

25.

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

+ **COMPANY APPLICATION (M) NO. 207/2010**

Date of decision: 23rd November, 2010

SWAGAT PROMOTERS PRIVATE LIMITD

..... Transferor Company.

WITH

SCOPE PROMOTERS PRIVATE LIMITED.. Transferee Company.

Through Mr. Mukesh Sukhija, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER (ORAL)

1. The present application under Sections 391 and 394 of the Companies Act, 1956 (Act, for short) has been filed by Swagat Promoters Private Limited (hereinafter referred to as the transferor company) and Scope Promoters Private Limited (hereinafter referred to as the transferee company) in respect of the scheme of amalgamation, which has been enclosed as Annexure A-3. The scheme envisages merger of the transferor company with the transferee company with vesting and transfer of the undertaking and entire business, including properties of the transferor company into the transferee company.

2. Resolutions passed by the Board of Directors of the transferor company and the transferee company approving the proposed scheme of amalgamation have been enclosed with the application. It is stated in the application that no proceedings under Sections 235 and 251 of the Act are pending against the transferor company and the transferee company.

3. The transferor company is a wholly owned subsidiary of the transferee company. The transferee company is a closely held private limited company.

4. Along with the application, list of shareholders of the transferor company and the transferee company have been filed. The shareholders of

the transferor company and the transferee company have also executed no objection certificates/consent letters, which have been enclosed with the application. In view of the no objection certificates/consent letters given by the shareholders of the transferor company and the transferee company, meeting of the shareholders of the transferor company and the transferee company is not required to be held to consider the proposed scheme of amalgamation.

5. Learned counsel for the transferor company states that there is typographical error in paragraph 7 of the application. Learned counsel has been permitted to correct the said error today in the Court and has initialed the same in today's date. The transferor company does not have any secured creditor and has two unsecured creditors as per the list at pages 64 and 65. The unsecured creditors of the transferor company have given their no objection certificates/consent letters to the proposed scheme of amalgamation, which are enclosed at pages 66 and 67. In view of the consent, meeting of the unsecured creditors of the transferor company is dispensed with.

6. The transferee company has two secured creditors and two unsecured creditors as per the list at pages 116 and 117 respectively. The two unsecured creditors of the transferee company have given their no objection certificates/consent letters, which have been enclosed at pages 118 to 120. The transferee company has two secured creditors, viz., HDFC Bank Car Loan of Rs.3,33,245/- and Rs.6,07,780/- (total Rs.9,41,025/-). The said amount has been certified by Mahesh K. Agrawal, Chartered Accountant for Mahesh Jagmohan & Company, Chartered Accountants and also by a Director of the transferee company.

7. My attention is drawn to the balance sheet of the transferor company for the year ending 31st March, 2010. It is pointed out that the transferor company has reserves and surplus of Rs.35,97,220.41. It is stated that the charge in favour of the HDFC Bank is in respect of two motor cars, which have been financed and HDFC Bank does not have charge on any other assets of the transferee company. Further my attention is drawn to the fact

that the transferor company is a wholly owned subsidiary of the transferee company. My attention is also drawn to the audited balance sheet of the transferee company, which has been placed on record and shows that the transferee company has reserves and surplus of Rs.1,02,26,370.31 as on 31st March, 2010 and the transferee company had profits available for appropriation of Rs.30,01,246.05 for the year ending 31st March, 2010.

8. In view of the aforesaid facts, I dispense with the need and requirement to call for meeting of the secured creditors of the transferee company. However, it is clarified that in case wrong facts have been stated by the applicant, this order will be recalled.

The application is accordingly disposed of.

DASTI.

SANJIV KHANNA, J.

NOVEMBER 19, 2010
VKR