

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

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Judgement reserved on: 11.03.2016

Judgement delivered on: 07.04.2016

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CO.PET. 728/2015

IN THE MATTER OF

RADHA RAJ ISPAT PRIVATE LIMITED

.... Transferor Company/Petitioner No. 1

WITH

KRBL LIMITED

.... Transferee Company/Petitioner No. 2

Through: Mr Kunal Tandon & Ms Snigdha
Sharma, Advs.

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 jointly by the transferor company Radha Raj Ispat Private Limited (i.e. the transferor company/petitioner no.1) and KRBL Limited (i.e the transferee company/petitioner no. 2) under Sections 391 and 394, read with Sections 100 to 103, of the Companies Act 1956 (in short the Act), to seek sanction of the Scheme of Amalgamation (hereafter referred to as the scheme).

2. The transferor company and the transferee company will hereafter be collectively referred to as the petitioners.

3. The registered office of the petitioners is located within the jurisdiction of this court. Hence, this court has the jurisdiction to entertain and adjudicate upon the present petition.
4. The transferor company was incorporated on 21.07.1994, under the name and style: Radha Raj Ispat Private Limited, in accordance with the applicable provisions of the Act.
5. The transferee company, which had been originally incorporated under the applicable provisions of the Act, on 30.03.1993, under the name and style: Khushi Ram Behari Lal Limited, changed its name to 'KRBL Limited' on 01.02.2000.
6. The petitioners aver that the scheme aims at simplification of the shareholding structure and reduction in shareholding tiers. It is submitted that the transferor company forms a part of the promoter group of the transferee company and therefore, the scheme will ensure direct commitment of the promoter i.e. the transferor company, towards the transferee company.
7. To be noted, the transferor company holds 2,79,13,892 equity shares in the transferee company. In percentage terms, this would work out to nearly 11.86% of equity stake in the transferee company. It is, therefore, averred that the transferor company constitutes the promoter group of the transferee company.
8. The details with respect to petitioners' authorised, issued, subscribed and paid-up capital, have been set out in Part-I of the scheme.
9. The copies of Memorandum and Articles of Association as well as the profit and loss accounts and the balance sheets, of an even date i.e. 31.03.2014, have been filed with the petition.

10. The copies of Board of Directors' (BOD) resolution of the petitioners, of an even date i.e. 18.02.2015, approving the scheme, have been filed with the petition.

11. The petitioners have further averred that there are no proceedings pending against them under Sections 237, 243, 247(1A), 250A and 251 or any other applicable provisions of the Act or under Sections 210, 212(1) to (7) & (11) to (17), 214, 215, 216(1) & (3), 217, 219, 220, 223, 224(1), (3) and (4) and 225 or any other applicable provisions of the Companies Act, 2013.

12. To recapitulate, the petitioners had earlier filed an application (i.e. the first motion) being: CA No. (M) 127/2015, whereby, a substantive prayer had been made for dispensing with the requirement of convening the meetings of equity shareholders, creditors (i.e. secured and unsecured) of the petitioners.

12.1 This court vide order dated 03.08.2015 dispensed with the requirement of convening meetings of equity shareholders of the transferor company and that of the secured creditors of the transferee company. In view of the fact that the transferor company had no secured and unsecured creditors, the court did not see the occasion to pass any orders with respect to the meetings concerning said class of persons / entities.

13. Furthermore, by virtue of the very same order i.e. order dated 03.08.2015, the court directed the transferee company to convene a meeting of its equity shareholders and unsecured creditors.

13.1 Both sets of meetings were convened on the same date i.e. 12.09.2015, albeit, at different times, under the chairmanship of different persons. The observations made in the chairpersons' report with regard to the meeting of

the equity shareholders of the transferee company, to the extent they are relevant, are set out hereinbelow :-

“....As per the directions of this Hon’ble Court in Order dated 13th July 2015, pronounced on 3rd August 2015, the quorum fixed for the meeting was 200 (Two Hundred) Equity Shareholders in number and more than 25% in value of the total equity share capital of the Amalgamated Company.

