

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 09.11.2016
Judgment pronounced on:19.12.2016

CO.PET. 220/2016

IN THE MATTER OF:-

CONSOLIDATED FINVEST & INVESTMENTS LIMITED

Petitioner /Transferor Company no.1

AND

CONSOLIDATED GREEN FINVEST PRIVATE LIMITED

Petitioner/Transferor Company no. 2

AND

JINDAL IMPERATIVE SPECIALIST LIMITED

Petitioner/Transferor Company no. 3

AND

HINDUSTAN POWERGEN LIMITED

Petitioner/Transferor Company no. 4

AND

JINDAL SOLAR POWERTECH LIMITED

Petitioner/Transferor Company no. 5

AND

JINDAL POLY FILMS INVESTMENT LIMITED

Petitioner/Transferor Company no. 6

AND

BUDHIYA MARKETING PRIVATE LIMITED

Non-Petitioner/Transferor Company no.7

AND

EDWARD SUPPLY PRIVATE LIMITED

Non-Petitioner/Transferor Company no. 8

AND

JESMIN INVESTMENTS LIMITED

Non-Petitioner/Transferor Company no. 9

AND

CORNET VENTURES LIMITED

Non-Petitioner/Transferor Company no. 10

WITH

JINDAL PHOTO INVESTMENTS LIMITED

Petitioner/Transferee Company

Through: Mr. Sharad Vaid, Advocate for
Petitioner.

Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director.

Mr. Rajiv Bahl, Advocate for the
Official Liquidator.

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

CO.APPL 2585/2016

The present application under Rule 9 of the Companies (Court) Rules, 1959, filed on behalf of the Official Liquidator seeks condonation of delay of 63 days in filing its report.

Issue notice. Learned counsel appearing on behalf of the Petitioner Companies accepts notice and fairly does not oppose this application.

For the reasons stated in the application, which are duly supported by an affidavit, the delay of 63 days in filing the report on behalf of the Official Liquidator is condoned. The report filed on behalf of the Official Liquidator is taken on record.

The application is disposed of accordingly.

CO.APPL 3166/2016

The present application under Rule 9 of the Companies (Court) Rules, 1959, filed on behalf of the Regional Director seeks condonation of delay of 113 days in filing its representation/affidavit.

Issue notice. Learned counsel appearing on behalf of the Petitioner Companies accepts notice and fairly does not oppose this application.

In view of the foregoing and for the reasons stated in the application, the delay of 113 days in filing the representation/affidavit on behalf of the Regional Director is condoned. The representation/affidavit filed on behalf of the Regional Director is taken on record.

The application is disposed of accordingly.

CO.PET.220/2016

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as the 'Act') by Consolidated Finvest & Investments Limited (hereinafter referred to as the 'Petitioner/Transferor Company no.1'), Consolidated Green Finvest Private Limited (hereinafter referred to as the 'Petitioner/Transferor Company no.2'), Jindal Imperative Specialist Limited (hereinafter referred to as the 'Petitioner/Transferor Company no.3'), Hindustan Powergen Limited (hereinafter referred to as the 'Petitioner/Transferor Company no.4'), Jindal Solar Powertech Limited (hereinafter referred to as the 'Petitioner/Transferor Company no.5'), Jindal Poly Films Investments Limited (hereinafter referred to as the 'Petitioner/Transferor Company no.6') and Jindal Photo

Investments Limited (hereinafter referred to as the ‘Petitioner/Transferee Company’) seeking sanction to the proposed Scheme of Amalgamation (hereinafter referred to as the ‘proposed Scheme’) of Transferor Companies no.1 to 6; Budhiya Marketing Private Limited (hereinafter referred to as the ‘Non-Petitioner/Transferor Company no.7’); Edward Supply Private Limited (hereinafter referred to as the ‘Non-Petitioner/Transferor Company no.8’); Jesmin Investments Limited (hereinafter referred to as the ‘Non-Petitioner/Transferor Company no. 9’); Cornet Ventures Limited (hereinafter referred to as the ‘Non-Petitioner/Transferor Company no.10’) with the Petitioner/Transferee Company.

