

**(2015) 12 DEL CK 0179**

**In the Delhi High Court**

**Case No : Company Application (Main) No. 189/2015**

**In Re: Lloyds Line Pipes Limited and Ors.**

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**Date of Decision : 23-12-2015**

**Acts Referred:**

**Citation : (2015) 12 DEL CK 0179**

**Hon'ble Judges : Sudershan Kumar Misra, J.**

**Bench : Single Bench**

**Advocate : Ashutosh Gupta, Advocate, for the Appellant**

**Final Decision : Allowed**

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## **Judgement**

Sudershan Kumar Misra, J.—This application has been filed under Sections 391, 392 & 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant/transferor company seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders and secured creditors and for convening a meeting of its unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Arrangement between Lloyds Line Pipes Limited (hereinafter referred to as the transferor company) and APL Apollo Tubes Limited (hereinafter referred to as the transferee company).

2. The registered offices of the applicant/transferor company and the transferee company are situated at New Delhi, within the jurisdiction of this Court.

3. The applicant/transferor company was originally incorporated under the Companies Act, 1956 on 4th September, 2008 with the Registrar of Companies, Maharashtra at Mumbai. The company shifted its registered office from the State of Maharashtra to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi 26th August, 2011.

4. The present authorized share capital of the applicant/transferor company is Rs. 20,00,00,000/- divided into 2,00,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 20,00,00,000/- divided into 2,00,00,000 equity shares of Rs. 10/- each.

5. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheet, as on 31st March, 2015, along with the report of the auditors, of the applicant/transferor company has also been filed.

6. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is submitted by the applicant that the transferor company is a wholly owned subsidiary of the transferee company. It is claimed that the proposed amalgamation will contribute in furthering and fulfilling the objectives and business strategies of both the companies thereby accelerating growth, expansion and development of their business. It is further claimed that the proposed amalgamation will lead to optimum and efficient utilization of capital, resources, assets and facilities; enhancement of competitive strengths including financial resources; and will result in reduction of overheads, administrative, managerial and other expenditure and bring about operational rationalization, efficiency and optimum utilization of various resources.

7. So far as the share exchange ratio is concerned, the Scheme provides that the entire share capital of the transferor company is held by the transferee company. Therefore, the transferee company shall not be required to issue any shares or pay any consideration to the transferor company or to their shareholders.

8. It has been submitted by the applicant that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and corresponding provisions of the Companies Act, 2013 are pending against the applicant/transferor company.

9. The Board of Directors of the applicant/transferor company and the transferee company in their separate meetings held on 13th June, 2015 have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the applicant/transferor company and the transferee company have been placed on record.

10. The applicant/transferor company has 07 equity shareholders and 02 secured creditors. All the equity shareholders and both the secured creditors have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and secured creditors of the applicant/transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with.

11. The applicant/transferor company has 126 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the applicant/transferor company shall be held on 13th February, 2016 at 01:00 p.m. at J.P. Hotels and Resorts, 6-B, I.P. Extension, Patparganj, Delhi. Mr. Shobhit Kumar Mahant,

Advocate, (Mobile No. 9810357786) is appointed as the Chairperson and Mr. Mudit Gupta, Advocate, (Mobile No. 9910687976) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the applicant/transferor company shall be 25 in number and more than 25% in value of the total unsecured debt.

12. In case the quorum as noted above for the above meeting is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the registered office of the applicant/transferor company at least 48 hours before the meeting. The Chairperson and Alternate Chairperson shall ensure that the proxy register is properly maintained.

13. The Chairperson and Alternate Chairperson shall ensure that notices for convening the aforesaid meeting of the unsecured creditors of the applicant/transferor company, along with copies of the Scheme of Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the applicant/transferor company by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meeting, in their presence or in the presence of their authorized representatives. Notice of the meeting shall also be published in the Delhi editions of the newspapers "Business Standard" (English) and (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meeting.

14. The Chairperson and Alternate Chairperson will be at liberty to issue suitable directions to the management of the applicant company so that the aforesaid meeting of the unsecured creditors of the applicant/transferor company is conducted in a just, free and fair manner.

15. The fee of the Chairperson and the Alternate Chairperson for the aforesaid meeting shall be Rs. 50,000/- each in addition to meeting their incidental expenses. The Chairperson will file his report within two weeks from the date of holding of the aforesaid meeting.

16. The applicant also seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its shareholders since the transferor company is wholly owned subsidiary of the transferee company; no new shares will be issued by the transferee company in lieu of the shares of the transferor company; and there will be no change in the control and management of the transferee company, therefore, the rights of the shareholders and creditors of the transferee company will not be affected in any manner whatsoever by the Scheme. Learned counsel also placed reliance on the

judgments of this Court, in many cases such as Sharat Hardware Industries Pvt. Ltd. (1978), 48 Com. Cas 23 (Delhi); eMeter India Pvt. Ltd. (CA(M) 179/2012); Century Seeds Private Ltd. (CA(M) 36/2015); Jaisingh Wires Private Limited (CA(M) 138/2015); Sudeep Import Export Private Limited (CA(M) 149/2015); and Bharti Infotel Private Limited (CA(M) 152/2015), wherein it has been held that there is no requirement to file a separate or joint application on behalf of the transferee company for sanction of the Scheme.

17. I have carefully considered the aforesaid case laws cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of this settled legal position and considering the Scheme, the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with.

18. The application stands allowed in the aforesaid terms.