

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

% Judgement reserved on: 10.03.2016
Judgement delivered on: 18.03.2016
+ **CO.PET. 851/2015**

IN THE MATTER OF

SPRINGER EDITORIAL SERVICE PRIVATE LIMITED

.... Transferor Company/Petitioner No. 1

WITH

SPRINGER (India) PRIVATE LIMITED

.... Transferee Company/Petitioner No. 2

Through: Mr. Rajeev Kumar, Advocate
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 Springer Editorial Service Private Limited (i.e. the transferor company/petitioner no.1) and Springer (India) Private Limited (SIPL i.e the transferee company/petitioner no. 2) under Section 391 and 394 of the Companies Act 1956 (in short the 1956 Act), to seek sanction of the Scheme of Amalgamation (hereafter referred to as the scheme). A copy of the scheme is enclosed with the petition.

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

3. The petitioners aver that the scheme will provide for a consolidated capital base resulting in a stronger and sustainable business, leading to improvement in the potential of the business group. The combined resources will lead to overall cost reduction, which will enable the petitioners to efficiently compete in the market and strengthen the position of SIPL in the industry.

3.1 The scheme, according to clause 5 provides for the following share exchange ratio:

1 Equity Share of the face value of Rs. 100/- (Rupees Hundred) each credited as fully paid up in the share capital of Amalgamated Company for every 24 fully paid up Equity Shares of the face value of Rs. 10/(Rupees Ten) each held in the Amalgamating Company

4. 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.

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

6. 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.

7. The copies of Board of Directors' (BOD) resolution of the petitioners, approving the scheme, have been filed with the petition.

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

9. To recapitulate, the petitioners had earlier filed an application (i.e. the first motion application) being: CA No. (M) 145/2015, whereby, a prayer had been made for dispensing with, the requirement of convening the meetings of equity shareholders, secured creditors of the petitioners. Further, a prayer for convening the meetings of unsecured creditors of the transferee company has also been made.

10. This court vide order dated 28.09.2015, having regard to the fact that the consents of the equity shareholders of the petitioners and the sole unsecured creditor of the transferor company were received, dispensed with the requirement of convening the meetings of the aforesaid class of persons/entities.

10.1 The court further directed to convene the meetings of the unsecured creditors of the transferee company. The meeting thereafter, dated 31.10.2015, was convened and 12 out of the 59 unsecured creditors (being 98.01% in value) present and voting, voted in favour of the scheme.

11. The petitioners, 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). Furthermore, citations were ordered to be published in Business Standard (English) and Jansatta (Hindi).

11.1 Accordingly, the citations were published in Delhi Editions of the newspapers; Business Standard (English) and Jansatta (Hindi) on

08.01.2016. An affidavit dated 14.01.2016, demonstrating service of the petition on the RD and establishing publication of the notice of hearing along with the newspaper extracts, has been filed by the petitioners.

11.2 Further, petitioners have averred by way of the affidavit dated 04.03.2016, that subsequent to the publication of the notice in the petition, they have not received any objection or complaint qua the scheme.

12. 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.

13. The affidavit of RD, adverts to the fact that it has received information from the ROC vide communication dated 01.03.2016. The communication, inter alia, is indicative of the fact that the said authority has no objection to the scheme and has not received any complaint or objection from the shareholders, creditors, or any of the stakeholders of either of the petitioners.

13.1 Further, the RD has made an observation to the effect that foreign / non-resident Indians, who hold 2,50,000 shares, representing 100% stake in the transferor company and similarly, holding 120 shares, representing 100% equity stake in the transferee company, continue to hold their entire stake in the transferee company.

13.2 To my mind, this, as indicated above, is more in the nature of an observation rather than an objection. Therefore, in so far as the RD's affidavit is concerned, there are no objections taken by him to the scheme.

14. 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. In other words, affairs of the companies, according to the OL, do not fall foul of the provisions of the second proviso of Section 394(1) of the Act.

15. To be noted, the scheme in clause 8 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.

16. In terms of the provisions of Section 391 and 394 of the Act, and in terms 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.

17. Furthermore, as per clause 16 of the scheme, the transferor company shall stand dissolved without being wound up.

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

19. 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 qua the scheme, as indicated above, 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.

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

20. 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.

21. 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.

22. 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.

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

RAJIV SHAKDHER, J

MARCH 18, 2016

