

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

Judgement reserved on: 17.03.2016

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Judgement delivered on: 21.03.2016

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CO.PET. 704/2015

IN THE MATTER OF NAHAR & PUNEET
MOVIEZ PRIVATE LIMITED

... Petitioner no. 1/ Transferor Company

AND

HYDEL CONSTRUCTIONS
PRIVATE LIMITED

...Petitioner no. 2/ Transferee Company

Through: Mr. Ashish Middha, 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 Nahar & Puneet Moviez Private Limited (i.e. petitioner no.1/transferor company) and Hydel Constructions Private 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).

1.1 The transferor company and transferee company, as referred to above, will hereafter be collectively referred to 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' authorized, issued, subscribed and paid-up capital are set out in paragraph nos. 1.1, 1.2, 3.1 and 3.2 of the scheme.

1.4 The transferor company was incorporated on 09.09.2008, in consonance with the provisions of the Act, under the name and style: Nahar & Puneet Moviez Private Limited.

1.5 The transferee company, on the other hand, was incorporated prior in point of time i.e. on 27.07.1972 under the name and style: Hydle Constructions Private Limited. Thereafter, in 1985 the name of the transferee company was changed to Hydel Constructions Limited. The word 'Private' was deleted from the name of the transferee company w.e.f. 19.04.1985. The word 'Private' was again added in the name of the transferee company w.e.f. 06.11.2002. Thus, w.e.f. 06.11.2002, the transferee company's name was changed to its present name viz., Hydel Constructions Private Limited.

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 21.01.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

4. The petitioners have averred that the amalgamation of the transferor company with the transferee company will enable further growth and development of the transferee company. It has been further claimed that the

amalgamation will also result in reduction in overheads and administrative and procedural work, eliminate duplication of work besides enabling optimal utilization of various resources, rationalization and streamlining of management and better economic control.

4.1 Furthermore, the petitioners have claimed 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 an application (i.e. the first motion), being: CA(M) No.101/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of the shareholders and creditors (secured and unsecured) of the petitioners. This court vide order dated 13.08.2015, having regard to the fact that all the shareholders of the petitioners and all the unsecured creditors of the transferee company had given their consent to the scheme, dispensed with the requirement of convening meetings, as prayed.

6. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 19.11.2015. Notices were accepted on behalf of both the Regional Director (RD) and the Official Liquidator (OL). Furthermore, citations were ordered to be published.

7.1 Accordingly, citations were published in the Delhi Editions of Business Standard (English) on 24.12.2015 and Business Standard (Hindi), on 25.12.2015.

7.2 An affidavit dated 01.03.2016 establishing publication of notice of hearing alongwith the newspaper extracts, was filed by the petitioners.

7.3 Further, in the aforementioned affidavit, it is averred that subsequent to the publication of notice, the petitioners have not received any objections/complaints from any third party qua the scheme.

8. 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. Based on the directions contained in the said circulars, the RD, sent communications to 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 The RD, evidently, has received information from the ROC vide communication dated 08.03.2016 which is indicative of the fact that the ROC has not made any adverse comments qua the scheme.

8.2. According to the RD, there are no Sales Tax, Income Tax, or any other Government Tax or any dues towards employees payable by the petitioners. The only amount owed is a sum of Rs.46,01,630/- by the transferee company towards income tax qua which an application for rectification is pending with the concerned authority.

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

8.4 In so far as the OL is concerned, he has inter alia, stated in his report, that no complaint qua 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 company has 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.

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

9. To be noted, the scheme in clause 10 provides that all staff, workmen and other employees of the transferor company in service as 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 company, as on the said date.

10. As per clause 14.4 of the scheme, the scheme provides that upon coming into effect of this scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the ratio of 21 equity shares of Rs.10/- each in the transferee company for every 10 equity shares of Rs.10 each held by them in the transferor company.

11. Furthermore, as per clause 23.1 of the scheme, the transferor company shall stand dissolved without being wound up.

12. In terms of clause 14.11 of the scheme, the transferee company shall follow pooling of interests method as prescribed under Accounting Standard 14 as notified under Companies (Accounting Standards) Rules 2006.

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

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

14. It is further directed that the petitioners will comply with all the provisions of the scheme and, in particular, those which are referred to hereinabove.

15. 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.

15.1 Notwithstanding the above, if there is any deficiency found or, any violation committed of 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.

16. In terms of the provisions of Section 391 and 394 of the Act, and in consonance with clause 4.1 of the scheme, the entire business and undertakings, assets, rights, title and interests 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 clause 4.2 of the scheme, all liabilities of the transferor company shall stand transferred to the transferee

company without any further act or deed so as to become the debts, liabilities, duties and obligations of the transferee company.

16.1 More particularly, upon the scheme coming into effect, the transferor company shall stand dissolved without having to follow the process of winding up.

16.2 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.

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

RAJIV SHAKDHER, J

MARCH 21, 2016

