. By the said order, the Court had dispensed with the need and requirement to convene meetings of the shareholders and creditors of the applicant companies after noticing that the shareholders had given their no objection/consents and the two companies do not have any creditors.

3. After filing of the present petition, vide order dated 24th July,

2006, citations were directed to be published in the newspapers “Statesman”(English) and “Jansatta” (Hindi) and notices were issued to the Regional Director (Northern Region) and the Official Liquidator.

4. As the matter had remained pending for some time, vide order dated 27th July, 2008, on the request of the counsel for the Official Liquidator, the petitioner was directed to provide copies of minutes books of shareholder and directors, ledgers and cash books for the last three years.

5. The Official Liquidator has now filed his report setting out in detail the history of the two companies as well as their financial position. The Official Liquidator has stated that the authorized share capital of the transferee company is insufficient to accommodate allotment of new shares in the transferee company in view of the swap ratio mentioned in the scheme of amalgamation. It is stated that the authorized share capital of the transferee company is required to be increased from Rs.50,00,000/- to Rs.1,25,00,000/-. The Official Liquidator has further stated that they have not received any complaint against the proposed scheme of amalgamation from any person/party interested. It is also stated that on the basis of the information submitted by the transferor company, the Official Liquidator is of the view that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of the members, creditors or public interest.

6. The transferee company has filed an affidavit of Mr. Padam Bajoria stating that consequent upon approval of the scheme of amalgamation and subsequent increase in authorized share capital, the

transferee company shall pay requisite fee and stamp duty in accordance with law. However, during the course of hearing, learned counsel for the petitioner has stated that the swap ratio as mentioned in the proposed scheme of amalgamation (Annexure A-5) can be modified to one share in the transferee company for every share held by the members of the transferor company. The said statement made on behalf of the petitioner company is taken on record and accepted. The petitioner company will be bound by the said statement. The petitioner company will be also bound by the averments made in the affidavit of Mr. Padma Bajoria.

7. Regional Director in his report has stated that as per the letter dated 2nd May, 2007 written by the transferor and transferee companies there are no employees, who are required to be absorbed. The second objection raised by the Regional Director is similar to the objection raised by the Official Liquidator with regard to enhancement of the authorized share capital of the transferee company. The said objection has been noticed above and the directions/concessions given above will equally apply. The last objection raised by the Regional Director is with regard to change of name of the transferee company in terms of the scheme as per which transferee company wants to adopt the name of the transferor company or any other name. The objection does not have any merit as para 7 of part-II of the scheme provides as under:-

“The Transferee Company shall have the right and liberty to change its name and adopt any name including the name of the Transferor Company subject, however, to such approvals as may be

required inadvertently this regard.”

8. The aforesaid clause envisages that change of name will be subject to approvals as may be required. The use of word “inadvertently” in this regard seems to be superfluous and an error. In any case the petitioners in their reply filed before the Court have stated that transferee company undertakes to duly comply with the provisions and requirements under the law for change of name.

9. The transferor company has also filed an affidavit dated 15th April, 2010 stating that after filing of the second motion for approval of the proposed scheme of amalgamation, there has been no change in the shareholding pattern and the transferor company does not have any creditors. Similar affidavit has been filed on behalf of the transferee company by Mr. Padma Bajoria.

10. In view of the aforesaid position, the present petition is allowed and the scheme of amalgamation is approved subject to aforesaid modifications/clarifications/concessions. The petition is disposed of

Dasti.

SANJIV KHANNA, J.

NOVEMBER 11, 2010
NA