

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

Judgement reserved on: 15.03.2016

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Judgement delivered on: 18.03.2016

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CO.PET. 720/2015

IN THE MATTER OF

POLYCAB ELECTRONICS PRIVATE LIMITED

....Petitioner / Transferor Company No.5

AND

JAISINGH WIRES PRIVATE LIMITED

....Non-Petitioner / Transferor Company No.1

AND

POLYCAB WIRE INDUSTRIES PRIVATE LIMITED

...Non-Petitioner / Transferor Company No.2

AND

POLYCAB ELECTRICAL INDUSTRIES PVT. LTD.

...Non-Petitioner / Transferor Company No.3

AND

DATAR NOUVEAU ENERGIE TECHNIK LTD.

... Non-Petitioner / Transferor Company No.4

WITH

POLYCAB WIRES PRIVATE LIMITED

... Non -Petitioner / Transferee Company

Through: Mr. Mahesh Agarwal and Mr.
Rajeev Kumar, Advocates
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 by Polycab Electronics Private Limited (i.e. petitioner / transferor company no.5) 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) with Jaisingh Wires Private Limited (i.e non-petitioner / transferor company no. 1), Polycab Wire Industries Private Limited (i.e non-petitioner / transferor company no. 2), Polycab Electrical Industries Private Limited (i.e non-petitioner / transferor company no.3), Datar Nouveau Energietechnik Limited (i.e non-petitioner / transferor company no.4) with Polycab wires private limited (i.e non-petitioner / transferee company).
2. The transferor company no. 5, will hereafter be referred, to as the petitioner company.
3. The registered office of the petitioner company is located within the territorial jurisdiction of this court.
4. The details with respect to the petitioner company' authorised, issued, subscribed and paid up capital are set out in paragraph 6 of the petition.

5. 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 has been filed by the petitioner company.
6. Copy of Board of Director (BOD) resolution dated 07.05.2015, concerning the petitioner company, whereby, the scheme has been approved, is filed with the petition.
7. The petitioner company had averred that the amalgamation of the transferor companies with the transferee company would result in pooling of resources of the entities to their common advantage, resulting in more productive utilization of the resources, costs and operational efficiencies.
8. In terms of clause 11 of the scheme, the petitioner company is a wholly owned subsidiary of the transferee company, and the entire issued, subscribed and paid-up share capital of the petitioner company is held by the transferee company. Therefore, the transferee company would not be required to issue and allot any shares to the shareholders of the petitioner company and the shares so held by the transferee company shall stand cancelled and extinguished pursuant to implementation of the Scheme.
9. The petitioner company has averred that there are no proceedings pending against it, under Sections 235 to 251 of the Act.
10. To recapitulate, the petitioner company had, in the earlier round filed an application (i.e. the first motion), being: CA(M) No.138/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of the equity shareholders , secured creditors and unsecured creditors of the petitioner company. This court vide order dated 11.09.2015, having regard to the fact that the petitioner company had two (2) equity

shareholders, all of whom had given their consent to the scheme, dispensed with the requirement of convening meeting, as prayed.

10.1 Furthermore, the petitioner company had one (1) unsecured creditor who has given the consent to the scheme, dispensed with the requirement of convening meeting, as prayed.

11. The court, also noted, the petitioner company did not have any secured creditors; therefore, obviously, there was no requirement to convene meeting with respect to that class of persons/ entities.

12. The petitioner company, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 22.09.2015. 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 in Delhi edition of newspapers: Business Standard (English) and Business Standard (Hindi) on 17.10.2015. An affidavit dated 16.12.2015 demonstrating service of the petition on the RD and establishing publication of citation along with the newspaper extracts, was filed by the petitioner.

13.1 Further, an affidavit dated 18.02.2016 was filed by the petitioner company that subsequent to the publication of the notice in the petition they 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.

15. The RD, received information from I.T. Department vide communication dated 10.11.2015 wherein it is stated that there is an outstanding demand of Rs.2,27,600/- against the petitioner company.

15.1. Furthermore, the RD received information from the ROC vide communication dated 10.02.2016 which, inter alia, is indicative of the fact that the petitioner company is required to file Form MGT-14 with the ROC within 30 days of passing the BOD resolution whereby, the scheme was approved; an aspect which was not taken care of.

16. In response to the concerns raised by the RD and the I.T.Department, the petitioner company filed an affidavit dated 18.02.2016, wherein, it is averred :-

16.1 a) that it has filed Form MGT-14, with the ROC, on 17.02.2016; and
b) that income tax liabilities of the petitioner company will be defrayed by the transferee company.

16.2 Therefore, having regard to the above, in my view, the concerns raised by the RD and the I.T. Department 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 that on the basis of information supplied by the petitioner company, it appears, the affairs of the petitioner 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 petitioner 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 9 provides that all the employees of the petitioner 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 petitioner 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 of the scheme, the entire undertaking, properties, rights and powers of the petitioner 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 petitioner company shall stand transferred to the transferee company without any further act or deed.

19.1 Furthermore, as per clause 15 of the scheme, the petitioner company shall stand dissolved without being wound up.

20. Accordingly, in view of the approval accorded to the scheme by the shareholders of the petitioner company 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 petitioner company 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 petitioner company will comply with all provisions of the scheme and, in particular, those which are referred to hereinabove.

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 action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioner company.

23. 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.

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

RAJIV SHAKDHER, J

MARCH 18, 2016