

\$~21

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

% *Date of Judgment: 12.10.2012.*

+ **COMPANY PETITION NO. 303 OF 2012**

In the matter of:
The Companies Act, 1956 (the "**Act**");

And

In the matter of Sections 391 to 394
of the Companies Act, 1956

And

In the matter of Scheme of Amalgamation between Karamtara Fasteners Private Limited, Karamtara Steel Private Limited and Sunder Rolling Mills Private Limited with Karamtara Engineering Private Limited and their respective shareholders

AND

IN THE MATTER OF:

Sunder Rolling Mills Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at C/o Avinash P. Jain, H/341, Ground Floor, New Rajendra Nagar, New Delhi-110066

... Petitioner Company

Through: Mr. Rohit Puri, Advocate
for the Petitioner Company
Mr. K.S. Pradhan, Deputy
Registrar of Companies.
Mr. Rajiv Behl, Advocate
for Official Liquidator

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This Second Motion petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the Petitioner / Transferor Company which is a 100% subsidiary of the Transferee Company seeking sanction of the Scheme (for short “Scheme”).
2. The Petitioner Company had earlier filed C.A. (M) No. 53 of 2012 seeking directions of this Court for dispensation of shareholder’s meetings. Vide order dated 23rd March 2012, this Court allowed the application and dispensed with the requirement of convening meeting of the share holders, but directed the meetings of Secured and Unsecured Creditors of the Transferor Company.
3. The Transferor Company (Petitioner) thereafter filed the present Petition under Section 391 (2) of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation. Vide order dated 06th July 2012 this Court issued notice in the

Petition 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 publication dated 6th September 2012 has been filed by the Petitioner Company showing compliance regarding publication of Citations in the aforesaid News papers on 31st August 2012. Copies of the news papers cuttings, in original, containing the publications have been filed with the affidavit of publication.

4. 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 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 till the date of filing of this report. The official liquidator further submits that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the

interest of its members or to public interest as per the second proviso of Section 394 (1) of the Companies Act, 1956.

5. In response to the notices issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit / report dated 5th October 2012. Relying on clause 8 of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of Amalgamation all the employees of the Transferor Company shall become the employees of Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble Court. The counsel for the Regional Director also states that in the scheme there is no mention of compliance by the Petitioner Company of Accounting Standard - 14 issued by Institute of Chartered Accountants of India.
6. The Ld. Counsel for the Petitioner states that such compliance will apply to the Transferee Company, which has already filed an undertaking dated 12th March 2012 before the Regional Director, Bombay stating therein that they will comply with

the said Accounting Standard-14. It is further stated by the counsel for the Petitioner that since then the Hon'ble High Court of Bombay has allowed the scheme vide its order dated 29th June 2012.

7. No objection has been received to the Scheme of Amalgamation from any other party. In this regard, Mr. Rohit Puri Advocate of Transferor Company submits that he has not received any notice from any person opposing the Petition pursuant to the citations published in the Newspapers respectively.
8. The counsel for the Official Liquidator and the Regional Director who are present in the Court today have not raised any further objections in sanctioning the Scheme of Amalgamation.
9. In view of the approval accorded by the Shareholders, Secured and Unsecured Creditors of the Petitioner Company, affidavits / reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this court to the proposed Scheme, there appears to be no impediment to the

grant of sanction to the Scheme of Amalgamation. Consequently 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 the order be filed with the Registrar of Companies within 30 days from receipt of the same. In terms of the provisions of Section 391 and 394 of the Companies Act, 1956 and in terms of the Scheme, the whole or part of the undertaking, all 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. Upon the Scheme coming into effect the Transferor Company shall stand dissolved without winding up. 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 any law; or

permission / compliance with any other requirement which may be specifically required under any law.

10. The Petitioner Company voluntarily states that it would deposit a sum of Rs. 1,00,000/- with the Common Pool Fund of the Official Liquidator within three weeks from today.
 11. The petition is allowed in the above terms.
- Order Dasti.

INDERMEET KAUR, J

OCTOBER 12, 2012

A