

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

% Judgement reserved on: 28.01.2016  
Judgement delivered on: 26.02.2016

+ **CO.PET. 631/2015**

IN THE MATTER OF  
GANRAJ SUGARS PRIVATE LIMITED

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

PUKHRAJ SUGARS PRIVATE LIMITED

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

JIVITESH SUGARS PRIVATE LIMITED

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

PARASHAR SUGARS PRIVATE LIMITED

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

RITESH VYAPAR PRIVATE LIMITED

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

HINDON PROJECTS PRIVATE LIMITED

.... Transferor Company No. 6/Petitioner No. 6

WITH

OJUS INDUSTRIES PRIVATE LIMITED

.... Transferee Company/Petitioner No. 7

Through: Mr Alok Aggarwal, Adv. for the  
petitioner.

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 Ganraj Sugars

Private Limited (i.e. the transferor company no. 1/petitioner no.1), Pukhraj Sugars Private Limited (i.e. the transferor company no. 2/petitioner no.2), Jivitesh Sugars Private Limited (i.e. the transferor company no. 3/petitioner no.3), Parashar Sugars Private Limited (i.e. transferor company no. 4/petitioner no. 4), Ritesh Vyapar Private Limited (i.e. transferor company no. 5/petitioner no. 5), Hindon Projects Private Limited (i.e. transferor company no. 6/petitioner no. 6) and Ojus Industries Private Limited (i.e. the transferee company/petitioner no.7) 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, 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. 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 4.6, provides for a share exchange ratio for petitioners no. 1 to 6 (i.e. the transferor companies) with petitioner no. 7 (i.e. the transferee company), as laid down herein below:

| Transferor Companies | For the number of shares @Rs. 10 each, held | No. of shares in the Transferee Company |
|----------------------|---------------------------------------------|-----------------------------------------|
| 1                    | 1 fully paid up equity share                | 6 fully paid up equity shares           |
| 2                    | 5 fully paid up equity shares               | 1 fully paid up equity share            |
| 3                    | 1 fully paid up equity share                | 5 fully paid up equity shares           |
| 4                    | 1 fully paid up equity share                | 5 fully paid up equity shares           |

|   |                                  |                              |
|---|----------------------------------|------------------------------|
| 5 | 1268 fully paid up equity shares | 1 fully paid up equity share |
| 6 | 1347 fully paid up equity shares | 1 fully paid up equity share |

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 2, 5, 8, 11, 14, 17 and 20 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, have been filed with the petition.

8. The copies of Board of Directors' (BOD) resolution of the petitioners of even date i.e. 11.06.2015, approving the scheme, have been filed with the petition.

9. The petitioners have averred that there are no proceedings pending 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) 14/2015, whereby, a prayer had been made for dispensing with, the requirement of convening the meetings of shareholders, preference shareholders and unsecured creditors of the petitioners. This court vide order dated 27.17.2015, dispensed with the requirement of convening the meetings as prayed with regard to the consent received by the following class of persons:

| Petitioners             | Shareholders | Consent | Preference shareholders | Consent | Unsecured Shareholders | Consent |
|-------------------------|--------------|---------|-------------------------|---------|------------------------|---------|
| Transferor company no.1 | 2            | All     | 1                       | All     | Nil                    | N.A.    |
| Transferor company no.2 | 2            | All     | 1                       | All     | Nil                    | N.A.    |
| Transferor              | 2            | All     | 1                       | All     | Nil                    | N.A.    |

|                         |   |     |     |      |     |      |
|-------------------------|---|-----|-----|------|-----|------|
| company no.3            |   |     |     |      |     |      |
| Transferor company no.4 | 2 | All | 1   | All  | Nil | N.A. |
| Transferor company no.5 | 2 | All | Nil | N.A. | 1   | All  |
| Transferor company no.6 | 2 | All | Nil | N.A. | Nil | N.A. |
| Transferee company      | 2 | All | Nil | N.A. | 5   | All  |

10.1 The court, also noted, that since, 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 10.09.2015. 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 Veer Arjun (Hindi).

11.1 The citations were published in Delhi Editions of newspapers; Statesman (English) and Veer Arjun (Hindi) on 23.09.2015. An affidavit dated 19.11.2015, 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 an affidavit dated 14.01.2016, that subsequent to the publication of the notice of the petition, they have no received any objection or complaint to 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 been received, till date.

13. The affidavit of RD, adverts to the fact that it has received information from the ROC vide communication dated 18.12.2015. 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 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, he has, inter alia, stated that no complaint against 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/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.

14.1 Thus, the OL, has conveyed that he has no objections to the scheme being sanctioned.

15. To be noted, the scheme in clause 4.2(k) 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 the 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 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, in terms of the scheme, 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 4.12 of the scheme, the 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 there are no objections by the RD and the OL, 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. 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**