2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court. However, the registered offices of the Non-Petitioner/Transferor Companies no.7 to 9 and 10 are situated at West Bengal and Uttar Pradesh respectively, outside the jurisdiction of this Court.

3. The Petitioner/Transferor Company no.1 was incorporated under the Act as a public company limited by shares, on 03.11.2010, with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

4. The authorised share capital of the Petitioner/Transferor Company no.1 as on 31.03.2015 is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Petitioner/Transferor Company no.1 as on 31.03.2015 is Rs.1,90,22,500/- divided into 19,02,250 equity shares of Rs.10/- each.
5. The Petitioner/Transferor Company no.2 was incorporated under the Act as a private company limited by shares, on 03.11.2010, with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.
6. The authorised share capital of the Petitioner/Transferor Company no.2 as on 31.03.2015 is Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Petitioner/Transferor Company no.2 as on 31.03.2015 is Rs.2,78,23,240/- divided into 27,82,324 equity shares of Rs.10/- each.
7. The Petitioner/Transferor Company no.3 was incorporated under the Companies Act, 2013 as a public company limited by shares, on 06.06.2014, with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.
8. The authorised share capital of the Petitioner/Transferor Company no.3 as on 31.03.2015 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the

Petitioner/Transferor Company no.3 as on 31.03.2015 is Rs 5,00,000/- divided into 50,000 equity shares of Rs.10/- each.

9. The Petitioner/Transferor Company no.4 was incorporated under the Act as a public company limited by shares, on 25.02.2008, with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The authorised share capital of the Petitioner/Transferor Company no.4 as on 31.03.2015 is Rs.8,45,00,000/- divided into 84,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Petitioner/Transferor Company no.4 as on 31.03.2015 is Rs.2,37,02,000/- divided into 23,70,200 equity shares of Rs.10/- each.

11. The Petitioner/Transferor Company no.5 was incorporated under the Act as a public company limited by shares, on 11.02.2010, with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

12. The authorised share capital of the Petitioner/Transferor Company no.5 as on 31.03.2015 is Rs.5,00,000/-, divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Petitioner/Transferor Company no.5 as on 31.03.2015 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each.

13. The Petitioner/Transferor Company no.6 was incorporated under the Act as a public company limited by shares, on 03.11.2010, with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

14. The authorised share capital of the Petitioner/Transferor Company no.6 as on 31.03.2015 is Rs.2,00,00,000/-, divided into 20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Petitioner/Transferor Company no.6 as on 31.03.2015 is Rs.1,78,20,000/- divided into 17,82,000 equity shares of Rs.10/- each.

15. The Petitioner/Transferee Company was incorporated under the Act as a public company limited by shares, on 16.08.1999, with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

16. The authorised share capital of the Petitioner/Transferee Company as on 31.03.2015 is Rs.9,25,00,000/- divided into 92,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Petitioner/Transferee Company as on 31.03.2015 is Rs.8,61,00,000/- divided into 86,10,000 equity shares of Rs.10/- each.

17. Copies of the Memorandum and Articles of Association, of the Petitioner Companies, have been filed on record alongwith the joint application, being Company Application (M) no.5 of 2016, earlier filed by

the Petitioner Companies. The audited financial statements, as on 31.03.2015, of the Petitioner Companies alongwith the report of the auditors, have also been duly filed. The same are on record.

18. A copy of the proposed scheme has been placed on record and the salient features of the same have been detailed in the present petition. The rationale for implementation of the proposed scheme as detailed out in para 121 of the present petition is as hereunder: -

“121. That the circumstances and/or reasons which justify and/or necessitate the implementation of the Scheme are, *inter alia*, as follows:-

