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

+ **CO.APPL.(M) 9/2016**

IN THE MATTER OF MASTERJI METALLOYS

PVT. LTD.

Transferor Company/ Applicant no.1

With

GOOD LUCK STEEL TUBES LTD.

Transferee Company/ Applicant no.2

Through: Mr Rajeev K. Goel, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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18.01.2016

1. This is a first motion application, which is jointly moved by applicant no.1/ transferor company and applicant no.2/ transferee company (hereafter collectively referred to as the applicants) under Section 391 and 394 of the Companies Act, 1956 (in short the Act) in connection with the Scheme of Amalgamation proposed by them (hereafter referred to as the Scheme). A copy of the proposed scheme is enclosed with the application.
2. The registered offices of the applicants are situate, within the National Capital Territory of Delhi and, therefore, within the territorial jurisdiction of this Court.
3. The details of the dates of incorporation of the applicants, their authorized, issued, subscribed and paid up capital have been set out in paragraph 6 of the respective affidavits in support of the Judge's Summons Application.
4. The copies of Memorandum and Articles of Association as well as the

latest audited annual accounts for the year ended 31.03.2015 of the applicants have been filed.

5. I am informed by the learned counsel for the applicants that no proceedings under Section 235 to 251 of the Act are pending against any of the applicants as on date.

6. The proposed scheme has been approved by the respective Board of Directors (BOD) of applicants. The copies of the BOD resolution of the applicants of even dated 15.09.2015 have been filed.

6.1 It is averred that applicant no.1/ transferor company is a 100% subsidiary of applicant no.2/ transferee company. It is, thus, averred that on amalgamation the shares of applicant no.1/ transferor company will stand cancelled/ extinguished and, therefore, no shares would be issued and/or allotted in the applicant no.2/ transferee company. It is thus, further submitted, that valuation of shares of the applicants is not necessary.

6.2 Learned counsel further submits that apart from unsecured creditors, there were some statutory and other dues, which have been paid in full. In this respect, learned counsel says, a certificate of the chartered account, confirming full and final payment of the statutory dues and expenses payable, is enclosed with the application.

7. The status of the shareholders, secured and unsecured creditors of the applicants and the consent obtained by them for the proposed scheme is set out in the table given below as laid down in the application:-

Company	No. Of Shareholders	Consent given	No. Of secured creditors	Consent given	No. Of unsecured creditors	Consent given
Transferor Company	2	100%	Nil	N.A.	5	100%
Transferee Company	Not required	N.A.	Not required	N.A.	Not required	N.A.

8. A prayer has been made to dispense with the requirement of convening the meetings of the shareholders and the creditors (i.e. the secured and unsecured creditors) of the applicants.

9. Learned counsel for the applicants submits that this court has not only dispensed with the requirement of convening meetings of shareholders and creditors (i.e. secured and unsecured creditors), but also held that the transferee company is not required to file any application / petition under Section 391 and 394 of the Act. For this purpose, learned counsel relied upon the order of this court dated 28.05.2009, passed in Co.Appl.(M) No. 117/2009, titled: ***Mapsko Hotels & Resorts Pvt. Ltd. with Mapsko Builders Pvt. Ltd.***

10. Given the fact that all shareholders and creditors (i.e. the unsecured creditors) of the transferor company have given their consent and/or No Objection (NOC) to the proposed scheme, there shall be no requirement to convene meetings qua them. In relation to the transferee company, I tend to agree with the submission made by the learned counsel for the applicants that the approach adopted by a single Judge of this court in ***Mapsko Hotels & Resorts Pvt. Ltd.'s*** case should be applied.

10.1 Accordingly, given the fact that the transferor company is a 100% subsidiary of the transferee company, the requirement to convene meetings of shareholders and creditors can be dispensed with. It is ordered accordingly.

11. The application stands allowed in the aforesaid terms.

12. Dasti.

RAJIV SHAKDHER, J

JANUARY 18, 2016

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