

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 154/2015

Reserved on 28th September, 2015
Date of pronouncement: 2nd November, 2015

In the matter of

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

And

**Application under Sections 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Orient Craft Sweaters Limited

Applicant/Transferor Company

WITH

O.C. Sweaters Private Limited

Applicant/Transferee Company

**Through Mr. Deepak Diwan and
Mr. Vinod Kumar, Advocates for the
applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 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 Orient Craft Sweaters Limited (hereinafter referred to as the transferor company) with O.C. Sweaters 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 originally incorporated under the Companies Act, 1956 on 26th July, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Orient Craft Sweaters Private Limited. The company changed its name to Orient Craft Sweaters Limited and obtained the fresh certificate of incorporation on 24th August, 2011.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 25th March, 2003 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Victoria Realtors Private Limited. The company changed its name to O.C. Sweaters Private Limited and obtained the fresh certificate of incorporation on 26th May, 2015.

5. The present authorized share capital of the transferor company is Rs.3,60,00,000/- divided into 36,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.3,58,60,870/- divided into 35,86,087 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each.

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, along with the reports of the auditors, and the unaudited provisional accounts, as on 30th June, 2015, of the transferor and transferee companies, 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 affidavit. It is claimed by the applicants that the proposed amalgamation will enable the companies to manage their businesses more efficiently and effectively and for better coordination of the business activities; to utilize their resources optimally; and to derive the benefits of synergies arising out of consolidation of business, such as, enhancement of net worth of the combined business. It is further claimed that the proposed amalgamation will enable reduction in managerial overlaps, which are necessarily involved in running multiple entities.

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 company in the following ratio:

“09 equity share of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held by the shareholders in the transferor company.”

10. It has been submitted by the applicants that no proceedings under Sections 237, 243, 250, 250A and 251 of the Companies Act, 1956 or under Sections 210, 214, 215, 216(1), (3) & (4), 217, 219, 220, 223, 224(1), (3) & (4) and 225 of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 31st July, 2015 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 07 equity shareholders and 24 unsecured creditors. All the equity shareholders and 15 out of 24 unsecured creditors, being 62.5% in number and 98.17% 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 meetings of the equity shareholders and 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.

13. The transferor company has 01 secured creditor namely State Bank of Bikaner & Jaipur to whom a sum of Rs.18,11,43,169/- was payable as on 31st July, 2015. The consent of the said secured creditor is not placed on record. Learned counsel for the applicants seeks dispensation of the meeting of the secured creditor on the ground that the net worth of both the applicant companies is positive and, in fact, will enhance on amalgamation and, therefore, the rights of the creditors of both the companies will not be adversely affected. He has further submitted that, post amalgamation, the assets of the transferee company will be excess to the combined liabilities. In support of his submission, learned counsel has placed on record a certificate dated 14th August, 2015 from Sharma Nitesh & Associates, Chartered Accountants certifying that, post amalgamation, the net worth of the transferee company will increase from Rs.2,12,54,083/- to Rs.13,40,82,811/-. They have further certified that, post amalgamation, the value of debt of the transferee company as on the appointed date of the Scheme is Rs.41,51,27,689/- whereas the value of its assets is Rs.56,93,14,158/-, and therefore, the

interests of the secured and unsecured creditors of the applicant companies will not be adversely affected. In view of the submissions made at Bar and considering the certificate of the Chartered Accountants placed on record, the requirement of convening the meeting of the secured creditor 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 04 equity shareholders and 01 unsecured creditor. All the equity shareholders and the sole unsecured creditor 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 unsecured creditor of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferee company, as on 31st July, 2015.

15. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

November 02, 2015