- (a) All the Transferor Companies as also the Petitioner Transferee Company are closely held companies and belong to the same group and are also engaged in similar/ allied or complimentary businesses or business which is capable of being conducted in a manner so as to directly or indirectly benefit the Petitioner Transferee Company. As such it would be desirable to amalgamate the Transferor Companies with the Petitioner Transferee Company so as to consolidate and bring them under one entity and avoid multiplicity of companies within the group engaged in similar/ allied or complimentary businesses. This will also assist in the exploitation and realisation of the potential of the combined businesses, post amalgamation, of such companies, to the fullest extent.
- (b) In terms of the Scheme, the amalgamation of the Transferor Companies with the Petitioner Transferee Company shall result in the consolidation of their business into one entity since it will facilitate running of all the businesses in an integrated manner, thereby bringing about better, efficient and economical management and control over all such businesses through administrative and operational rationalization,

resulting in organizational efficiencies, reduction in overheads and other costs and expenses and optimal allocation and utilization of all available resources. It will also help in avoiding duplication of work and efforts and in reducing managerial overlaps that usually exist in running multiple entities.

- (c) The amalgamation of the Transferor Companies with the Petitioner Transferee Company, will result in increased financial strength and provide flexibility and enhance the ability of the Petitioner Transferee Company to raise larger resources, attract better talent and undertake larger projects, thereby enabling proper and better realisation of the future business potential of the companies and improving the business prospects and profitability.
- (d) The individual strength, capabilities and resources of the Transferor Companies and the Petitioner Transferee Company shall get combined which will be conducive for facing the increasing competition in the marketplace more effectively.
- (e) The proposed amalgamation of the Transferor Companies with the Petitioner Transferee Company in terms of the Scheme, is as such in the interest of the shareholders, creditors, employees and all other stakeholders of all the companies involved as it would enable a focused business approach for the maximization of benefits to all stakeholders and afford them the benefits of operational synergies of business.

That in the circumstances, it is considered desirable, beneficial and expedient to amalgamate the Transferor Companies with the Petitioner Transferee Company, in the manner and on the terms and conditions as stated in the Scheme.”

19. So far as the share exchange ratio is concerned, the proposed scheme provides that, upon coming into effect of the proposed scheme, the

Petitioner/Transferee Company shall issue and allot equity shares to the shareholders of the Transferor Companies no.1 to 6, in the following ratio:-

“48 equity shares of Rs.10/- each of the Petitioner/Transferee Company for every 100 equity shares of Rs.10/- each held in the Petitioner/Transferor Company no.1.”

“38 equity shares of Rs.10/- each of the Petitioner/Transferee Company for every 100 equity shares of Rs.10/- each held in the Petitioner/Transferor Company no.2 (except the shares held by any of the Transferor companies as stated in Para 4.1(ii) of the Scheme).”

“01 equity shares of Rs.10/- each of the Petitioner/Transferee Company for every 100 equity shares of Rs.10/- each held in the Petitioner/Transferor Company no.3.”

“No shares are required to be issued to the shareholders holding fully paid up equity shares of Petitioner/Transferor Company no.4”

“23 equity shares of Rs.10/- each of the Petitioner/Transferee Company for every 100 equity shares of Rs.10/- each held in the Petitioner/Transferor Company no.6.”

It has been further provided that the Petitioner/Transferor Company no.5 is a wholly owned subsidiary of the Petitioner/Transferor Company no.4, the entire issued, subscribed and paid-up share capital of the Petitioner/Transferor Company no. 5 held by Petitioner/Transferor Company

no. 4, shall stand automatically cancelled and no shares shall be issued by the Petitioner /Transferee Company.

20. It has been averred on behalf of the Petitioner Companies that there are no proceedings pending against them, as on the date of filing of the present petition, under Sections 235 to 251 of the Act (including their corresponding Sections of the Companies Act, 2013).

21. The Board of Directors of the Transferor Companies no.1 and 2; Transferor Companies no.3, 4, 5 & 6; and the Transferee Company, in their separate meetings held on 07.01.2015, 08.01.2015 and 06.01.2015 respectively, have unanimously approved the proposed scheme. Copies of the Resolutions passed at the meetings of the Board of Directors of the Petitioner Companies have been placed on record.

