

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

Judgement reserved on: 19.01.2016

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Judgement delivered on: 03.02.2016

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CO.PET. 415/2015

IN THE MATTER OF
LEADING POINT POWERTRONICS PRIVATE LIMITED
... Petitioner no. 1/ Transferor Company No.1

AND

LEADING POINT TECHNOLOGY PRIVATE LIMITED
...Petitioner no. 2/ Transferor Company No.2

WITH

ERD TECHNOLOGIES PRIVATE LIMITED.
.... Petitioner no. 3 / Transferee Company

Through: Mr Saurabh Kalia & Mr Gursat Singh,
Adv. for the Petitioners.

Through: 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 Leading Point Powertronics Private Limited (i.e. petitioner no.1/transferor company no.1) and Leading Point Technology Private Limited (i.e. petitioner no. 2/ transferor company no. 2) with ERD Technologies Private Limited (i.e. Petitioner company no. 3/ 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).

1.1 The transferors and transferee companies, as referred to above, will collectively be referred, hereafter, as the petitioners.

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

1.3 The details with respect to incorporation and the petitioners' authorised, issued, subscribed and paid up capital have been set out in the petition.

2. 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.

3. Copies of Board of Directors' (BOD) resolution of even date i.e 27.01.2015, concerning the petitioners, whereby, the scheme of amalgamation has been approved, are filed with the petition.

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

5. To recapitulate, the petitioners had in the earlier round filed a petition (i.e. the first motion), being: CA(M) No.72/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meeting of shareholders and creditors. This court vide order dated 21.05.2015, 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.

5.1 The court, having regard to the fact, that all the secured creditors of the transferor company no.1 and transferee company had given their consent to the scheme, dispensed with requirement of convening a meeting of the

said class of persons/entities , as prayed.

5.2 Furthermore, the court, having regard to the fact, that unsecured creditors, being 95.88% in value (though 95.52 % in number), belonging to transferor company no. 1 and, unsecured creditors, being 99.63 % in value (though 94.52 % in number), belonging to the transferee company had given their consent to the scheme, dispensed with the requirement of convening meetings of this class of persons/entities, as well.

5.3 The court, also noted, that since, transferor company no. 2 did not have any creditors (unsecured or secured), therefore, there was no requirement to convene a meeting with respect to that class of persons/entities.

6. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 07.07.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD). Furthermore, citations were ordered to be published.

7. Pursuant thereto, reply/ representation has been filed by the RD. Accordingly, citations were published in Delhi Editions of newspapers Business Standard (English) and Business Standard (Hindi), on 30.09.2015. An affidavit dated 23.11.2015 demonstrating service of the petition on the RD and establishing publication of citation alongwith the newspaper extracts, was filed by the petitioners.

8. Pursuant thereto, the RD filed its affidavit under Section 394 A of the 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 15.1.2014. Based on the aforementioned circular, as per the affidavit of the RD, communication was sent to the Registrar of Companies, Delhi and Haryana

(in short the ROC), and the Income Tax Department (I.T. Department) seeking their response to the scheme. However, no comment/response of the I.T. Department has apparently been received in the matter.

8.1 In the affidavit filed on behalf of the RD, there were following objections/ concerns raised:

(i) That it had received information via ROC's communication dated 11.11.2015 that the resolution passed by the BODs of the petitioners at their respective meeting held on even date i.e. 27.01.2015 had not been filed in its office within the stipulated period of 30 days of passing of the said resolution, which was violative of the provisions of Section 117(3) read with Section 179(3) of the Companies Act, 2013 (in short 2013 Act).

(ii) The valuation report prepared for crystallizing as to what should be the swap ratio, had not been enclosed.

(iii) The transferee company should follow the pooling of interest method as provided under Accounting Standard-14 as notified under Companies (Accounting Standards) Rules 2006 (in short the 2006 Rules).

8.2 In so far as the first aspect is concerned, the petitioners in their affidavit-in-reply dated 30.11.2015 have categorically taken the stand that they have filed e-Form-MGT-14 on 19.11.2015 along with additional fees and thus, in effect, bringing on record the BODs resolution dated 27.01.2015, whereby the said scheme was approved.

8.3 In so far as the second objection of the RD is concerned, the petitioners have taken a categorical stand that the valuation report was filed with the RD on 02.11.2015. The petitioners have further averred that the valuation report was also provided to the RD vide email dated 24.11.2015. This apart, the petitioner states that the share exchange ratio, as crystallized

in the valuation report, finds mention in clause 9.1 of the scheme, which stands appended to the first motion application as also the instant petition; a copy of which was served on the RD.

8.4 The third objection is really in the nature of a concern, which, in my view, stands addressed as there is a provision in clause 11.a of the scheme. The said clause requires the transferee company to follow the pooling of interest method as prescribed under AS -14 in line with 2006 rules.

8.5 In these circumstances, in my view, the objections and concerns raised by the RD stands liquidated.

8.6 In so far as the OL is concerned, he has, inter alia, stated in his report that no complaint against the scheme has been received by him from any interested person or party. The OL has also averred in his report 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, did not fall foul of the provisions of the second proviso of Section 394(1) of the Act.

9. To be noted, the scheme in clause 7.a provides that all the 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 and interruption in service and on the terms and conditions not in any way less favorable to them than those subsisting with reference to the transferor companies as the case may be on the said date.

9.1 Furthermore, as per clause 6 of the scheme, the transferor companies shall stand dissolved without being wound up.

10. 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 Income Tax Authorities or other Statutory Authorities 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.

10.1 Notwithstanding the above, if there is any deficiency found or, any violation committed of any other statute, the sanction granted by this court to the scheme will not come in the way of any action being taken in accordance with law, against the concerned persons, directors and officials of the petitioners.

11. As indicated above, the OL has indicated, that no objections have been received by him, from any person and / or interested party qua the scheme. Furthermore, the OL has also indicated that the requirement of the second proviso of Section 394 (1) of the Act are met.

12. 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, as indicated above, have been duly taken care of, 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. A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

12.1 In terms of the provisions of Section 391 and 394 of the Act, and in terms of the scheme, the entire undertaking, properties, rights, title and interests of the transferor companies 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, duties and obligations of the transferor companies shall stand transferred to the transferee company without any further act or deed. Upon the scheme coming into effect, the transferor companies shall stand dissolved without having to follow the process of winding up.

12.2 It is made clear, that this order will not be construed as an order granting exemption from: payment of stamp duty or, taxes or, other penalties/ 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.

13. Resultantly, the petition is allowed and disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

FEBRUARY 03, 2016

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