On 12th September 2015, at the scheduled time of meeting i.e. 11:00 A.M., the above stated quorum was present, therefore, the meeting of the Equity Shareholders attended by 358 (Three Hundred Fifty Eight) Equity Shareholders including proxy / authorized representative, together holding equity share capital of Rs. 20,50,07,597 (constituting 87.09% in value) out of the total equity share capital of the Amalgamated Company was convened. As per the Order dated July 13, 2015, pronounced on August 3, 2015, of this Hon’ble Court, at the meeting 358 (Three Hundred Fifty Eight) Equity Shareholders constituted proper quorum of the meeting and the meeting was called “to order”. A list of Equity Shareholders who attended the meeting along with the Attendance Slips are annexed hereto and marked collectively as ANNEXURE "C" (COLLY)....”

13.2 Similarly, in so far as the observations made in the report dated 12.09.2015 of the chairperson appointed for the meeting of the unsecured creditors of the transferee company are concerned, to the extent they are relevant, are extracted hereinafter:-

2. That in compliance of the directions of this Hon'ble Court contained in the Order dated 13th July, 2015, pronounced on 03rd August, 2015, notice for convening and holding the meeting of Unsecured Creditors of the Amalgamated Company on the date fixed by this Hon'ble Court i.e. 12th September 2015 along with a) the

Explanatory Statement under section 393 of the Companies Act 1956 read with Section 102 and other applicable section of the Companies Act, 2013

b) Scheme of Amalgamation under Sections 391 to 394 read with Section 100 to 103 and other applicable provisions, if any, of the Companies Act, 1956 and corresponding Sections of the Companies Act, 2013 (as and when such corresponding Sections are notified in the Official Gazette by the Central Government),

c) Observation Letter dated 23rd April, 2015 from BSE Limited ('BSE') conveying no objection for filing the Scheme with the Delhi High Court

d) Observation Letter dated 22nd April, 2015 from National Stock Exchange of India Limited ('NSE') conveying no objection for filing the Scheme with the Delhi High Court

e) Fairness Opinion on the Scheme dated February 16th 2015 Obtained from M/s Corporate Professionals Capital Private Limited, Merchant Bankers

f) Complaints Report dated 23rd March, 2015 submitted by the Company to BSE and NSE and also uploaded on the Company Website.

g) Form of Proxy and

h) Attendance Slip were dispatched by the Applicant Company II / Amalgamated Company to all the 2,487 (Two Thousand Four Hundred Eighty Seven) Unsecured Creditors, having outstanding balance aggregating to Rs.3,49,77,19,998 (Rupees Three Hundred Forty Nine Crore Seventy Seven Lakh Nineteen Thousand Nine Hundred and Ninety Eight) at their respective last known addresses, in the presence of my Authorised Representative, through registered post on 17th day of August, 2015. Copies of the above stated documents have

already been annexed to the Affidavit of Service filed before this Hon'ble Court on 4th day of September, 2015 vide dairy no. 447783.

.....

5. As per the directions of this Hon'ble Court in Order dated 13th July, 2015, pronounced on 03rd August, 2015, the quorum fixed for the meeting was 200 (Two Hundred) Unsecured Creditors in number and more than 25% in value of the total unsecured debt of the Amalgamated Company. On 11th September, 2015, at the scheduled time of meeting i.e. 2:30 P.M., the above stated quorum was not present, therefore the meeting was adjourned for half an hour in accordance with the Order. Post adjournment, the meeting of the Unsecured Creditors was resumed and attended by 232 (Two Hundred Thirty Two) Unsecured Creditors including proxy, together having balance outstanding Rs. 71,79,41,680 (constituting 20.53% in value) out of the total balance outstanding towards Unsecured Creditors of the Amalgamated Company. As per the Order dated July 13, 2015, pronounced on August 3, 2015, of this Hon'ble Court, at the resumed meeting 232 (Two Hundred Thirty Two) Unsecured Creditors were deemed to constitute a proper quorum of the meeting and the meeting was called "to order". A list of Unsecured Creditors who attended the meeting along with the Attendance Slips are annexed hereto and marked collectively as ANNEXURE-"B"(COLLY)."

13.3 Having regard to the aforesaid, it is quite clear that consents of the equity shareholders as well as the unsecured creditors of the transferee company are in accordance with law. The consents were obtained from

requisite majority both in number and value of the concerned class of persons/ entities.

