

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 769/2015

Reserved on 11th August, 2016

Date of pronouncement: 2nd September, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Petition under Sections 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Karan Exports Private Limited

Petitioner/Transferor Company

WITH

Shree Puja Overseas Private Limited

Petitioner/Transferee Company

**Through Mr. Mayank Kumar and
Mr. Awnish Kumar, Advocates for the
petitioners**

**Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director
Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Karan Exports Private Limited (hereinafter referred to as the transferor company) with Shree Puja Overseas Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was incorporated under the Companies Act, 1956 on 11th January, 1990 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 21st February, 1990 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.10,00,000/- divided into 10,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.8,50,000/- divided into 8,500 equity shares of Rs.100/- each.

6. The present authorized share capital of the transferee company is Rs.20,00,000/- divided into 20,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.10,00,000/- divided into 10,000 equity shares of Rs.100/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the

joint application, being CA(M) 125/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, along with the reports of the auditors, and the audited provisional balance sheets, as on 31st January, 2015, of the transferor and transferee companies had also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is claimed by the petitioners that the amalgamation will make available to the transferee company the consolidated shareholdings and finances so as to achieve a size commensurate to meet the competition from multi nationals in the field. It is further claimed that the amalgamation will also bring the much required integration of the management activities and would reduce the overall administrative costs.

9. So far as the share exchange ratio is concerned, 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 following ratio:

“02 equity shares of Rs.100/- each of the transferee company for every 05 equity shares of Rs.100/- each held by the shareholders in the transferor company.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 250A of the Companies Act, 1956 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 30th March, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 125/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 11th September, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor company and equity shareholders and unsecured creditors of the transferee company, there being no secured or unsecured creditors of the transferor company and no secured creditor of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 13th October, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Indian Express' (English) and 'Veer Arjun' (Hindi) editions. An affidavit has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 25th February, 2016 and 19th February, 2016. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

14. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 17th March, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and subject to submissions made in para 6 & 6 of his report, the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 22nd March, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation subject to the necessary amendment in the Scheme and compliance of Companies (Accounting Standards) Rules, 2006 by the petitioner companies. The Regional Director in para 10 of his report has prayed that the transferee company may be directed to comply with the Accounting Standard-14 as prescribed under the Companies (Accounting Standards) Rules, 2006 issued by the Central Government.

16. The Official Liquidator in para 6 of his report has submitted that the details of the issued, subscribed and paid-up share capital of the transferee company mentioned in the Scheme and petition was not calculated correctly. As per the share exchange ratio, it should be Rs.13,40,000/- instead of Rs.11,68,900/-. The Official Liquidator has prayed that the petitioner companies may be asked to clarify the position. The Official Liquidator in para 7 of his report has submitted that there was no provision in the Scheme regarding the continuity of services of the employees of the transferor company in the transferee company. Similar observations have also been made by the Regional Director in his report. The Official Liquidator and the Regional Director have prayed that the

petitioner companies may be asked to make such provisions in the Scheme.

17. In response to the aforesaid observations, the petitioner companies have moved an application being CA 2533/2016 seeking to place on record the amended Scheme of Amalgamation in view of the observations made by the Official Liquidator and the Regional Director, Northern Region. The Board of Directors of the petitioner companies have approved the amended Scheme of Amalgamation in their meetings held on 16th March, 2016 and 30th March, 2016. Copies of the said Board Resolutions have been placed on record. The application CA 2533.2016 was allowed by this Court vide order dated 22nd July, 2016 and the amended Scheme was taken on record. In view of the aforesaid, the objections raised by the Official Liquidator and the Regional Director, Northern Region do not survive.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 19th March, 2016 of Sh. Awnish Kumar, counsel for the petitioner companies, have submitted that they have not received any objection pursuant to the citations published in the newspapers on 25th February, 2016 and 19th February, 2016.

19. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and there being no surviving objection to the same by the Regional Director, Northern Region, and the Official Liquidator, there appears to be no impediment to the grant of sanction to the amended Scheme of Amalgamation. Consequently, sanction is hereby granted to the amended Scheme of Amalgamation annexed with CA 2533/2016 under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of amalgamation, i.e. 1st April, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

20. Learned counsel for the Official Liquidator prays that costs of at least Rs.75,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner companies states that the same is acceptable to him. As already directed vide order dated 11.08.2016, the petitioners shall deposit a sum of Rs.75,000/- by

way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

21. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 02, 2016