

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

+ CO.APPL. (M) 175/2015

IN THE MATTER OF
NALIAN ENGINEERS PRIVATE LIMITED

.... Applicant No.1/ Transferor Company

WITH

SUNRAYS ENGINEERS PRIVATE LIMITED

.... Applicant No.2/Transferee Company

Through: Mr Dilip Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
25.02.2016

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1. This is a first motion (joint) application filed by Nalian Engineers Private Limited (applicant no.1/transferor company) with Sunrays Engineers Private Limited (applicant no.2/transferee company) (hereafter collectively referred to as the applicants) under section 391 to 394 of the Companies Act, 1956(in short the Act) for approval of the scheme of amalgamation (hereafter referred to as the scheme).A copy of the scheme is enclosed with the application.
2. The registered office of the applicants are located in Delhi and, therefore, within the territorial jurisdiction of this Court.
3. The details with respect to the incorporation and the applicants' authorized, issued, subscribed and paid-up capital are set out in paragraphs 2 and 6 of the affidavits filed in support of Judge's summons.
4. Copies of Memorandum and Articles of Association as well as the latest

audited annual accounts as on 31.03.2015 have been filed by the applicants.

5. The scheme has been approved by the Board of Directors (BOD) of the applicants. Copies of the BOD resolutions of even date i.e. 05.10.2015 are filed with the application.

6. The applicants aver that there that there are no proceedings pending against them, under Sections 235 to 251 of the Act.

7. The position with regard to equity shareholders and creditors (i.e. secured and unsecured) of the applicants, as averred by them, is as follows:

Company	No. of equity Shareholders	Consent given	NO. of preference shareholders	Consent Given	No. of Secured Creditors	Consent given	No. of Unsecured Creditors	Consent given
Transferor Company	02	ALL	Nil	N.A.	01	ALL	NIL	N.A
Transferee Company	04	ALL	02	All	06	5	03	ALL

8. As would be evident upon reading of the aforementioned table, it is clear that in so far as the transferor company is concerned, consents have been obtained from its shareholders (i.e. equity) and creditor (i.e. secured).

9. In so far as the transferee company is concerned, all the shareholders (i.e. equity and preference) and unsecured creditors have given their consent.

9.1 As regards the secured creditors of the transferee company, the applicants aver, five (5) out of six (6) have given their consent. A scrutiny of documents filed with the joint application reveals that two (2) secured creditors have given their consent prior to the scheme being sanctioned by the transferee company. Notwithstanding the said discrepancy, the percentage of consent given, in terms of value and number is as follows: 88.70% in value and 50% in number.

10. In these circumstances, in so far as the shareholders (i.e. equity) and creditors (i.e. secured) of the transferor company are concerned, the requirement to convene their meetings is dispensed with.

11. Similarly, the prayer made for dispensing with the requirement of convening meetings of the shareholders (i.e. equity and preference) and unsecured and secured creditors of the transferee company is also allowed. The reason for allowing the prayer made for dispensation with the requirement of convening meeting of the secured creditors of the transferee company, is that, the percentage of consent given, in value, in this case, is above 75%.

12. The joint application stands disposed of in the aforesaid terms.

13. Dasti.

RAJIV SHAKDHER, J

FEBRUARY 25, 2016