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

+ **CO.APPL.(M) 10/2016**

**IN THE MATTER OF
KANAV PAPERS PRIVATE LIMITED**

... Applicant no.1/ Transferor Company

AND

STAR KRAFT PAPERS PRIVATE LIMITED

... Applicant no.2 / Resulting Company

Through: Mr Anil Airi & Mr Vaibhav Mirg, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **25.01.2016**

1. Learned counsel for the petitioners has come back with instructions saying that there is no bar in the loan agreements executed with the secured creditors which prohibits the presentation of the scheme of amalgamation, till such time the debt owed to them is liquidated.

2. To be noted, the proposed scheme is configured in a manner whereby, a demerged undertaking of the transferor company is to merge with the transferee/ resulting company (hereafter to as the resulting company).

3. This is a (first motion) joint application filed by the petitioners herein. Applicant no. 1 is the transferor company, while applicant no. 2 is the resulting company (hereinafter collectively referred to as the applicants).

3.1 This application has been filed, to seek dispensation of the meetings of equity shareholders, secured and unsecured creditors of the applicants. The proposed scheme has been appended with the captioned application.

The said proposed scheme has been filed under Section 391 to 394 of the Companies Act, 1956 (in short the 1956 Act) read with Rules 6 and 9 of the Companies (Court) Rules, 1959 (in short the 1959 Rules).

3.2 The registered office of the applicants are located in Delhi and, therefore, within the territorial jurisdiction of this Court.

3.3 The transferor company was incorporated on 04.05.05, under the name and style : Devpriya Fibres Private Limited, in consonance with the provisions of the 1956 Act. Thereupon, in 2015, the name of the transferor company was changed to its present name i.e. Kanav Papers Private Limited. Accordingly, a fresh certificate of incorporation was issued by the Registrar of Companies (ROC), NCT of Delhi and Haryana, on 10.04.15.

3.4 In so far as the resulting company is concerned, it was incorporated on 27.06.12, under the name and style : Dev Star Papers Private Limited. Subsequently, the name of the resulting company was changed, with due approval of the concerned ROC, to Star Kraft Papers Private Limited. This change in name was brought about on 11.03.15.

3.5 The details with respect to the authorized, issued, subscribed and paid-up capital have been set out in the proposed scheme qua both the applicants.

3.6 Copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.15 have been filed by the applicants.

3.7 Copies of Board of Directors' resolution of even date i.e. 25.06.15, concerning the applicants, whereby, the proposed scheme has been approved, are filed with the application.

3.8 The applicants have averred that there that there are no proceedings

pending against them, under Sections 235 to 251 of the 1956 Act.

4. The position with regard to equity shareholders, secured and unsecured creditors of the applicants, as averred by them, is as follows:

Company	No. of Equity Shareholders	Consent given	No. of Secured Creditors	Consent given	No. of Unsecured Creditors	Consent given
Demerged Company	17	ALL	3	2	104	92
Resulting Company	13	ALL	5	4	88	84

4.1 As would be evident upon reading of the aforementioned table, it is clear that consents have been obtained from the equity shareholders of both the applicants.

4.2 In these circumstances, in so far as the equity shareholders of the applicants are concerned, the requirement to convene their meeting is dispensed with.

4.3 As far as the secured creditors are concerned, in the case of the resulting company, 5 out of the 4 have given their consent. The percentage of consents in terms of value and number is as follows : 95.3% in value and 80% in number.

4.4 As regards the unsecured creditors of the resulting company are concerned, it is averred that out of the total 88, 84 have given their consents. A scrutiny of the documents filed alongwith the joint application has revealed, that only 73 letters of consents are on record. Notwithstanding the aforesaid discrepancy, the percentage of consents in terms of value and number are as follows : 79.83% in value and 82.95% in number.

4.5 In so far as the transferor company is concerned, out of the 3 secured creditors, 2 have given their consents. In terms of the value and number, the position with regard to the consents given is as follows: 99.81% in value and 66.66% in number.

4.6 As regards the unsecured creditors, the transferor company avers that it has 104 unsecured creditors which represent a debt amounting to Rs.5,94,98,367.58/-, as on 30.06.2015. A certificate issued by a Chartered Accountant, is appended to the joint application. It is further averred that out of the 104 unsecured creditors, 92 have given their consents. However, even in this case, on scrutiny it has been found that only 77 letters of consent, are on record. On the basis of the 77 letters of consent, the consent obtained in value works out 34.38%, while in number it gets crystallized to 74.03%.

5. Accordingly, the prayer made for dispensing with the requirement of convening meetings of the secured creditors of the applicants as also meeting of the unsecured creditors of the resulting company is allowed. The reason for allowing the prayer made for dispensation of the requirement of convening meetings of the secured creditors of the applicants as well as unsecured creditors of the resulting company, is that, the percentage of consent given, in value, in these cases is above 75%.

6. In so far as the unsecured creditors of the transferor company is concerned, prayer made to dispense with meeting is rejected. Accordingly, their meeting will be convened on 15.03.2016 at 12.30 p.m. at Big Bite Resorts, Partapur, Bypass Road, Meerut, U.P. Mr. Mayank Goel, Advocate (Mb no. 9810329623) is appointed as Chairperson, while Ms. Sureksha Luthra, former Registrar, Delhi High Court, (Mb 9910390944) is appointed as an alternate Chairperson to conduct the said meeting. The quorum of the

meeting of the unsecured creditors will be 10 in number and 25% in value of the total debt.

6.1 In case the quorum, as mentioned above is not in place, at the designated time when the meeting is called to order, then, the meeting shall be adjourned by half-hour, and thereafter, the persons present for voting shall be deemed to constitute the quorum. For the purposes of computing the quorum, any valid instrument of proxy filed shall be considered, if filed in the prescribed format, and is, duly signed by the person entitled to attend the meeting and furthermore is deposited with the registered office of the transferor company, at least 48 hours before the meeting is convened. The Chairperson and/or alternate Chairperson, so appointed, shall ensure that proxy registers are properly maintained.

6.2 The Chairperson and/or alternate Chairperson shall also ensure that notice for convening the aforementioned meeting, along with the proposed scheme, and a statement as required under Section 393 of the 1956 Act is dispatched to the unsecured creditors of the transferor company by ordinary post at their registered or last known address at least 21 clear days before the date appointed for the said meeting, in their presence or in the presence of their authorized representative. The notice with respect to the said meeting referred to above, shall be published in the Business Standard (English), Delhi Edition and in the Business Standard (Hindi), Delhi Edition in terms of the Companies (Court) 1959 Rules, at least 21 clear days before the date appointed for the said meeting.

6.3 The Chairperson and/or alternate Chairperson shall be entitled to issue suitable directions to the management of the transferor company so as to ensure that the aforementioned meeting is conducted in a just, free and

fair manner. For their efforts, the Chairperson and the alternate Chairperson for the said meeting will be paid a fee of Rs.50,000/- each. This will be in addition to reimbursement of any out of pocket expenses incurred by them. The reimbursement will be on actual basis. The Chairperson so appointed will file his report within two weeks of holding the aforesaid meeting.

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

8. Dasti.

RAJIV SHAKDHER, J

JANUARY 25, 2016

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