

IN THE HIGH COURT OF JUDICATURE AT PATNA
Company Petition No.1 of 2014

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In the matter of

1. M/s Durga Waxes Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 503, Venketesh Apartment, Budh Marg, P.S. Kotwali, Town and District Patna-800001 in the State of Bihar through one of its Directors cum Authorized Signatory Ramautar Sultania S/o late Navrang Lal Sultania, Resident of Gaushala Road, P.S. Town and Dist. Begusarai.

[hereinafter referred to as the "Transferee Company"]

2. M/s Durga Tradevin Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 503, Venketesh Apartment, Budh Marg, Patna-800001 in the State of Bihar, through one of its Directors cum Authorized Signatory Ramautar Sultania S/o late Navrang Lal Sultania, Resident of Gaushala Road, P.S. Town and Dist. Begusarai.

[hereinafter referred to as the "Transferor Company"]

3. M/s K.B. Combines Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 503, Venketesh Apartment, Budh Marg, Patna-800001 in the State of Bihar through one of its Directors cum Authorized Signatory Ramautar Sultania, S/o late Navrang Lal Sultania, Resident of Gaushala Road, PS. Town and Dist. Begusarai.

[hereinafter referred to as the "Transferor Company"]

.... Petitioner/s

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Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

5 15-01-2015 The prayer of the petitioner in this application reads as follows:-

- "1. *That the present petition is being filed for with the object and prayer so seek sanction of this Hon'ble Court to scheme of Amalgamation of M/s Durga Tradevin Private Limited and M/s K.B. Combines Pvt. Ltd. (hereinafter referred to as the "transferor Companies") with M/s Durga Waxes Pvt. Ltd. (hereinafter referred to as the "Transferee*

Company") whereby all the properties rights and claims whatsoever of the transferor companies and its entire undertakings together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Transferee company without being would up on the terms and conditions fully stated in the scheme of Amalgamation."

Mr. S.D. Sanjay, learned senior counsel for the petitioner in support of the aforementioned prayer has straightway proceeded to rely the report of the Regional Director, Company Law Board as also the report of the Official Liquidator for advancing his submission that all the requirements for amalgamation of the companies stand fulfilled.

Learned counsel for the Official Liquidator does not controvert the aforementioned submission of Mr. S.D. Sanjay.

In that view of the matter, when this Court would find that the Official Liquidator had appointed Mr P. Puneet a Chartered Accountant for submission of the investigation report and such investigating report dated 2.1.2015 has been submitted by the Chartered Accountant, there would be no difficulty in holding that the requirement of law for the purpose of amalgamation of the company has been completed.

Let it be noted that in the report of the Chartered Accountant in terms of Section 394 of the Companies Act

(Annexure-A to the report of the Official Liquidator), it has been stated as follows:-

"A. **Scope of Examination:**

The Assignment has been carried out in terms of the Letter No. OL/PAT/Amalgamation/538 dated 16.12.2014 from the Official Liquidator, High Court, Patna. The letter refers to inter alia, Company Petition No.1 of 2014, Company Application No. 2 of 2014 in the matter of an application under section 391 to 394 of the Companies Act, 1956. Out audit period is covered from 01.04.2008 to 31.03.2013 (the 'relevant period').

R. **Conclusion:**

On examination of books of accounts and other statutory records of the transferor companies M/s DURGA TRADEVIN PRIVATE LIMITED & M/S K.B. COMBINES PRIVATE LIMITED for the period 1st April 2008 to 31st March 2013 and on the basis of information and explanations given to us, we report as under:

- 1. That the Transferor Companies have maintained proper books & records as per Section 209 of the Companies Act, 1956.*
- 2. That the statutory auditors have not made any adverse comment in their audit reports of last five years ended on 31.03.2013.*
- 3. That the affairs of the Transferor Companies were conducted within the ambit of the Companies Act, 1956.*
- 4. That the Transferor Companies have not accepted any public deposits.*
- 5. That the Transferor Companies have no disputed statutory dues in respect of Income Tax, Excise,*

Custom, Provident Fund, E.S.I. or Gratuity etc as on 31.03.2013.

6. *That the interest of their respective shareholders, creditors, and employees etc. does not appear to have been hampered or jeopardized through the affairs conducted by the Transferor Companies.*
7. *That the Transferor Companies have paid requisites fees to the Registrar of Companies to increase their authorized share capital.*
8. *That no application for winding up of the Transferor Companies is pending before the Hon'ble High Court.*
9. *That we have obtained all the information or explanations from the Transferor Companies for the purpose of scrutiny of books and records.*
10. *That in the circumstances stated above and as it appears from the scrutiny, we are of the opinion that the affairs of the transferor companies have not been conducted in a manner prejudicial to the interest of its members or to public interest."*

(Underlined for emphasis)

Additionally, this Court would also find that the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata in his affidavit has also stated as follows:-

2. *That it is submitted that on examination of the petition and the report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation and also all the petitioner companies are up-dated in filing their statutory returns. The Central Government has, therefore, decided that the petition/application need not be opposed and the*

matter may be decided by this Hon'ble High Court in its merits."

Thus, from the aforesaid materials on record, it would now transpire that the petitioner fulfills the requirement of law and, as such, sanction is hereby accorded to the scheme of amalgamation of M/s Durga Tradevin Private Limited and M/s K.B. Combines Private Limited with M/s Durga Waxes Private Limited.

The submission of Mr. Sanjay that it be also recorded that both the transferor companies shall stand merged with the main company M/s Durga Waxes Private Limited without being wound up in the facts and circumstances is not required because when two transferor companies have been merged with their full identity in the M/s Durga Waxes Private Limited, question of their being wound up also does not arise.

That being so, this application is allowed.

The Registrar General of the High Court is hereby directed to issue a formal order in Form-42.

(Mihir Kumar Jha, J)

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