

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

% Judgement reserved on: 21.02.2016
Judgement delivered on: 26.02.2016

+ **CO.PET. 349/2015**

IN THE MATTER OF
DEDICATED INVESTMENTS PRIVATE LIMITED

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

AND

SAMBHAV FINLEASE PRIVATE LIMITED

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

AND

NARU INVESTMENTS PRIVATE LIMITED

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

AND

MODA ELEGANZA PRIVATE LIMITED

.... Petitioner No. 4/Transferor Company No. 4

AND

MAHAJAN POLYBAG PRIVATE LIMITED

..... Petitioner No. 5/Transferor Company No. 5

WITH

A L CONSULTANTS PRIVATE LIMITED

..... Petitioner No.6/Transferee Company

Through: Mr. Ashish Midha, Advocate
Ms. Aparna Mudiam, Asstt. ROC.
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 Dedicated Investments Private Limited (i.e. petitioner no.1/transferor company no.1) and Sambhav Finlease Private Limited (i.e. petitioner no. 2/ transferor company no. 2) and Naru Investments Private Limited (i.e. petitioner no. 3/ transferor company no. 3) and Moda Eleganza Private Limited (i.e. petitioner no. 4/ transferor company no. 4) and Mahajan Polybag Private Limited (i.e. petitioner no. 5/ transferor company no. 5) alongwith A L Consultants Private Limited (i.e. petitioner no. 6/ transferee company), under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of amalgamation (hereafter referred to as the scheme).

2. The transferor companies and the transferee company, will hereafter, collectively be referred to as the petitioners. Furthermore, transferor company nos 1 to 5 will be conjointly referred as the transferor companies.

3. The registered office of the petitioners are located within the territorial jurisdiction of this court.

4. The details with respect to petitioners' authorised, issued, subscribed and paid up capital are set out in part II of the scheme.

5. The copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2014 have been filed by the petitioners.

6. Copies of Board of Directors' (BOD) resolution of even date i.e 10.04.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

7. It is averred that the amalgamation of the transferor companies with transferee company will result in formation of a larger juridical entity enabling

further growth and development of the business.

8. In terms of clause 13.1 of the scheme the share exchange ratio as provided therein is as follows:

i) 149 equity shares of Rs.10/- each of the transferee company for every 100 fully paid up equity shares of Rs.100/- each held in the transferor company no.1.

ii) 124 equity shares of Rs.10/- each of the transferee company for every 100 fully paid up equity shares of Rs.100/- each held in the transferor company no.2.

iii) 76 equity shares of Rs.10/- each of the transferee company for every 100 fully paid up equity shares of Rs.10/- each held in the transferor company no. 3 and one (1) 6% redeemable non cumulative preference shares of Rs.10/- each for every one (1) fully paid up 6% redeemable non cumulative preference shares of Rs.10/- each held in transferor company no. 3.

iv) 32 equity shares of Rs.10/- each of the transferee company for every 100 fully paid up equity shares of Rs.100/- each held in the transferor company no. 4.

v) 135 equity shares of Rs.10/- each of the transferee company for every 100 fully paid up equity shares of Rs.10/- each held in the transferor company no. 5 and one (1) 6% redeemable non cumulative preference shares of Rs.10/- each for every one (1) fully paid up 6% redeemable non cumulative preference shares of Rs.10/- each held in transferor company no. 5.

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

10. To recapitulate, the petitioners had, in the earlier round filed an application (i.e. the first motion), being: CA(M) No.68/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of

the equity shareholders , preference shareholders, secured creditors and unsecured creditors of the petitioners.

11. The court vide order dated 21.05.2015, having regard to the facts as mentioned in the table below, dispensed with the requirement of convening meetings, as prayed.

Number of Companies	Equity Shareholders	Consent given	Preference Shareholders	Consent given
Transferor company no. 1	15	All	NIL	N.A.
Transferor company no. 2	13	All	NIL	N.A.
Transferor company no. 3	14	All	02	All
Transferor company no. 4	13	All	NIL	N.A.
Transferor company no. 5	14	All	03	All
Transferee company	14	All	02	All

11.1 The court, also noted, that since, the petitioners did not carry any secured creditors and unsecured creditors and, therefore, obviously, there was no requirement to convene meetings with respect to those classes of persons/entities.

12. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 10.07.2015. Notices were accepted on behalf of both the Regional Director (RD) and the Official Liquidator (OL).

12.1 Furthermore, citations were ordered to be published.

13. Citations were published in the Delhi Editions of Business Standard (English) on 04.08.2015 and Business Standard (Hindi), on 10.09.2015. An affidavit dated 02.12.2015, demonstrating service of the petition on the OL and

the RD and establishing publication of citation along with the newspaper extracts, was filed by the petitioners.

13.1 Further, in the aforementioned affidavit it was stated that subsequent to the publication of the notice in the petition they have not received any objection or complaint qua the scheme.

14. Pursuant thereto, the RD filed its affidavit/report under Section 394 A of the Act. In the affidavit/report, the RD relied upon the general circular bearing no. 53/2011, dated 26.07.2011 and, the circular bearing no. 1/2014, dated 15.01.2014.

14.1. Based on the aforementioned circulars, the RD, sent communication to the Registrar of Companies (ROC), and the Income Tax Department (I.T. Department) seeking their response to the scheme.

14.2. However, no comment/response of the I.T. Department has, apparently, been received in the matter by the RD.

14.3. The RD, though, received information from the ROC vide communication dated 26.11.2015 which, inter alia, is indicative of the fact that the said authority has not received any complaint or objection from the shareholders, creditors, or any of the stakeholders of the petitioners.

15. Therefore, in so far as the RD is concerned, there are no objections taken by him to the scheme.

16. The OL, in his report, inter alia, stated that he has not received any complaint qua the scheme 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 transferor companies, according to the OL, do not fall foul of the provisions of the second proviso of Section 394(1) of the Act.

16.1 Thus, the OL, in effect, has conveyed that he has no objections to the

scheme being sanctioned.

17. To be noted, the scheme in clause 10 provides that all employees of the 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 the basis of continuity of service, and on terms and conditions as to employment, not less favorable than those subsisting in the transferor companies, as on the said date.

18. 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 companies will stand transferred to and / or vest in the transferor company without any further act or deed. Similarly, in terms of clause 4.2 of the scheme, all debts, liabilities, duties and obligations of the transferor companies shall stand transferred to the transferor company without any further act or deed.

18.1 Furthermore, as per clause 21.1 of the scheme, the transferor companies shall stand dissolved without being wound up.

19. Accordingly, in view of the approval accorded to the scheme by the equity shareholders and preference shareholders of the petitioners and, given the fact, that the RD and the OL have not articulated any objections to the scheme, 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 the 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 the 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, any 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, inter alia, from: payment of stamp duty or, taxes or, other penalties / charges, if any, payable, as per the relevant provisions of law.

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

RAJIV SHAKDHER, J

FEBRUARY 26, 2016