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

Date of decision: 9th July, 2013

+ **COMPANY APPLICATION (M) NO. 86 OF 2013**

O.C. DENIMS AND SPECIAL
FINISHES LIMITED & ANR.

.....Applicants

Through: Mr. Deepak Diwan, Ms. Adarika
Ghose and Ms. Sanjna Muttreja,
Advocates for the Applicants

CORAM:

HON'BLE MR. JUSTICE R.V.EASWAR

R. V. EASWAR, J.: (ORAL)

1. This is a first motion application under Sections 391 and 394 of the Companies Act, 1956 ('Act') in connection with the Scheme of Amalgamation ('Scheme') of O.C. Denims and Special Finishes Limited (hereinafter referred to as 'Transferor company') with the Orient Craft Limited (hereinafter referred to as 'Transferee company') [hereinafter collectively referred to as 'Applicant companies']. A copy of the proposed Scheme is enclosed with the application.

2. The registered offices of the Applicant companies are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

3. The details of the dates of incorporation of the Applicant companies, their authorized, issued, subscribed and paid up capital have been enclosed with the application.

4. The copies of the Memorandum and Articles of Association as well as the latest audited annual accounts for the year ended 31st March 2012 of the Applicant companies have also been enclosed with the application.

5. Learned counsel for the Applicant companies submits that no proceedings under Sections 235 to 251 of the Act are pending against the Applicant companies as on the date of the present application.

6. The proposed Scheme has been approved by the Boards of Directors ('BoDs') of the Applicant companies. Copies of the board resolutions have been filed along with the application.

7. The status of the equity shareholders, secured and unsecured creditors of the Applicant companies and the consents obtained by them

for the proposed Scheme is set out in a table forming part of the application which reads as under:-

Company	No. of equity shareholders	Consents given	No. of secured creditors	Consents given	No. of unsecured creditors	Consents given
Transferor company	7	Yes (99.9%)	NIL	N.A.	101	NIL
Transferee company	11	Yes (96.7%)	16	NIL	1351	NIL

8. A prayer has been made for dispensation from the requirement of convening the meetings of the equity shareholders, secured and the unsecured creditors of the Applicant companies.

9. In view of the averments made in the application that 99.99% equity shareholders of the Transferor company and 96.79% equity shareholders of the Transferee company have given their written consents/NOC, the requirement of convening their meetings are dispensed with.

10. The Transferor company has “nil” secured creditors and 101 unsecured creditors to the tune of ₹2,18,21,170/- (Rupees Two Crore Eighteen Lakh Twenty One Thousand One Hundred Seventy only) and the Transferee company has 16 secured creditors to the tune of ₹745,50,38,924/- (Rupees Seven Hundred Forty Five Crore Fifty Lakh Thirty Eight Thousand Nine Hundred Twenty Four only) and 1351

unsecured creditors to the tune of ₹182,36,09,505/- (Rupees One Hundred Eighty Two Crore Thirty Six Lakh Nine Thousand Five Hundred Five only).

11. Learned counsel for the applicants submits that the net worth of the Applicant companies is positive as per the certificate dated 28th May 2013 issued by Sunita Maheshwari & Co, Chartered Accountants and the net worth of the Transferor company will get added to the net worth of the Transferee company pursuant to the merger and therefore, the rights and interests of the secured and unsecured creditors of the Applicant companies will not be adversely affected and in fact will be placed in a better position vis-a-vis their security post-amalgamation. The Applicants, therefore, prays that the requirement of convening and holding the meeting of the secured and unsecured creditors of the Applicant companies may be dispensed with.

12. In support of his submissions, the Learned counsel for the Applicant companies placed reliance on the judgments of this Court in the matter of **In Re.: Scheme of Amalgamation of Unitel Credit Private Limited with Intec Capital Limited [CA (M) No. 116/2010 decided on 4th June 2010]; In Re.: Scheme of Amalgamation of M/s Global Digital**

Technologies Limited with MVL Industries Limited [CA (M) No. 108/2012 decided on 2nd July 2012]; and In Re.: Scheme of Amalgamation of Mag Engineering Private Limited and Sandhar Technologies Limited [CA (M) No. 19/2013 decided on 4th February 2013] wherein this Court, under similar circumstances, has dispensed with the requirement of convening and holding the meeting of the secured and unsecured creditors. The Learned counsel has also placed on record the net worth certificate dated 28th May 2013 issued by Sunita Maheshwari and Co., Chartered Accountants. The certificate shows that the pre-amalgamation net worth of the Transferor company is ₹1,71,81,593/- and the pre and post amalgamation net worth of the Transferee company is ₹209,09,81,096/- and will be ₹509,92,22,034/- respectively. Further, post-amalgamation, the value of debt (secured and unsecured creditors) of the Transferee company is ₹930,04,69,599/- against the value of the assets of ₹1536,14,90,021/- (at their respective fair values), therefore, the interests of the creditors of either of the Applicant companies will not be adversely affected and in fact will be placed in a better position viz. a viz. their security post amalgamation.

13. In view of the above and considering the settled law on the subject, the requirement of convening and holding the meetings of the secured and unsecured creditors of the Applicant companies are dispensed with.

14. The Application stands allowed in the aforesaid terms.

Order be given dasti.

R.V. EASWAR, J.

JULY 09, 2013
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