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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 239/2011

**IN THE MATTER OF KATHURIA SPECIAL
STEELS ROLLING MILL PRIVATE LTD. & ORS. Petitioners**

**Through: Ms. Vatsala Kak, Advocate for petitioner
companies.**

**Mr. K.S. Pradhan, Deputy Registrar of
Companies for Regional Director,
Northern Region.**

**Mr. Rajiv Bahl, Advocate for Official
Liquidator.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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21.11.2011

1. This second motion petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 (for short 'Act') seeking sanction of the Scheme of Amalgamation (for short 'Scheme') of KATHURIA SPECIAL STEELS ROLLING MILL PRIVATE LIMITED (hereinafter referred to as 'Transferee Company') with VIBRANT VYAPAAR PRIVATE LIMITED (hereinafter referred to as 'Transferor Company').

2. The registered office of the Transferee Company is situated at New Delhi, within the jurisdiction of this Court. The registered office of the Transferor Company is situated at Kolkata, within the jurisdiction of the Calcutta High Court.

3. Details with regard to the date of incorporation of Transferor and Transferee Companies, there authorised, issued, subscribed and paid up capital have been given in the petition.

4. Copies of the Memorandum and Articles of Association as well as the last audited annual accounts for the year ending 31st March, 2010 of the Transferor and Transferee Companies have also been enclosed with the petition.

5. Copies of the Resolutions passed by the Board of the Directors of the Transferor and Transferee Companies approving the Scheme have also been placed on record.

6. It has been submitted that no proceeding under Sections 235 to 251 of the Act is pending against the Transferor and Transferee Companies.

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7. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the shares held by the Transferee Company in the Transferor Company shall stand cancelled. Each shareholder of the Transferor Company, out of the balance shares after the aforesaid cancellation, shall get one share of the Transferee Company for 24.40 shares held in Transferor Company. In case of calculating the number of shares that each shareholder of the Transferor Company shall be entitled to that of the Transferee Company, all fractions shall be rounded off to the next whole number.

8. The Transferee Company had earlier filed Co. Appl. (M) No. 79/2011 seeking directions of this Court for dispensation of meetings. Vide order dated 26th April, 2011, this Court allowed the Application and dispensed with the requirement of convening meetings of shareholders and creditors of the Transferee Company.

9. The Transferee Company thereafter, filed the present Petition seeking sanction of the Scheme. Vide order dated 24th May, 2011, notice in the Petition was directed to be issued to the Regional Director (Northern Region) and the Official Liquidator. Citations were also directed to be published in 'Indian Express' (English, Delhi edition) and 'Jansatta' (Hindi, Delhi edition).

Affidavit of service and publication has been filed by the Petitioner showing compliance regarding service of the petition on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 09th July, 2011. Copies of the newspapers' cuttings in original, containing the publications have been filed along with Affidavit of Service.

10. Pursuant to the notice issue, the Official Liquidator sought information from the Petitioner Company. Based on the information received, the Official Liquidator has filed his report dated 03rd November, 2011, wherein he has stated that as the Petitioner Company is the Transferee Company and is not going to be dissolved or merged with any other company and consequently, the report of the Official Liquidator is not required.

11. In response to the notice issued in the Petition, Mr. B.K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 12th October 2011. Relying on Clause 4 of Part-III of the Scheme, he has stated that all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court.

12. However, the Regional Director has pointed out that there is no mention in the Scheme as to whether the Petitioner Company has complied with the Accounting Standard-14 issued by Institute of Chartered Accountants of India.

13. Ms. Vatsala Kak, learned counsel for Petitioner Company states that the aforesaid Accounting Standard-14 has been followed and shall be followed by the Petitioner Company. Today in Court, she has also handed over an affidavit dated 21st November, 2011 of Director of the Transferee Company affirming that the procedure of Accounting Standard-14 shall be followed as and when the scheme is sanctioned by this Court. The said affidavit is taken on record and the Transferee Company is held bound by the same.

14. No objection has been received to the Scheme from any other party. Today, Ms. Vatsala Kak, learned counsel for Petitioner Company has handed over in Court an affidavit dated 21st November, 2011 confirming that she has not received any objection pursuant to citations published in the newspapers. The same is taken on record.

15. Ms. Vatsala Kak further states that the Calcutta High Court has on a petition filed by the Transferor Company sanctioned the present Scheme. A

computer generated copy of said order has also been handed over today in Court. The same is taken on record.

16. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Company; affidavit/report filed by the Regional Director, Northern region and the Official Liquidator, there appears to be no impediment to the grant of sanction to the Scheme. Accordingly, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner Company will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within thirty days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act, and in terms of the Scheme, the whole or part of the undertakings, the properties, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. It is however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with law; or permission/compliance with any other requirement which may be specifically required under any law.

17. Ms. Vatsala Kak, learned counsel states that the Petitioner Company would voluntarily deposit a sum of ₹ 50,000/- with the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted.

18. The Petition is allowed in the above terms.

Order Dasti


MANMOHAN, J

NOVEMBER 21, 2011

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