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IN THE HIGH COURT OF DELHI

COMPANY PETITION NO. 513/2009

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Reserved on 14th May, 2010
Date of pronouncement: 26 May, 2010

In the matter of
The Companies Act, 1956:

And

**Petition under Sections 391 &
394 of the Companies Act, 1956**

Scheme of Amalgamation of:

M/s. JCB Manufacturing Limited .. Non-petitioner/
Transferor Company

WITH

M/s. JCB India Limited .. Petitioner/Transferee
Company

**Through Mr. Manoj Arora with
Mr. Siddharth Shankar and
Mr. Arjun Sirohi, Advocates for
the petitioner
Mr. V. K. Gupta, Dy. Registrar of
Companies
Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391 & 394 of the Companies Act, 1956 by the petitioner/transferee company seeking sanction of the Scheme of Amalgamation of M/s. JCB Manufacturing Limited (hereinafter referred to as the transferor company) with M/s. JCB India Limited (hereinafter referred to as the petitioner/transferee company).

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2. The registered office of the petitioner/transferee company is situated at New Delhi, within the jurisdiction of this court. However, the registered office of the transferor company is situated at Maharashtra, outside the jurisdiction of this court. Learned counsel for the petitioner submits that necessary steps are being taken by the transferor company for sanction of the Scheme of Amalgamation in respect of the transferor company from the court of competent jurisdiction.

3. The transferor company was incorporated under the Companies Act, 1956 on 21st June, 2004 with the Registrar of Companies, Maharashtra at Mumbai.

4. The petitioner/transferee company was originally incorporated under the Companies Act, 1956 on 1st February, 1979 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Escorts JCB Limited. The company changed its name to JCB India Limited after passing the necessary resolution to this effect and obtained the fresh Certificate of Incorporation on 7th March, 2003.

5. The present authorized share capital of the transferor company is Rs.6,00,00,00,000/- divided into 35,00,000 equity shares of Rs.100/- each amounting to Rs.35,00,00,000/- and

5,65,00,000 preference shares of Rs.100/- each amounting to Rs.5,65,00,00,000/-. The issued, subscribed and paid up capital of the company is Rs.5,46,91,00,000/- divided into 33,55,000 equity shares of Rs.100/- each amounting to Rs.33,55,00,000/- and 5,13,36,000 preference shares of Rs.100/- each fully paid up amounting to Rs.5,13,36,00,000/-

6. The authorized share capital of the petitioner/transferee company, as on 31st March, 2009, is Rs.10,00,00,000/- divided into 10,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid up capital of the company is Rs.8,85,00,000/- divided into 8,85,000 equity shares of Rs.100/- each.

7. Copies of the Memorandum and Articles of Association of the transferor company and petitioner/transferee company have been filed on record. The audited balance sheets, as on 31st March, 2009, of the transferor company and the petitioner/transferee company, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the

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accompanying affidavit. It has been submitted by the petitioner that both the companies belong to the JCB Group of companies and are in the business of manufacturing and marketing allied industrial equipments and machinery. It has been further submitted that there would be synergy in the working of the two companies by combining the businesses of both the companies which would lead to a larger capital base and stronger financial resources and would also reduce avoidable administrative expenses.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the petitioner/transferee company shall issue and allot, to each shareholder of the transferor company, equity shares in the following ratio:

“1 (one) equity share of Rs.100/- each credited as fully paid up for every 148 (one hundred forty eight) equity shares of Rs.100/- each held by them in the transferor company.”

10. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/transferee company.

11. The Board of Directors of the transferor company and the petitioner/transferee company, in their separate meetings

held on 24th June, 2009 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor company and petitioner/transferee company have been placed on record. 11

12. The petitioner/transferee company had earlier filed CA (M) No. 143/2009 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 2nd December, 2009, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and sundry creditors of the petitioner/transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner/transferee company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 21st December, 2009, notice in the petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Citations were also directed to be published in 'Statesman' (English) and 'Jansatta'

(Hindi) in terms of the Companies (Court) Rules, 1959. An affidavit has been filed by the petitioner showing compliance regarding publication of citations in the aforesaid newspapers on 10th April, 2010 and also regarding issuance of individual notices to all the creditors of the petitioner/transferee company. Copies of the newspaper clippings containing the publications and proof of despatch of notices to the creditors have been filed along with the affidavit.

14. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner company. Based on the information received, the Official Liquidator has filed his report dated 26th February, 2010 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner.

15. In response to the notices issued in the petition, Dr. Navrang Saini, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 8th February, 2010. Relying on Clause 7.1 of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their

services. He has further submitted that the Central Government has no objection to the proposed Scheme of Amalgamation.

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16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner/transferee company, in the affidavit dated 14th May, 2010 of Sh. S. Ramaswamy, Associate Vice President, Head Legal and Company Secretary of the petitioner company, has submitted that they have not received any objection against the Scheme of Amalgamation pursuant to citations published on 10th April, 2010.

17. In view of the approval accorded by the equity shareholders and creditors of the petitioner/transferee company, the Official Liquidator and the Regional Director, Northern Region, to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, subject to sanction of the Scheme of Amalgamation in respect of the transferor company from the court of competent jurisdiction, sanction is hereby granted to the Scheme of Amalgamation under Section 391 and 394 of the Companies Act, 1956. The petitioner company will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with

the Registrar of Companies within five weeks. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. The sanction will be effective from the appointed date of Amalgamation, that is 1st April, 2009.

18. The petition is allowed in the above terms.

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May 26, 2010
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SUDERSHAN KUMAR MISRA, J.