14. The petitioners, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 18.10.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD). Furthermore, citations were ordered to be published in Business Standard (English) and Jansatta (Hindi).

14.1 The citations were published in Delhi Editions of the newspapers; Business Standard (English) and Jansatta (Hindi) on 19.10.2015. An affidavit dated 29.10.2015, demonstrating service of the petition on the RD and establishing publication of citation along with the newspaper extracts, has been filed by the petitioners.

15. Further, petitioners have averred by way of the affidavit dated 15.02.2016, that subsequent to the publication of the notice in the petition, they have not received any objection or complaint qua the scheme.

16. Pursuant thereto, affidavit has been filed by the RD under Section 394A of the 1956 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. Based on the aforementioned circulars, as per the affidavit of R.D., communications were sent to the Registrar of Companies (ROC) and the Income Tax Department (I.T. Department) seeking their response to the scheme. However, no response by the I.T. Department, on this matter, has apparently been received, till date.

16.1 The affidavit of RD, adverts to the fact that it has received information from the ROC vide report, dated 09.02.2016, which is indicative of the fact that the ROC has not made any adverse comments qua the scheme.

16.2 In so far as the RD is concerned, he appears to have no objection in the scheme being sanctioned.

17. As far as the OL's report is concerned, it has, inter alia, stated that no complaint qua the scheme has been received by him from any interested person or party. The OL has also averred that, on the basis of information supplied by the petitioners, it appears, the affairs of the transferor company, 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.

17.1 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.

18. To be noted, in the scheme, clause 7 provides that all employees of transferor company, in service on the effective date, shall become the employees of the transferee company, on such date without any break or interruption in service and on terms and conditions as to remuneration not less favorable than those subsisting with reference to transferor company, as on the said date.

19. In terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 4 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, all liabilities and duties of the transferor company shall stand transferred to the transferee company, without any further act or deed.

20. Importantly, in respect of the 11.86% equity stake held by the transferor company in the transferee company of which cancellation is sought upon completion of the process of amalgamation, the relevant

provisions stand incorporated in clause 5.4 and 5.5 of the proposed scheme.

These clauses read as follows:

“5.4 Upon New Equity Shares being issued and allotted by the Amalgamated Company to the shareholders of the Amalgamating Company, in accordance with Clause 5.1 above, the investment held by the Amalgamating Company in the share capital of the Amalgamated Company shall, without any further application, act, instrument or deed stand cancelled. The shares held by the Amalgamating Company in dematerialized form shall be extinguished, on and from such issue and allotment of New Equity Shares.

5.5 Such reduction of share capital of Amalgamated Company as provided in Clause 5.4 above shall be effected as an integral part of the Scheme and the orders of the High Court sanctioning the Scheme shall be deemed to be an order under Section 100-103 and any other applicable provisions of the Act confirming the reduction. The Amalgamated Company shall not be required to add the words "and reduced" as a suffix to its name consequent upon such reduction.”

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

22. Accordingly, in view of the approval accorded to the scheme by the shareholders of the petitioners and creditors of the transferee company, and, given the fact, that the RD and the OL have not articulated any objections qua 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.

23. Consequently, the investment held by the transferor company, to the extent of 11.86%, in the transferee company, shall stand cancelled. The shares of the transferor company, which are in dematerialized form, shall stand extinguished on or from the date of issuance and allotment of new equity shares as envisaged under clause 5.4 of the sanctioned scheme. The aforesaid order shall, therefore, be deemed to be an order under Section 100 and 103 of the Act, as well, and thus, result in confirmation of reduction in capital. Consequently, the provision made in the scheme, in clause 5.5, to the effect that there shall be no requirement of the transferee company, post amalgamation, that is, for amalgamating company, to add the words, “and reduced” as a suffix to its name post reduction in capital will also get triggered. The petitioners will, however, comply with all statutory requirements, as mandated in law.

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

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

26. 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 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.

27. 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 any action being taken, albeit in accordance with law, against the concerned persons, directors and officials of the petitioners.

28. It is made clear, that this order will not be construed as an order granting exemption from: payment of stamp duty or, taxes or, any other charges, if any, 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.

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

APRIL 07, 2016

RAJIV SHAKDHER, J