

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

%

Judgement reserved on:18.01.2016

Judgement delivered on: 26.02.2016

+

CO.PET. 732/2014

IN THE MATTER OF
CHINAR BUILDWELL PRIVATE LIMITED

..... Petitioner No. 1/Transferor Company
Through

WITH

SAMARTH TOWN PLANNERS PRIVATE LIMITED

..... Petitioner No.2/Transferee Company
Through: Mr. Dilip Singh, Ms. Neha Tandon
and Ms. Suman, Advs.
Ms Aparna Mudiam, Asstt. ROC for
the RD.
Mr Rajiv Behl, Adv. for the OL.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by Chinara Buildwell Private Limited (i.e. the transferor company/petitioner no.1) and Samarth Town Planners Private Limited (i.e. the transferee company/petitioner no.2) under Section 391 and 394 of the Companies Act 1956 (in short the 1956 Act), to seek sanction of the Scheme of Amalgamation (hereafter referred to as the scheme). A copy of the scheme is enclosed with the petition.
2. The transferor and transferee companies, as referred to above, will hereafter be collectively referred to as the petitioners.
3. The petitioners have averred that the scheme will lead to creation of synergy in two closely held private companies carrying out business of real estate under the same management. The scheme aims at pooling resources to

avoid duplication of work and reduction of overall cost, thereby, beneficially impacting the shareholders, employees and other stakeholders.

4. The registered offices of the petitioners, are located within the jurisdiction of this court.

5. The details with respect to petitioners' authorised, issued, subscribed and paid up capital have been set out in paragraphs 1.5 and 2.5 respectively, of the petition.

6. The transferor company was originally incorporated as a Private Limited Company under the name and style: Chinar Buildwell on 19th March 1999 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi. The transferee company was originally incorporated as a Private Limited Company under the name and style: Shiva Town Planners Private Limited, on 19th March 1999, with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi. Subsequently the transferee company changed its name to Samarth Town Planners Private Limited and obtained the fresh certificate of incorporation on 31st March 2010.

7. The copies of Memorandum and Articles of Association as well as the profit and loss accounts and the Balance Sheets as on 31.03.2013, as averred in the petition, have been filed by the petitioners.

8. The copies of Board of Directors' (BOD) resolution of the petitioners, of even date i.e. 17.07.2014, approving the scheme, are filed with the petition.

9. The petitioners have averred that there are no proceedings pending against them, under Section 235 to 251 of the Act.

10. To recapitulate, the petitioners had earlier filed an application (i.e. the first motion application) being: CA No. (M) 139/2014, whereby, a prayer had been made for dispensing with, the requirement of convening meeting of shareholders. This court vide order dated 14.10.2014, having regard to

the fact, that all shareholders of the petitioners had given their consent to the scheme, dispensed with the requirement of convening meetings as prayed. The court, also noted, that since, both the petitioners did not have any secured or un-secured creditors; therefore, there was no requirement, to convene meetings, with respect to those classes of persons/entities.

11. The petitioners, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 25.11.2014. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD). Furthermore, citations were ordered to be published in Statesman (English) and Jansatta (Hindi).

11.1 The citations were published in Delhi Editions of newspapers: The Statesman (English) and Jansatta (Hindi), on 30.01.2015. An affidavit dated 24.02.2015 demonstrating service of the petition on the RD and establishing publication of citation along with the newspaper extracts, has also been filed by the petitioners.

11.2 Further, petitioners have averred by way of an affidavit dated 24.02.2015 that subsequent to the publication of the notice of the petition, they have not received any objection or complaint qua the scheme.

12. Pursuant thereto, an affidavit dated 13.03.2015, has been filed by the RD under Section 394A of the 1956 Act. In the affidavit, the RD relied upon the general circular bearing no. 53/2011, dated 26.07.2011 and, circular bearing no. 1/2014, dated 15.01.2014. Based on the aforementioned circulars, as per the affidavit of RD, communications were sent to the Registrar of companies (ROC) and the Income Tax Department (I.T. Department) seeking their response to the scheme. However, no response by the I.T. Department, on this matter, has been received, till date.

