

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

Judgement reserved on: 11.03.2016

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Judgement delivered on: 18.03.2016

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CO.PET. 719/2015

**IN THE MATTER OF R.C. SOOD & CO.
PRIVATE LIMITED**

.. Petitioner no. 1/
Transferor Company

AND

**J.R. SOOD & CO. PRIVATE LIMITED ... Petitioner no. 2/
Resulting Company**

Through: Ms. Malini Sud and Ms. Vidhi
Goel, Advocates for the petitioners.
Ms Aparna Mudiam, Asstt. ROC for the RD.
Mr. Rajiv Behl, Advocate for the OL

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by R.C. Sood & Co. Private Limited (i.e. petitioner no.1/transferor company) with J.R. Sood & Co. Private Limited (i.e. petitioner no.2/resulting company) under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of arrangement (hereafter referred to as the scheme).

1.1 To be noted, the scheme is configured in a manner whereby, a demerged undertaking of the transferor company will merge with the resulting company.

1.3 The transferor company and resulting company, as referred to above,

will hereafter be collectively referred to as the petitioners.

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

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

1.6 The transferor company was originally incorporated on 20.01.1954 under the name and style: R.C. Sood & Co Limited, in consonance with the provisions of the Indian Companies Act, 1913. Thereafter, the transferor company converted into a private limited company and a fresh Certificate of Incorporation dated 18.07.2000 was issued by the Registrar of Companies, NCT of Delhi and Haryana (in short, ROC). Thus, with effect from 18.07.2000 the transferor company got converted into a private limited company and its name was changed to its present name viz., R.C. Sood & Co Private Limited.

1.7 The resulting company, on the other hand, was incorporated on 30.01.2006 under the name and style: J.R. Sood & Co Private Limited. Thereafter, the name of the resulting company was changed twice, once to, Golden Earth Estates Developers Private Limited, and then, with effect from 03.03.2014 to its present name viz., J.R. Sood & Co. 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 31.12.2014, have been filed by the petitioners.

3. Copies of Board of Directors' resolution of even date i.e. 30.03.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

4. The petitioners have averred that the demerger will provide the basis for enabling the petitioners to focus on improving shareholders' value in each of them. It has been further claimed that, by the demerger, the petitioners, will be in a position to pursue their individual growth strategies via different arrangements adopted by them.

5. Furthermore, the petitioners have averred that there are no proceedings pending against them, under Sections 235 to 251 of the Act or the corresponding provisions of the Companies Act, 2013, to the extent notified.

6. To recapitulate, the petitioners had in the earlier round filed an application (i.e. the first motion), being: CA(M) No.113/2015, 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 21.07.2015, having regard to the fact that all the shareholders of the petitioners had given their consent to the scheme, dispensed with the requirement of convening meetings, as prayed.

6.1 Furthermore, the court having regard to the fact that the only secured creditor of the transferor company and the sole unsecured creditor of the resulting company had given their consent to the scheme, dispensed with the requirement of convening meetings with respect to the said classes of entities, as well.

6.2 In addition, the court, given the fact, that unsecured creditors, being 99.76% in value, belonging to the transferor company had given their consent to the scheme, dispensed with the requirement of convening meetings of the said class of persons/ entities, in this case, as well.

7. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 21.09.2015. Notices were

accepted on behalf of both the Regional Director (RD) and the Official Liquidator (OL). Furthermore, citations were ordered to be published.

8. Accordingly, citations were published in the Delhi Editions of Business Standard (English) and Jansatta (Hindi), on 02.12.2015.

8.1 An affidavit dated 10.02.2016 demonstrating service of the petition on the RD and the OL and establishing publication of notice of hearing alongwith the newspaper extracts, was filed by the petitioners.

8.2 Further, the petitioners filed an affidavit dated 12.02.2016, wherein 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.

9. 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 15.04.2014. 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 seeking their response to the scheme. However, no observation/comment/reply of the Income Tax department, it appears, has been received in the matter.

9.1 The RD, evidently, has received information from the ROC vide communication dated 04.02.2016 which is indicative of the fact that the ROC has not made any adverse comments qua the scheme.

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

9.3 Since, this is a case of demerger, as far as the OL is concerned, it would have no role to play in this case. Mr. Behl, the learned counsel for the OL affirms this position. In any event, the OL has filed a report wherein he

has not articulated any objections to the scheme being sanctioned.

10. To be noted, the scheme in clause 4.12 (a) provides that all employees of the transferor company engaged in the demerged undertaking in service on the effective date shall become the employees of the resulting company on such date and on the terms and conditions not in any way less favorable to them than those subsisting in transferor company as the case may be on the said date.

11. As per clause 5.1 of the scheme, upon coming into effect of this scheme, the resulting company shall issue and allot equity shares to the shareholders of the transferor company in the ratio of one (01) equity share each fully paid-up of Rs.10 each in the resulting company for every 01 fully paid-up equity share of Rs.10 each held by them in the transferor company.

12. 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 has not articulated any objections to 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.

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

13. 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.

14. In any event, notwithstanding what is stated by the petitioners, the resulting 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 resulting 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.

14.1 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.

15. In terms of the provisions of Section 391 and 394 of the Act, and in consonance with clause 4.1 of the scheme, all the rights, title and interest of the transferor company in the demerged undertaking in its entirety will stand transferred to and / or vest in the resulting company without any further act or deed. Similarly, in terms of clause 4.3 of the scheme, all debts, liabilities and obligations of the transferor company relating to the demerged undertaking shall stand transferred to the resulting company without any further act or deed.

15.1 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.

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

RAJIV SHAKDHER, J

MARCH 18, 2016