

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

% Judgement reserved on: 28.01.2016
Judgement delivered on: 26.02.2016

+ **CO.PET. 329/2015**

IN THE MATTER OF

GENUINE ENTERPRISES PRIVATE LIMITED

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

CANVAS ENTERPRISES PRIVATE LIMITED

.... Transferor Company No. 2/Petitioner No. 2

SPHERE ENTERPRISES PRIVATE LIMITED

.... Transferor Company No. 3/Petitioner No. 3

WITH

MAAN INFRASTRUCTURE PRIVATE LIMITED

.... Transferee Company/Petitioner No.4

Through: Mr.Awnish Kumar, Adv.

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 Genuine Enterprises Private Limited (i.e. the transferor company no. 1/petitioner no.1), Canvas Enterprises Private Limited (i.e. the transferor company no. 2/petitioner no.2), Sphere Enterprises Private Limited (i.e. the transferor company no. 3/petitioner no.3) and Maan Infrastructure Private Limited (i.e. the transferee company/petitioner no.4) 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 companies and transferee company, as referred to above, will hereafter be collectively referred to as the petitioners.

3. The petitioners aver that the objective of the scheme is to consolidate the shareholdings and finances and to integrate the management in order to ultimately be equipollent to the multi nationals in the field. Apart from this, the combined resources will lead to overall cost reduction, which will enable the petitioners to efficiently compete in the market and enhance the net worth. The scheme therefore aims at attaining an all in all financial growth and promotion of business of the petitioners.

4. The scheme, according to Para 3.1, provides for a share exchange ratio of 2:3, 1:17 and 1:5 respectively, for petitioners no. 1 to 3 (i.e. the transferor companies) with petitioner no. 4 (i.e. the transferee company).

5. The registered offices of the petitioners are located within the jurisdiction of this court. Hence, this court has the jurisdiction to entertain and adjudicate upon the present petition.

6. The details with respect to petitioners' authorised, issued, subscribed and paid up capital have been set out in paragraphs 3(g), 4(g), 5(g) and 6(g) respectively, of the petition.

7. The copies of Memorandum and Articles of Association as well as the profit and loss accounts and the Balance Sheets, of an even date i.e. 31.03.2014, as averred in the petition, have been filed by the petitioners. Copies of provisional Balance Sheets of an even date i.e. 31.12.2014, have also been filed.

8. The copies of Board of Directors' (BOD) resolution of the petitioners, of even date i.e. 31.12.2014, approving the scheme, have been 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) 45/2015, whereby, a prayer had been made for dispensing with, the requirement of convening the meetings of shareholders and unsecured creditors of the petitioners. This court vide order dated 05.05.2015, having regard to the fact, that all shareholders and unsecured creditors of the petitioners had given their consent to the scheme, dispensed with the requirement of convening the meetings as prayed. The court, also noted, that since, both the petitioners did not have any secured creditors; therefore, there was no requirement to convene a meeting with respect to that class of persons/entities.

11. The petitioners, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 11.08.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD). Furthermore, citations were ordered to be published in Indian Express (English) and Navbharat Times (Hindi).

11.1 The citations were published in Delhi Editions of newspapers; Indian Express (English) and Navbharat Times (Hindi) on 18.12.2015. An affidavit dated 18.01.2016, demonstrating service of the petition on the RD and establishing publication of citation along with the newspaper extracts, has been filed by the petitioners.

11.2 Further, petitioners have averred by way of the aforementioned affidavit dated 18.01.2016 that subsequent to the publication of the notice in the petition, they have not received any objection or complaint qua the scheme.

12. Pursuant thereto, affidavit 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 R.D., 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 apparently been received, till date.

13. The affidavit of RD, adverts to the fact that it has received information from the ROC vide communication dated 12.01.2016. The communication, inter alia, is indicative of the fact that the said authority has no objection to the scheme and has not received any complaint or objection from the shareholders, creditors, or any of the stakeholders of either of the petitioners. Therefore, in so far as the RD's affidavit is concerned, there are no objections taken by him to the scheme.

14. As far as the OL's report is concerned, it has, inter alia, stated that no complaint qua the scheme has been received by him from any interested person or party. The OL has also averred that on the basis of information supplied by the petitioners, it appears, the affairs of the transferor companies, have been conducted in a manner which could not be construed as being prejudicial to either the interest of their members or the public at large. In other words, affairs of the companies, according to the OL, do not fall foul of the provisions of the second proviso of Section 394(1) of the Act.

15. To be noted, the scheme in clause 9.4 provides that all employees of transferor companies, 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 transferor companies,

as on the said date.

16. In terms of the provisions of Section 391 and 394 of the Act, and in terms of part 5 of the scheme, the entire undertaking, properties, rights and powers of the transferor companies, will stand transferred to and/or vest in transferee company, without any further act or deed. Similarly, all liabilities and duties of the transferor companies shall stand transferred to transferee company, without any further act or deed.

17. Furthermore, as per clause 10.6 of the scheme, transferor companies shall stand dissolved without being wound up.

18. The petitioners will comply with the all provisions of the scheme and, in particular, those which are referred to hereinabove.

19. Accordingly, in view of the approval accorded to the scheme by the shareholders and unsecured creditors of the petitioners and, given the fact, that the RD and the OL have not articulated any objections qua the scheme, as indicated above, in my opinion, there appears to be no impediment in 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.

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

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

21. 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 companies. It is also made clear, that the

concerned statutory authority will be entitled to proceed against transferee company qua any liability which it would have fastened on to the transferor companies for the relevant period, and that, which may arise on account of the scheme being sanctioned.

22. 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 any action being taken, albeit in accordance with law, against the concerned persons, directors and officials of the petitioners.

23. 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.

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

RAJIV SHAKDHER, J

FEBRUARY 26, 2016