

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

+ **COMPANY APPLICATION (M) No.199/2010**

Date of Decision: 12th November, 2010

Goyal India Private Limited Transferor Company No. 1.
Gee Enn Industries Pvt. Limited Transferor Company No. 2.
Alkon Trading Limited Transferor Company No. 3.
Subh Luxmi Securities Pvt. Ltd. Transferor Company No. 4.
Top Most Securities Pvt. Ltd. Transferor Company No. 5

AND

Indian Securities Limited Transferee Company
Through Mr. Rajeev K. Goel, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER (ORAL)

1. This application under Sections 391 and 394 of the Companies Act, 1956 (Act, for short) has been filed by Goyal India Private Limited, Gee Enn Industries Private Limited, Alkon Trading Limited, Subh Luxmi Securities Private Limited, Top Most Securities Private Limited (transferor company Nos. 1 to 5 respectively) and Indian Securities Limited (transferee company) for dispensation of holding of the meeting of the shareholders and creditors for approval, with or without modification, the proposed scheme of amalgamation enclosed with the application as Annexure A-8.
2. The application sets out and give details of the authorized and paid up share capital of the transferor company Nos. 1 to 5 and the transferee company. Memorandum and Articles of Association of the five transferor companies and the transferee company have been enclosed.
3. Board of Directors of the five transferor companies and the transferee company have approved this proposed scheme of amalgamation. It is stated in the application that no proceedings under Sections 235 and 251 of the Act are pending against the five transferor companies and the transferee company.

4. The transferor company No. 1 has three class A and three class B shareholders. The said shareholders have given their consent/no objection certificates to the proposed scheme of amalgamation. It is stated in the application that the transferor company No. 1 does not have any secured creditor and has two unsecured creditors. The said averment in the application is duly supported by the certificate issued by Datta Singla and Company, Chartered Accountants. The two unsecured creditors to whom Rs.16,575/- is payable have given their no objection certificates/consent to the proposed scheme of amalgamation. In these circumstances, need and requirement to call for and hold meeting of the shareholders and creditors of the transferor company No. 1 is dispensed with.

5. The transferor company No. 2 has thirteen class A and one class B shareholders. The said shareholders have given their no objection certificates/ consent to the proposed scheme of amalgamation. The transferor company No. 2 as per the application does not have any secured creditor and has two unsecured creditors. The said averment in the application is supported by the certificate issued by Datta Singla and Company, Chartered Accountants. It is stated that the total amount due and payable to the two creditors by the transferor company No. 2 is Rs.5,20,450/-. In these circumstances, I dispense with the need and requirement to hold meeting of the shareholders and the creditors of the transferor company No. 2 to consider the scheme of amalgamation.

6. The transferor company No. 3 has seven equity shareholders and all of them have given their consent/no objection certificates to the proposed scheme of amalgamation. As per the application, the transferor company No. 3 does not have any secured creditor and has seven unsecured creditors to whom Rs.13,47,648/- is due and payable. Along with the application, the transferor company No. 3 has enclosed consent/no objection certificates issued by six unsecured creditors to whom Rs.13,40,148/- is due and payable. Thus, the transferor company No. 3 has obtained no objection certificates/consent from creditors more than 90% in value terms. The averments made in the application with

regard to the total amount due and payable by the transferor company No. 3 to the unsecured creditors is supported by a certificate issued by Anil Jatalia and Company, Chartered Accountants. It is stated that Anil Jatalia and Company, Chartered Accountants are the internal auditors of the transferor company No. 3. In view of the aforesaid factual position, the need and requirement to hold meeting of the shareholders and creditors of the transferor company No. 3 is dispensed with.

7. The transferor company No. 4 has seven class A and one class B shareholder. The said shareholders have given their consent/no objection certificates to the proposed scheme of amalgamation. As per the averments made in the application, the transferor company No. 4 does not have any secured creditor and has two unsecured creditors to whom Rs.15,000/- is payable. The said averment in the application is supported by the certificate issued by Datta Singla and Company, Chartered Accountants. The two unsecured creditors have given their no objection certificates/consent to the proposed scheme of amalgamation. In view of the aforesaid factual position, need and requirement to call for the meeting of the members/shareholders and the creditors of the transferor company No. 4 is dispensed with.

8. The transferor company No. 5 has six class A and one class B shareholders. The said shareholders have given their no objection certificates/consent to the proposed scheme of amalgamation, which have been enclosed with the application. As per the application, the transferor company No. 5 does not have any secured creditor and has two unsecured creditors to whom Rs.18,000/- is payable. The said averment in the application is supported by the certificate issued by Datta Singla and Company, Chartered Accountants. The said unsecured creditors have given their no objection certificates/consent to the proposed scheme of amalgamation. Accordingly, the requirement to hold meeting of the shareholders/creditors of the transferor company No. 5 is dispensed with.

9. The transferee company has seventeen shareholders and the said shareholders have given their consent/no objection certificates to the proposed scheme of amalgamation, which have been enclosed with the

application. The transferee company has one secured creditor, viz., State Bank of Bikaner and Jaipur and the said bank has given its consent/no objection certificate to the proposed scheme of amalgamation. The transferee company has 101 unsecured creditors to whom Rs.20,61,79,423/- is payable. It is stated that this includes statutory dues amounting to Rs.52,320/-, which have been paid, leaving a balance of Rs.20,61,27,423. Along with the application, the transferee company has enclosed no objection certificates/consent letters from 68 unsecured creditors to whom the transferor company is liable to pay Rs.19,43,34,059/-. Accordingly, the transferee company has been able to obtain consent/no objection certificates from unsecured creditors 67.33% in number and 94.32% in value terms.

10. Learned counsel for the applicant has drawn my attention to the balance sheets and profit and loss accounts of the five transferor companies, details of which have been placed on record along with valuation report of shares and share exchange ratio. I have also examined the total amount of debt due and payable by the five transferor companies and impact thereof on the financial health of the transferee company. Keeping in view the value of the debt due and payable by the five transferor companies, the earnings of the five transferor companies during the last three years and also the no objection certificates, which have been obtained from the secured and unsecured creditors of the transferee company, I dispense with the need and requirement to call for meeting of the secured and unsecured creditors of the transferee company. It may be noted that the averments made in the application with regard to the total amount of debt due and payable by the five transferor companies and the transferee company are duly supported by the certificate issued by the Chartered Accountants. It is clarified that

the share exchange ratio has not been examined and the said aspect will be examined at the time of second motion.

The application is disposed of.

DASTI.

SANJIV KHANNA, J.

NOVEMBER 12, 2010
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