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

Judgement reserved on: 23.03.2016

% Judgement delivered on: 04.04.2016

\+ **CO.PET. 790/2015**

IN THE MATTER OF
RANDOM HOUSE PUBLISHERS INDIA PRIVATE LIMITED
…….Petitioner no.1 / Transferor Company

AND

PENGUIN BOOKS INDIA PRIVATE LIMITED
….... Petitioner no.2/ Transferee Company

Through: Mr. Vivek Singh, Advocate
Mr. Sanjay Bose, DROC for 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 Random House Publishers India Private Limited (i.e. petitioner no.1/transferor company) and Penguin Books India Private Limited (i.e petitioner no.2 / 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).

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

3. The registered office of the petitioners is located within the territorial jurisdiction of this court.

4. The details with respect to the petitioners' authorised, issued, subscribed and paid up capital are set out in paragraphs 6 and 12 of the petition.

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

6. Copies of Board of Director's (BOD) resolution of even date i.e. 08.04.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

7. The petitioners have averred that the amalgamation of the transferor company with the transferee company would result in accumulation of existing resources of the petitioners in one unit and shall enable better and more productive utilization of various resources, economies of scale, and enhance the business with the collective resources of the petitioners concerned.

8. In terms of clause 9.1 of the scheme, the share exchange ratio as provided therein is as follows:

> "0.015 equity shares of Rs.100/- each of the transferee company, credited as fully paid up, for every 01 equity share of Rs.1/- held in the transferor company".

9. The petitioners have averred that there are no proceedings pending against them, under Sections 235 to 251 of the Act.

10. To recapitulate, the petitioners had, in the earlier round filed an application (i.e. the first motion), being: CA(M) No.144/2015, whereby a prayer had been made, for dispensing with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the petitioners.

11. The court vide order dated 21.09.2015, having regard to the facts as mentioned in the table below, dispensed with the requirement of convening the meetings, as prayed.

Number of Companies	Equity Shareholders	Consent given	Unsecured creditors	Consent given
Transferor company	02	ALL	229	15 (being 6.55 % in number & 97.69 % in value)
Transferee company	02	ALL	884	31 (being 3.5% in number & 92.38 % in value)

12. The petitioner, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 19.11.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD).

13.1. Furthermore, citations were ordered to be published.

14. Citations were published, on 11.12.2015, in Delhi Editions of the following newspapers: Business Standard (English) and Business Standard (English). An affidavit dated 05.01.2016 establishing publication of citation along with the newspaper extracts, was filed by the petitioners.

14.1 Further, an affidavit dated 22.03.2016 was filed by the petitioners that subsequent to the publication of the notice they have not received any objection or complaint qua the scheme.

15. 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.

15.1 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.

15.2. However, no response by the I.T. Department, on this matter, has apparently been received, till date.

16. The RD, though, received information from the ROC vide report dated 15.03.2016 which, is indicative of the fact that the ROC has not made any adverse comments qua the scheme.

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

18. 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 petitioners, it appears, the affairs of the transferor 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 transferor company, according to the OL, do not fall foul of the provisions of the second proviso to Section 394(1) of the Act.

18.1 Thus, the OL, in effect, has conveyed that he has no objections to the scheme being sanctioned.

19. To be noted, the scheme in clause 7 provides that all the workmen and employees of the transferor company in service immediately before the transfer 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 transferor company before such transfer.

20. In terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 3.1 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, in terms of the scheme, all liabilities, duties and obligations of the transferor company shall stand transferred to the transferee company without any further act or deed.

20.1 Furthermore, as per clause 13 of the scheme, the transferor company shall stand dissolved without being wound up.

21. Accordingly, in view of the approval accorded to the scheme by the shareholders and unsecured creditors of the petitioners 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 petitioners will, however, comply with all statutory requirements, as mandated in law.

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

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

23. 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 the 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.

24. 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.

25. 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.

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

RAJIV SHAKDHER, J

APRIL 04 , 2016