13. The affidavit of RD, adverts to the fact that it has received information from the ROC vide communication dated 28.01.2015 which,

points to the fact that the transferee company has not filed its Annual Return for the Financial Year 31.03.2014. Furthermore, it indicates, that the Authorised Share Capital of the transferee company is not sufficient to issue shares to the shareholders of the transferor company. It noted that even if, as per Para 4.7 (e) of the scheme, the Authorised Share Capital of the petitioners, shall stand merged, it will still, not be sufficient to issue shares to the shareholders of the petitioners. Though, the ROC goes on to suggest that the scheme will not be adversely affected because of these factors.

14. In so far as the OL is concerned, he has raised two objections. The first objection pertains to the share ratio mentioned in the scheme. Second, objection pertains to the discrepancy in the appointed date in the scheme. In so far as this aspect is concerned, the discrepancy pointed out by the OL is that in the company petition, the appointed date is mentioned as: 01.04.2013 whereas in the scheme, the appointed date is mentioned as: 01.04.2014.

15. Apart from this, the OL concerned has, inter alia, stated in his report that no complaint qua the scheme has been received by him from any interested person or party.

16. In response to the concerns raised by the RD, the petitioners filed an affidavit dated 17.03.2015, wherein they clearly averred that the transferee company had in fact filed its annual return for the financial year ending 31.03.2014, on 23.02.2015. Ms. Mudiam, who appears for the RD, affirms this position. Therefore, this objection raised on behalf of the RD stands liquidated.

17. In response to the concerns raised by the OL, the petitioners have filed two affidavits. The first affidavit is dated 24.02.2015, while the second affidavit is dated 04.04.2015. In the first affidavit, the petitioners have indicated that the share exchange ratio, by virtue of an inadvertent typographical error, is wrongly indicated in paragraph 4.14 of the scheme.

Paragraph 2 of the affidavit dated 24.02.2015, indicates the correct share ratio. The corrected version of paragraph 4.14 of the scheme is as follows:-

“4.14 (a)(i): 100 (One Hundred) Equity Shares of Rs. 10/- (Rupees Ten) each of the Transferee Company for every 268 (Two Hundred Sixty Eight) Equity Shares of Rs. 10/- (Rupees Ten) each held in the Transferor Company i.e Chinar Buildwell Private Limited.”

17.1 As regards the other aspect, which is, the discrepancy which obtained in the appointed date, the same stands corrected by virtue of the averments made in paragraph 3 of the affidavit dated 04.04.2015. The petitioners aver that the company petition ought to have reflected that the appointed date, as indicated in the scheme, and accordingly, it should have been shown as 01.04.2014, as against, 01.04.2013. In my opinion, having regard to the averments made in the affidavit, the objections of the OL have been taken care of and consequently, are met. Pertinently, the petitioners have also filed resolutions of even date 19.02.2015, of their respective Board of Directors, wherein, a decision was taken to correct the discrepancies pointed out by the OL.

18. Therefore, in my view, having regard to the above, all concerns and objections of the RD and the OL stand duly addressed.

19. To be noted, the scheme in clause 4.15 provides that all employees of the transferor company, in service on the effective date, shall become the employees of the transferee company, on such date without any break or interruption in service and on terms and conditions as to remuneration not less favorable than those subsisting with reference to the transferor company, as on the said date.

20. In terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 4.1 of the scheme, the entire undertaking, properties, rights and powers of the transferor company will stand transferred to and/or vest in

the transferee company without any further act or deed. Similarly, in terms of the scheme, all liabilities and duties of transferor company shall stand transferred to the transferee company without any further act or deed.

21. Furthermore, as per clause 4.18 of the scheme, the transferor company shall stand dissolved without being wound up.

22. Accordingly, in view of the approval accorded to the scheme by the shareholders and creditors of the petitioners and, given the fact, that the concerns of the RD and the OL, as indicated above, have been duly taken care of, in my opinion, there appears to be no impediment qua the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioners will, however, comply with all statutory requirements, as mandated in law.

22.1 A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

23. Resultantly, it is directed that the petitioners will comply with all provisions of the scheme and, in particular, those which are referred to hereinabove.

24. In any event, notwithstanding what is stated by the petitioners, the transferee company will file an undertaking with this court, within two weeks from today, stating therein, that it will take over and defray all liabilities of the transferor company. It is also made clear, that the concerned statutory authority will be entitled to proceed against the transferee company qua any liability which it would have fastened on to the transferor company for the relevant period, and that, which may arise on account of the scheme being sanctioned.

25. 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 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 petitioners.

26. 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.

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

RAJIV SHAKDHER, J

FEBRUARY 26, 2016