22. To recapitulate, the Petitioner Companies had in the earlier round filed Company Application (M) no.5 of 2016, whereby a prayer was sought to dispense with the requirement of convening the meetings of their equity shareholders and creditors. This Court vide order dated 18.02.2016 allowed the said application and dispensed with the requirement of convening and holding the meetings of the shareholders and creditors of the Petitioner

Companies, to consider and, if thought fit, approve, with or without modification, the proposed scheme.

23. The Petitioner Companies have thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 22.03.2016 notice in the present petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Furthermore, notice of the hearing was directed to be uploaded on the website of the Petitioner Companies, Official Liquidator and the Ministry of Corporate Affairs alongwith the direction to publish notice of the hearing in the Delhi Edition of two newspapers, namely, “Business Standard” (English) and in “Jansatta” (Hindi). Affidavit of service and publication, dated 17.05.2016, has been filed by the Petitioner Companies, showing compliance regarding service on the Regional Director and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper clippings, regarding publication carried out on 26.04.2016 have also been filed alongwith the said affidavit.

24. Pursuant to the notices issued in the present petition, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed a report dated

29.06.2016, wherein, *inter alia*, it has been stated that the Official Liquidator has not received any complaint against the proposed scheme from any interested person/party and that the affairs of the Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest, as per second proviso of Section 394(1) of the Act.

25. It has been further stated in the said report dated 29.06.2016, that the Official Liquidator has no objection to the proposed scheme being sanctioned subject to the observations made therein, pertaining to pending tax assessment against the Transferor Companies no.1, 2 and 3. It has been noted in the said report that tax assessment is pending against Petitioner/Transferor Company no.3 for A.Y. 2014-2015; Petitioner/Transferor Company no.1 and Petitioner/Transferor Company no.2 for A.Y. 2014-2015 and 2015-2016. In this behalf, it would be relevant to refer to part 3 of the proposed scheme. As per part 3 of the proposed scheme any pending liability against the Transferor Companies would be continued and enforced against the Petitioner/Transferee Company, in accordance with the proposed scheme. Therefore, part 3 of the proposed scheme satisfies the objection raised by the Official Liquidator with respect

to the pending tax assessment against the Transferor Companies no.1, 2 and 3.

26. Further, in response to the notice issued in the present petition, Mr. Narendra Kumar Bhola, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit dated 23.08.2016, wherein, in effect, it has been stated that he does not have any objection to the proposed scheme being sanctioned.

27. No objection has been received to the proposed scheme from any other party. The Petitioner Companies, vide affidavit dated 19.08.2016, have submitted that neither the Petitioner Companies nor their counsel have received any objection to the proposed scheme pursuant to the citations published in the newspapers on 26.04.2016.

28. Considering the approval accorded by the shareholders and creditors of the Petitioner Companies to the proposed scheme; affidavit filed by the Regional Director, Northern Region and the report filed by the Official Liquidator, having not raising any objection to the proposed scheme, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme. The Petitioner Companies will comply with the statutory requirements in

accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st April, 2014, the Transferor Companies no.1 to 6 shall stand dissolved without undergoing the process of winding up.

29. A certified copy of this order, sanctioning the proposed scheme, be filed with the ROC, within 30 days of its receipt.

30. Notwithstanding the above, if there is any deficiency found or, violation committed *qua* any enactment, statutory rule or regulation, the sanction granted by this Court to the proposed scheme will not come in the way of action being taken, *albeit*, in accordance with law, against the concerned persons, directors and officials of the Petitioner Companies.

31. It is made clear, that this order shall not be construed as an order granting exemption, *inter alia*, from, payment of stamp duty or, taxes or, any other charges, if, 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.

32. Learned counsel for the Official Liquidator prays that costs of at least Rs.25,000/- should be paid by the Petitioner Companies keeping in view the fact that the matter has involved examination of extensive records. Learned

counsel for the Petitioner Companies states that the same is acceptable to him. The Petitioner Companies shall deposit a sum of Rs.25,000/- by way of costs, in the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

33. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.

DECEMBER 19, 2016
dn/ap

SIDDHARTH MRIDUL, J

