

(2017) 02 DEL CK 0279

In the Delhi High Court

Case No : 67 of 2016

**GALAXY COMMODITIES PRIVATE LIMITED Company? AND TEX APPARELS
PRIVATE LIMITED Vs NIL**

Date of Decision : 10-02-2017

Acts Referred:

Companies Act, 1956, Section 251, Section 394, Section 391(2), Section 235, Section 394(1) - Saving for legal advisers and banker

Citation : (2017) 02 DEL CK 0279

Hon'ble Judges : Siddharth Mridul

Bench : SINGLE BENCH

Advocate : Anilendra Pandey, Aparna Mudiam, Rajiv Bahl

Judgement

1. The present petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 (hereinafter referred to as "the Act") by Galaxy Commodities Private Limited (hereinafter referred to as "Transferor Company") and Tex Apparels Private Limited (hereinafter referred to as "Transferee Company") seeking sanction to the proposed scheme of Amalgamation (hereinafter referred to as "scheme") between the Transferor Company and the Transferee Company.

2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The Transferor Company was incorporated under the provisions of the Act, on 02.01.2007, with the Registrar of Companies, West Bengal. It has been stated by way of the present petition that the registered office of the Transferor Company has been shifted from West Bengal to Delhi, w.e.f. 11.02.2014 and thus this Court has necessary jurisdiction to adjudicate this petition.

4. The Transferee Company was incorporated under the provisions of the Act, on 09.08.1988, with the Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

5. The authorized share capital of the Transferor Company as on 31.03.2014 is Rs.14,00,000/-, divided into 1,40,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company as on 31.03.2014 is Rs.13,24,000/- divided into 1,32,400 equity shares of Rs.10/- each.

6. The authorized share capital of the Transferee Company as on 31.03.2014 is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferee Company as on 31.03.2014 is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum of Association and Articles of Association of each of the Petitioner Companies have been filed alongwith Company Application (Main) No. 57 of 2015, which earlier came to be filed on behalf of the Petitioner Companies, and the same are on record. The audited balance sheets as on 31.03.2014 of the Petitioner Companies, along with the reports of the auditors, have also been filed on record alongwith Company Application (Main) No. 57 of 2015.

8. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and set out in detail in the present petition. It has been stated by way of the present petition that the objectives of amalgamation are inter alia as follows: a) To pool the resources and make a combined entity of reasonable size.

b) The amalgamation of the Transferor Company in the Transferee Company shall result in the formation of a larger Company, enabling further growth and development of the businesses of the said Company.

c) The Scheme will enable the undertakings and business of the said Company to obtain greater facilities possessed and enjoyed by one large Company compared to two small Companies for raising capital, securing and conducting trade and business on favourable terms and other related benefits & enable the Companies concerned to rationalize and streamline their management, businesses and finances which shall lead to a better economic control, over the running and management of the businesses and undertakings of the said Company.

d) The businesses of the Transferor Company and the Transferee Company could be combined conveniently and advantageously and in such a manner so as to take up the activities, which will relate more to the business of the Transferee Company.

e) The proposed amalgamation will aid in reduction of overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, transaction cost, lead to better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity; fulfilling the objects of the Company

concerned and enabling the optimum growth and development of their combined businesses.

f) With the enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility to market and meet customer needs and will be able to compete more effectively, thus, further strengthening its market position in domestic markets.

g) The Amalgamation would create economies in administrative and managerial costs by consolidating operations and will substantially reduce duplication of administrative responsibility and multiplicity of records and legal and regulatory compliances.

9. So far as the share exchange ratio is concerned, the proposed scheme provides that upon coming into effect thereof, the Transferee Company shall allot and issue to the shareholders of the Transferor Company, 01 (One) Equity Share of the Face Value of Rs.10/- each at par of Transferee Company, credited as fully paid up, as on the Effective Date (as per the Scheme) for every 24.53 fully paid Equity Shares of the Face Value of Rs.10/- each held by the shareholders of the Transferor Company. It has further been stated that it has however been provided in the scheme, that cross holding of shares between the Transferor Company and/or the Transferee Company, if any, shall stand cancelled.

10. It has been averred on behalf of the Petitioner Companies that there are no proceedings pending against the Petitioner Companies, under Sections 235 to 251 of the Act (including their corresponding Sections of the Companies Act, 2013).

11. The Board of Directors of both the Petitioner Companies, in their separate Board Meetings held on 01.01.2015, have approved the proposed scheme. Copies of the Resolutions passed at the said meetings of the Board of Directors of the Petitioner Companies have been placed on record alongwith Company Application (Main) No. 57 of 2015.

12. The Petitioner Companies had earlier filed Company Application (Main) No. 57 of 2015 seeking directions of this Court to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the Petitioner Companies.

13. This Court, vide order dated 18.08.2015, allowed the said application and dispensed with the requirement of convening the meetings of the equity shareholders of the Petitioner Companies, secured and unsecured creditors of the Transferee Company (there being no secured or unsecured creditors of the Transferor Company) to consider and, if thought fit, approve, with or without modification the proposed scheme.

14. The Petitioner Companies have thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 29.01.2016, notice in the present petition was issued to the Regional Director, Northern Region and the

Official Liquidator. Citations were also directed to be published in the newspapers, namely, "Business Standard" (English; Delhi Edition) and "Jansatta" (Hindi; Delhi Edition). Affidavit of service and publication, dated 08.07.2016 has been filed by the Petitioner Companies showing compliance regarding publication of citations in the aforesaid newspapers on 13.06.2016.

15. In response to the notices issued in the present petition, the Regional Director, Northern Region, (RD) has filed its affidavit dated 08.07.2016 stating that the RD has no objections to the grant of sanction to the proposed Scheme.

16. Pursuant to the notices issued in the present petition, the Official Liquidator (OL) has filed its report dated 25.07.2016 wherein, inter alia, it has been stated that the Official Liquidator has not received any complaint qua the proposed scheme from any interested person/party and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

17. Therefore, it has been stated that the OL has no objections to the grant of sanction to the proposed scheme by this Court.

18. No objection has been received to the proposed scheme from any other party. The Petitioner Companies in their affidavits dated 23.01.2017 have averred that the Petitioner Companies have not received any objection to the proposed scheme from any person/party pursuant to publication of citations in the newspapers on 13.06.2016.

19. In view of the foregoing and upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed scheme; the report filed by the Official Liquidator & the Affidavit filed by the RD, both not having raised any objection to the proposed scheme; there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme under the provisions of the Act.

20. The Petitioner Companies shall comply with all the statutory requirements, in accordance with law.

21. Upon the sanction becoming effective from the appointed date of the proposed scheme, the Transferor Company shall stand dissolved without undergoing the process of winding up.

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

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 proposed scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors

and officials of the Petitioner Companies.

24. It is made clear, that this order shall 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. The Petitioner Companies shall deposit a sum of Rs.50,000/- by way of costs, in the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi, within a period of two weeks from today.

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