

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 3/2015

Reserved on 7th January, 2015
Date of pronouncement: 20th January, 2015

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Application under Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956 and the Companies Act, 2013 (to the extent applicable)

Scheme of Amalgamation of:

Om Jee Snacks Private Limited

Applicant/Transferor Company

WITH

Om Sweets Private Limited

Applicant/Transferee Company

**Through Mr. Ashish Middha, Advocate
for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956 and the Companies Act, 2013 (to the extent applicable) by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Om Jee Snacks Private Limited (hereinafter referred to as the transferor

company) with Om Sweets Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was incorporated under the Companies Act, 1956 on 29th March, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 31st July, 2000 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.3,00,000/- divided into 30,000 equity shares of Rs.10/- each fully paid-up.

6. The present authorized share capital of the transferee company is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each fully paid-up.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, 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 application and the accompanying affidavits. It is submitted by the applicants that the proposed scheme will result in formation of a larger company enabling further growth and development of the business of the said company thus enabling the said company to obtain greater facilities possessed and enjoyed by one large company compared to a small company for raising capital, securing and conducting trade and business on favourable terms and other related benefits. It is claimed that the proposed amalgamation will result in reduction in overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity.

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

“279 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company.”

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 15th October, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The transferor company has 03 equity shareholders and 03 secured creditors. All the equity shareholders and all the secured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity

shareholders and secured creditors of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

13. The transferor company has 128 unsecured creditors, as on 30.09.2014. Subsequently, the debts of certain creditors have been paid off and there are only 05 unsecured creditors of the transferor company as on 28.11.2014. A certificate to this effect by Mr. Nimit Agarwal, Partner, KAP & Associates, Chartered Accountants, has also been placed on record. All the 05 unsecured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the unsecured creditors of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

14. The transferee company has 03 equity shareholders & 20 secured creditors. All the equity shareholders and all the secured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof,

the requirement of convening the meetings of the equity shareholders and the secured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

15. The transferee company has 206 unsecured creditors, as on 30.09.2014. Subsequently, the debts of certain creditors have been paid off and there are only 14 unsecured creditors of the transferee company as on 28.11.2014. A certificate to this effect by Mr. Nimit Agarwal, Partner, KAP & Associates, Chartered Accountants, has also been placed on record. 13 out of 14 unsecured creditors, being 93% in number and 91% in value, have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the unsecured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

16. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

January 20, 2015