**(2011) 02 DEL CK 0492**

**In the Delhi High Court**

**Case No :** Co. Application (M) 36 of 2011

**In Re: Ginni Energy Pvt. Ltd.**

**Date of Decision :** 22-02-2011

**Acts Referred:**
Companies Act, 1956 — Section 2(7), 235, 236, 237, 238

**Citation :** (2011) 02 DEL CK 0492

**Hon'ble Judges :** Manmohan, J

**Bench :** Single Bench

**Advocate :** Vikrant Rohilla, for the Appellant;

**Final Decision :** Allowed

## Judgement

Manmohan, J.—This is an application under Sections 391(1) and 393 of the Companies Act, 1956 (in short, ''the Act") seeking sanction of Scheme of Amalgamation of DEKA HOLDINGS (MAURITIUS) LIMITED (hereinafter referred to as the "Transferor Company") with GINNI ENERGY PRIVATE LIMITED (hereinafter referred to as the "Transferee Company").

2. The Scheme of Amalgamation is annexed as Annexure-G to the present application. While the registered office of Transferee Company is situated at New Delhi within the jurisdiction of this Court, the registered office of Transferor Company is based in Mauritius.

3. In the application, details with regard to date of incorporation of Transferee Company, its authorized, issued, subscribed and paid up capital have been stated. Along with the application, the Transferee Company has enclosed copies of its Memorandum and Articles of Association as well as latest Balance Sheets as on 31st December, 2010.

4. Mr. Vikrant Rohilla, learned Counsel submits that no proceedings are pending against the Transferee Company under Sections 235 to 251 of the Act. He further states that though the Transferor Company is situated outside the jurisdiction of this Court, the Transferor Company is taking requisite steps for effectuation of merger under the applicable law.

5. Mr. Rohilla further points out that all the shareholders of the Transferee Company have given their consent in writing at pages 144 to 146 of the paper book. He further states that the Transferee Company has no secured or unsecured creditors. In this connection, he has drawn my attention to the certificate issued by the Chartered Accountant M/s. Anil T. Gupta & Associates at page 147 of the paper book.

6. In my opinion, even though the Transferor Company is situated outside India, the present amalgamation application would be maintainable as the Transferee Company is situated in India. The definition of the Transferor Company contained u/s 394(4)(b) of the Act, inter alia, includes a ''body corporate''. It is pertinent to mention that ''body corporate'' as defined in Section 2(7) of the Act includes a company incorporated outside India.

7. I am also fortified in my opinion by the following judgments:

(i) In Re: Essar Shipping Ports and Logistics Ltd.,

(ii) In Re: Zenta P. Ltd.,

(iii) Company Petition 46/2004 HDFC AMC Services Company Private Limited

8. In fact, in Essar Shipping Ports and Logistics Ltd. (supra) , the Gujarat High Court has held as under:

17. Having heard learned Counsel appearing for the parties and having considered the scheme as well as the objections raised by the Regional Director and Mr. Raval at the time of hearing of this petition and having considered the decision of the Andhra Pradesh High Court in the case of Moschip Semiconductor Technology Ltd., In re (supra) as well as the Bombay High Court in the case of Zenta P. Ltd., In re (supra), this Court is of the view that the objections raised by the Regional Director as well as Mr. Raval are not sustainable. In view of the definition "transferor company" contained in Section 394(4)(b), which, inter alia, includes "body corporate" the transferor company which is situated outside India can be amalgamated with the transferee company situated in India. The only condition is that such amalgamation should not be in violation of the provisions contained in the Companies Act prevailing in such a foreign country....

9. Keeping in view the aforesaid as well as the fact that all the shareholders of the Transferee Company have given their consent in writing and the Transferee Company has no secured and unsecured creditors, the meeting of equity shareholders as well as secured and unsecured creditors of the Transferee Company is dispensed with.

10. With the aforesaid observation, present application stands allowed. However, it is made clear that this order is without prejudice to the contentions that may be raised by the Respondents at the second motion stage.