

* **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. 710/2015

**IN THE MATTER OF CHAMBAL ENERGY
(ORISSA) LIMITED**

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

AND

**CHAMBAL ENERGY
(CHATTISGARH) LIMITED**

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

WITH

**CHAMBAL INFRASTRUCTURES
VENTURES LIMITED.**

.... Petitioner no. 3 / Transferee Company

Through: Mr. Satwinder Singh, 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 Chambal Energy (Orissa) Limited (i.e. petitioner no.1/transferor company no.1) and Convergys Chambal Energy (Chattisgarh) Limited (i.e. petitioner no. 2/ transferor company no. 2) with Chambal Infrastructures Ventures Limited

(i.e. petitioner 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 hereafter be collectively referred to as the petitioners. Furthermore, transferor company nos. 1 and 2 will hereafter be conjointly referred to as transferor companies.

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 are set out in the preamble and part II of the scheme.

2. The copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2015 have been filed by the petitioners.

3. The Board of Directors (BOD) of the transferor companies and the transferee company in their separate meetings held on 19.04.2015 and 30.03.2015 respectively have unanimously approved the scheme. Copies of the BOD resolutions whereby, the scheme has been approved, are filed with the petition.

4. The petitioners have averred that the amalgamation of the transferor companies with the transferee company will provide integration of capabilities, streamlining of administration, cost effective management system and operational flexibility for the transferee company thereby resulting in maximising overall shareholders' value. It has been further

claimed that the amalgamation will also result in a larger base for the future growth and continuous development of the transferee company.

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.133/2015, 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 28.08.2015, having regard to the fact that all the shareholders and all the unsecured creditors of the petitioners 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 18.09.2015. Notices were accepted on behalf of both the Regional Director (RD) and the Official Liquidator (OL). Furthermore, citations were ordered to be published.

7.1 Accordingly, citations were published in the Delhi Editions of Hindustan Times (English) and Hindustan Times (Hindi), on 05.11.2015.

7.2 An affidavit dated 08.12.2015 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.

7.3 Further, the petitioners filed an affidavit dated 15.02.2016, 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.

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 04.02.2016 which is indicative of the fact that the ROC has not made any adverse comments qua the scheme.

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

8.3 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 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, do not fall foul of the provisions of the second proviso to Section 394(1) of the Act.

8.4 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 3.22 provides that all employees of the transferor companies in service immediately preceding 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 companies, as on the said date.

10. As per clause 3.23 of the scheme, since transferee company is the holding company of the transferor companies, all the equity shares as held by the transferee company and its nominees in the transferor companies shall stand cancelled pursuant to the amalgamation and there will be no issue and allotment of equity shares of the transferee company to the members of the transferor companies upon coming into effect of the scheme.

11. Furthermore, as per clause 4.10 of the scheme, the transferor companies shall stand dissolved without being wound up.

12. In terms of clause 3.24 of the scheme, the transferee company shall follow pooling of interest 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 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.

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 companies. 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 companies 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 3.1 of the scheme, the entire business and undertakings , properties and assets 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 clause 3.12 of the scheme, all debts, liabilities, duties and obligations of the transferor companies shall stand transferred to the transferee company without any further act or deed.

16.1 More particularly, upon the scheme coming into effect, the transferor companies 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 18, 2016

