

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

Judgement reserved on: 23.03.2016
% Judgement delivered on:06.04.2016

+ **CO.PET. 679/2015**

IN THE MATTER OF
J.M. INFRA TECH PRIVATE LIMITED

.....Petitioner no.1 / Transferor Company

AND

J.M. HOUSING LIMITED

..... Petitioner no.2/ Transferee Company

Through: Ms. Manisha Chaudhary and
Mr.Karan Malhotra, Advocates
Mr. Sanjay Bose, DROC for 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 J.M. Infra Tech Private Limited (i.e. petitioner no.1/transferor company) and J.M. Housing Limited (i.e petitioner no.2 / 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 company and the transferee company, will hereafter be referred, to as the petitioners.

3. The registered office of the petitioners are located within the territorial jurisdiction of this court.
4. The details with respect to the petitioners' authorised, issued, subscribed and paid up capital are set out in paragraphs 5 and 13 of the petition.
5. The copies of Memorandum and Articles of Association as well as the provisional profit and loss account and the balance sheet as on 31.03.2014 have been filed by the petitioners.
6. Copies of Board of Director's (BOD) resolution dated 01.012.2014 and 30.11.2014 of the transferor company and the transferee company respectively, whereby, the scheme has been approved, are filed with the petition.
7. The petitioners have averred that the amalgamation of the transferor company with transferee company would result in pooling of resources of the aforementioned entities to their common advantage, resulting in more productive utilization of the resources, costs and operational efficiencies.
8. In terms of clause 6.4 of the scheme, the entire paid up share capital in the transferor company, fully held by the transferee company shall be extinguished and stand cancelled and no shares shall be issued by the transferee company pursuant to the amalgamation as transferor company is a wholly owned subsidiary of the transferee company.
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.107/2015, whereby a prayer had been made, for dispensing with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the petitioners.

11. The court vide order dated 18.08.2015, having regard to the facts as mentioned in the table below, dispensed with the requirement of convening the meetings, as prayed.

Number of Companies	Equity Shareholders	Consent given	Secured creditors	Consent given	Unsecured creditors	Consent given
Transferor company	02	ALL	03	ALL	46	44 (being 95.6% in number and 98% in value)
Transferee company	26	ALL	09	08 (being 88.9% in number and 99.7% in value)	86	77 (being 89.5% in number and 97% in value)

12. The petitioners, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 11.09.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD).

12.1. Furthermore, citations were ordered to be published.

13. Citations were published, on 10.02.2016, in Delhi Editions of the following newspapers: Business Standard (English) and Jansatta (Hindi). An affidavit dated 09.03.2016 demonstrating service of the petition on the RD and OL and establishing publication of citation along with the newspaper extracts, was filed by the petitioners.

13.1 Further, in the abovementioned affidavit it is averred that subsequent to the publication of the notice, the petitioners have not received any objection or complaint qua the scheme.

14. 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 15.01.2014.

14.1 Based on the aforementioned circulars, 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.

14.2. However, no response by the I.T. Department, on this matter, has apparently been received, till date.

15. The RD, though, received information from the ROC vide report dated 29.02.2016 which, inter alia, is indicative of the facts as follows:

a) First, that there is a discrepancy as between what is stated in paragraph 18.1 and paragraph 34 of the scheme regarding the time limit prior to which sanctions and approvals qua the scheme had to be obtained;

b) and second, the BOD resolution concerning the petitioners regarding extension of the validity period of the scheme had not been filed with the ROC.

16. In response to the concern raised by the Regional Director, the petitioners filed a reply dated 29.02.2016. By virtue of the said reply, the petitioners submitted a copy of the E-Form MGT 14 with respect to the filing made by them qua BOD's meetings held on 29.02.2016 in connection with rectification of a typographical error, which had crept in paragraph 18.1 of the scheme. To be noted, in paragraph 18.1 of the scheme, prior to the correction, the validity period of the scheme ended on 31.03.2015. By virtue of the resolutions passed, by the BOD's of the petitioners on 29.02.2016, the said error was corrected and the validity period of the scheme was extended till 30.09.2016. This aspect has been noted by the RD in its own report dated 09.03.2016, placed before the court to which I have made a reference.

16.1 Therefore, having regard to the above, in my view, the concerns raised by the RD stand duly addressed.

17. 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, albeit, on the basis of information supplied by the petitioners, that the affairs of the transferor company had been conducted in a manner which could not be construed as being prejudicial to either the interest of its members or the public at large. In other words, affairs of the transferor company, according to the OL, do not fall foul of the provisions of the second proviso to Section 394(1) of the Act.

17.1 Thus, the OL, in effect, has conveyed that he has no objections to the scheme being sanctioned.

18. To be noted, the scheme in clause 14.1 provides that all the 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 and interruption in service and on the terms and conditions not in any way less favourable to them than those subsisting with reference to the transferor company as the case may be on the said date.

19. In terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 5.1 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 the transferor company shall stand transferred to the transferee company without any further act or deed.

19.1 Furthermore, as per clause 13.1 of the scheme, the transferor company shall stand dissolved without being wound up.

20. Accordingly, in view of the approval accorded to the scheme by the shareholders and creditors (i.e secured and unsecured) 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.

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

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

22. 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.

23. 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.

24. 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, any other charges, if, 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.

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

RAJIV SHAKDHER,

APRIL 06, 2016

