

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

Judgement reserved on: 22.02.2016
% Judgement delivered on: 26.02.2016

+ **CO.PET. 853/2015**

IN THE MATTER OF
ORIENT CRAFT SWEATERS LIMITED

....Petitioner No.1/ Transferor Company

WITH

O.C. SWEATERS PRIVATE LIMITED

.... Petitioner no.2/ Transferee Company

Through: Mr.Deepak Diwan, Adv

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 Orient Craft Sweaters Limited (i.e. petitioner no.1/ transferor company no.1) with O.C. Sweaters 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 collectively be referred, to as the petitioners.
3. The registered office of the petitioners are located within the

territorial jurisdiction of this court.

4. The details with respect to incorporation of the petitioners are set out in paragraph 3 and paragraph 5 respectively in the petition.

4.1 Similarly, details qua the petitioners' authorised, issued, subscribed and paid up capital are set out in paragraph 4 and paragraph 6 respectively in 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 have been filed by the petitioners.

6. Copies of Board of Directors' (BOD) resolution of even date i.e. 31.07.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

7. It is averred that the amalgamation of the transferor company with 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, faster and effective decision making and its implementation and to derive the synergy benefit.

8. In terms of clause 7 of the scheme, the share exchange ratio as provided therein is as follows:

Nine (9) equity shares of the transferee company for every 100 equity shares of 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.154/2015, whereby, a prayer had been made for dispensing with, the requirement of convening

meetings of shareholders and creditors. This court vide order dated 02.11.2015, having regard to the fact that all shareholders of the petitioners had given their consent to the scheme, dispensed with the requirement of convening meetings, as prayed.

11. The court vide order dated 02.11.2015, having regard to the facts as mentioned in the table below, dispensed with the requirement of convening meetings, as prayed.

Number of Companies	Equity Shareholders	Consent given	Unsecured Creditors	Consent given
Transferor company	7	All	24	15 (being 98.17% in value and 62.5% in number)
Transferee company	4	All	1	All

11.1 The court, however, despite consent not given by the secured creditor of the transferor company, dispensed with the requirement of convening meeting, as prayed, having regard to the fact, that the interest of the creditors of the petitioners will not be adversely affected and rather would be placed in a better position, vis-a-vis their security post amalgamation.

12. The petitioners, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 20.11.2015. 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 Jansatta (Hindi) on 12.12.2015. An affidavit dated 18.12.2015 demonstrating service of the petition on the RD and establishing publication of citation along with the newspaper extracts, was filed by the petitioners.

13.1 Further, the petitioners filed an affidavit dated 10.02.2016, wherein it was stated 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.

14.2 However, no comment, response of the I.T. Department has been received in the matter by the RD.

14.3 The affidavit of the RD alludes to the fact that it has received information from the ROC vide communication dated 05.02.2016 that the petitioners have not filed the BOD resolutions wherein they approved the scheme, with the ROC within thirty days of passing the resolution, thereby, being in violation of Section 117(3) r/w 179(3) of the Companies Act, 2013.

14.4 In response to the concern raised by the RD, the petitioners filed a reply dated 19.01.2016 wherein, it clearly averred that, they have already filed the BOD resolution with the office of the ROC.

15. Therefore, in my view, having regard to the above, the aforesaid concern of the RD stand duly addressed.

16. 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 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. 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.

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

17. To be noted, the scheme in clause 13 provides that all the employees of the transferor 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 transferor company as the case may be on the said date.

18. In terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 3 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 and duties of the transferor company shall stand transferred to the transferee company without any further act or deed.

18.1 Furthermore, as per clause 22.1 of the scheme, the transferor company shall stand dissolved without being wound up.

19. Accordingly, in view of the approval accorded to the scheme by the shareholders and 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.

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 petitioners will comply with all provisions of the scheme and, in particular, those which are referred to hereinabove.

22. 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.

23. 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.

24. 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

FEBRUARY 26, 2016