

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2016

DELIVERED ON : 05.08.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.519 and 520 of 2015

M/s.SouthernChromatics Private Limited,
New No.398,Old No.766,
Poonamallee High Road, Kilpauk,
Chennai - 600 010
represented by Mr.Shibu Punnen,
Director

.. Petitioner in C.P.No.519 of 2015
/ Transferor Company

M/s.Chennai Pen Products Private Limited,
New No.398,Old No.766,
Poonamallee High Road, Kilpauk,
Chennai - 600 010
represented by Mr.K.Jacob
Director

.. Petitioner in C.P.No.520 of 2015
/ Transferee Company

Petitions filed under Sections 391 to 394 of the Companies Act,
1956 to sanction the Scheme of Amalgamation.

For Petitioners : Ms.P.Indumathi

Mr.G.Venkatesan
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai

Mr.Atchuta Ramaiah,
Official Liquidator

COMMON ORDER

1. These company petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the transferor company with the transferee company with effect from 01.04.2015. The scheme of amalgamation (in short scheme) is appended as Annexure '6' to these petitions.

2. The petitioner in C.P.No.519 of 2015 is the transferor company and the petitioner in C.P.No.520 of 2015 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. It is stated that there is no secured creditor as far as transferor company as well as transferee company are concerned and the certificates of the Chartered

Accountant confirming the same are appended as Annexure '9' to these petitions.

3.1. A copy of two separate resolutions of even date, i.e., 29.09.2015, passed by the Board of Directors of both the transferor company as well as the transferee company adopting the scheme is enclosed as Annexure '5' to these petitions.

4. The affidavits of equity shareholders of both the transferor and the transferee company giving their consent to the scheme are appended as Annexure '8' to these petitions. This Court, by order dated 18.11.2015 passed in C.A.Nos.1040 and 1041 of 2015 dispensed with the convening, holding and conducting of the meeting of the shareholders of both the transferor and transferee company for the purpose of considering and if thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving amalgamation.

5. To be noted, arguments in this matter were heard and judgment was reserved on 29.07.2016. On a perusal of the matter, it is seen that the transferor and transferee company has unsecured

creditors and their consents to the proposed scheme had not been obtained. Hence, the matter was posted on 03.08.2016 for clarification.

5.1. When the matter was called on 03.08.2016, learned counsel for the petitioners has placed in Court 'Notes on submission' enclosing two Certificates of even date, i.e., 22.07.2016 issued by Vijayan & Murali, Chartered Accountants, wherein the details of the unsecured creditors of both the transferor and the transferee company have been given. The petitioner companies have obtained the consents of such unsecured creditors to the proposed Scheme, which are appended to the said Notes on submission.

6. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report stating that he has no objection to the scheme being sanctioned.

7. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. Chartered Accountant, in his report, states that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to

public interest, and that, he has not come across any act of misfeasance by the Directors attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant. In the absence of any inference that the affairs of the transferor company were being conducted in a manner prejudicial to the interest of its members or public interest, the Official Liquidator has filed his report before this Court for appropriate orders.

8. I have perused the proposed scheme filed along with the company petitions. I find that the Scheme proposed is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner companies. The said scheme, as framed, is not violative of any statutory provisions.

9. The scheme as formulated is fair, just, sound and is not contrary to any public policy or public interest. No proceedings appear to be pending under the provisions of Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions appear to have been complied with.

10. Consequently, there shall be an order approving the scheme of amalgamation between the transferor company, viz., Southern Chromatics Private Limited with the transferee company, viz., Chennai Pen Products Private Limited, with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act.

11. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, the transferor company shall stand dissolved, albeit, without winding up.

12. It is made clear, that this order will not be construed as an order granting exemption from payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

13. The learned Senior Central Government Standing Counsel will be entitled to a fee of Rs.5,000/-, which shall be paid by the transferee company.

14. The above petitions are disposed of in the aforementioned terms.

Index: Yes / No
Internet: Yes / No
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05.08.2016

RAJIV SHAKDHER,J.

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Pre-Delivery Common Order in
C.P.Nos.519 and 520 of 2015

Dated: 05.08.2016