

**(2012) 09 DEL CK 0323**

**In the Delhi High Court**

**Case No : Co. Petition 263 of 2012**

**In Re: M/s Kanth Solutions Pvt. Ltd. and Others**

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**Date of Decision : 14-09-2012**

**Acts Referred:**

Companies Act, 1956 — Section 295, 391, 394, 628  
Income Tax Act, 1961 — Section 56(2)

**Citation : (2012) 09 DEL CK 0323**

**Hon'ble Judges : Indermeet Kaur, J**

**Bench : Single Bench**

**Advocate : Dilip Singh, for the Appellant;**

**Final Decision : Allowed**

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## **Judgement**

Indermeet Kaur, J.—This second motion joint petition has been filed under Sections 391 and 394 of the Companies Act, 1956 (for short "the Act") by the petitioner Companies seeking sanction of the Scheme of Arrangement (for short Scheme). The Petitioner Companies had earlier filed CA (M) No. 85/2012 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 08.05.2012 this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders, Secured and Unsecured Creditors of the Petitioner Companies.

2. The Petitioner Companies had thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 25.05.2012 notice in the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator attached with this Court, Citations were also directed to be published in "Financial Express" (English, Delhi Edition) and "Dainik Bhaskar" (Hindi Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator and also regarding publication of citation in the aforesaid newspapers. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

3. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report dated 30.08.2012 wherein he has stated that he has not received any complaint against the proposed Scheme from any person/ party interested in the Scheme in any manner and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest. In response to the observation of the Official Liquidator regarding the reserves in the Transferor Companies, an affidavit has been filed by Transferor Companies on 13.09.2012 stating that it is already mentioned in the Petition that all the transferor companies are not carrying out any business activity except investment of idle funds and the provisions of Companies Act do not conflict in the determination of the share price.

4. In response to the notice issued in the Petition. Mr. Rakesh Chandra, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit dated 27.08.2012. Relying on the Scheme, he has stated that upon sanction of the Scheme, all the employees of the Transferor Company/Companies shall become the employees of the Transferee Company without any break or interruption in their services.

5. The petitioner/transferee company has already filed affidavit on 21.08.2012 regarding compliance with the Accounting Standard-14 issued by the Institute of Chartered Accountants of India.

6. That the observation of learned Regional Director in para No. 5 is about the income of companies. This fact has already been stated in detail in the petition. Secondly, the provisions of Companies Act do not come in conflict with the determination of share price. However, the Companies Act puts restriction only on shares issued at discount not on premium. It is more investors' perspective that justifies the premium. So far as the question of Sundry Debtors is concerned, it is stated in petition that all funds were lying idle, hence these were invested in other companies and later on these investments were realized. However, as consideration was not received at the time of transaction took place, hence they were shown as Sundry Debtors in balance sheet.

7. That in paragraph No. 6, learned Regional Director has observed about the change of status of company from Public Limited to Private Limited. It is stated that there is no discrepancy in the status. It is correct that the Public Limited Companies were converted in August, 2011 so later the status has been shown as Private Limited. The balance sheet of the Companies are dated 31.03.2011, so it rightly shows the status of companies as Public Limited. This observation is without merit and law is settled on this point. The certificate issued by Company secretaries shows the status of Company after conversion from public limited to private limited.

8. That in sub para (1) of paragraph No. 7 learned Regional Director has

submitted the observation of ROC, the observation is made about the typographical error related to paid up share capital one transferor company in filing e form 22. The intention of the company was never to conceal any fact or misrepresent any fact. This can be rightly inferred from the observation of ROC that the Form -2 contains the correct figure of the paid up share capital. This typographical error took place as the paid up share capital of that company was Rs. 5 lacs till two months back and it increased later. Learned ROC has wrongly made this observation that this is a prima facie case u/s 628 of the Act.

9. That the observation made in sub-para 2 of para 7 is no way concerned with the present scheme of merger and these are mere interlinking of the different affairs of companies which are not part of the Scheme. The observation made in sub para 2(d) & (e) of para (7) about companies ANG Finvest Pvt. Ltd. and Sushil Electronics Pvt. Ltd. are not related to this Scheme. The observation made in sub- para 2 (g) is vague and misleading. The transfer effected in April 2011 cannot figure as profit or loss in the Balance Sheet ended on 31.03.2011. The observation made in sub-para 2(h) is nothing but presumption of learned ROC. He should have taken note of the fact that the balance sheets are duly audited by the chartered Accountants and so this observation is not relevant. And it is categorically stated that there is no violation of Section 295 of the Act. The observation made in sub-para 2(j) about the addition of new clause in Section 56(2) of the Income Tax Act and its non-compliance in the present case. The said clause does not have relevancy to the present case.

10. That in paragraph No. 8, learned Regional Director has submitted the factual aspect found by ROC and this factual position has been stated in the petition as well as Scheme. So far as the payment of Stamp Duty is concerned that is a statutory liability and that will be borne by the Transferee Company as and when it arises.

11. That the observations made in the representation/Affidavit filed by learned Regional Director are of routine nature. The scheme is not prejudicial to any one and it is admitted fact that there is no proceeding is pending today against any company. And to this effect a detailed reply along with the affidavit from all the transferor Companies has been duly filed on 13.09.2012.

12. No objection has been received to the Scheme from any other party. Mr. Ashok Kumar Mann, Director of the Transferee Company, has filed an affidavit confirming that neither the Petitioner Companies nor their counsel has received any objection pursuant to citations published in the newspapers.

13. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies, affidavit/report filed by the Regional Director, Northern Region and the Official Liquidator attached with this Court to the proposed Scheme, there appears to be no impediment to the grant of sanction in the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner Companies will comply with the statutory

requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within thirty days from the date of receipt of the same. In terms of the provisions of Section 391 and 394 of the Act, and in terms of the Scheme, the whole or part of the undertakings, all properties, rights and powers of the Transferor Company/Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Company/Companies be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company/Companies shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

14. The Petitioner Companies voluntarily state that they would deposit a sum of Rs. 1,00,000/- with the Common Pool Fund of the Official Liquidator within three weeks from today.

15. The petition is allowed in the above terms.