

(2014) 08 DEL CK 0007**Delhi High Court****Case No:** Co. Pet. 132/2014

In Re : J.B. Texfab Private Limited

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 29, 2014**Acts Referred:**

- Companies Act, 1956 - Section 235, 236, 237, 238, 239

Hon'ble Judges: Sanjeev Sachdeva, J**Bench:** Single Bench**Advocate:** Yogesh Bhardwaj, Advocate, Atma Sah and Rajiv Behl, Advocate for the Appellant**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

Sanjeev Sachdeva, J.

CA No.1934/2014 (application on behalf of the Petitioner seeking condonation of delay in filing the affidavits by the Transferor and Transferee Companies)

For the reasons stated in the application, the application is allowed and delay in filing the affidavit is condoned. The affidavits are taken on record.

1. This second motion joint petition has been filed under Sections 391 & 394 of the Companies Act, 1956 ("Act ") seeking sanction of the Scheme of Amalgamation ("Scheme ") of J.B. Texfab Private Limited (hereinafter referred to as Transferor Company) with Jai Shree Notebooks and Files Private Limited (hereinafter referred to as Transferee Company) (collectively referred to as Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.
2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The details of the respective dates of incorporation of the Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.
4. The copies of the Memorandum and Articles of Association as well as the Annual Accounts along with the Audited Balance Sheet for the year ended 31st March, 2013 of the Petitioner Companies have also been enclosed with the Petition.
5. The copies of Resolutions passed by the Board of Director of the Petitioner Companies approving the Scheme of Amalgamation have also been filed along with the Petition.
6. Learned Counsel for the Petitioner Companies submits that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.
7. The Petitioner Companies had earlier filed CA (M) 25 of 2014 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 11th February, 2014, this Court allowed the Application and requirement of convening all the meetings of Un- secured Creditors of the Transferor Company and the Transferee Company were dispensed with. None of the Transferor Company and the Transferee Company has any Secured Creditors.
8. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide Order dated 12th March, 2014, notice of the Petition was directed to be issued to the Regional Director, Northern Region, Ministry of Corporate Affairs and the Official Liquidator attached with this Court. Citations were also directed to be published in "Business Standard" (English, Delhi Edition) and "Business Standard" (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 citations in the aforesaid newspapers. Copies of the newspaper cuttings containing the publications have also been filed along with the Affidavit of Service.
9. In response to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, learned Official Liquidator has filed his report dated 8th July, 2014, 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, which are subject matter of dissolution, do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest of its members, creditors or to public interest as per the 2nd proviso of Section 394(1) of the Act.

10. In response to the notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 3rd July, 2014. The learned Regional Director has raised a concern that there is no clause in the Scheme with regard to the transferor of employees of the Transferor Company in the Transferee Company.

11. In response to the aforesaid observation, Mr. Vineet Kumar Gupta and Ms. Deepa Gupta, Directors of both the Transferor and Transferee Company have filed their Affidavits dated 07th August, 2014, in which they have deposed that there are no employees in the Transferor Company as on the date of the presentation of the Petition as well as on the date of the swearing of the Affidavit.

12. Further, the learned Regional Director submits that despite notice, the Income Tax Authorities have not raised any objection with regard to the Scheme.

13. In view of the aforesaid clarification given by the Petitioner, the concern of the Regional Director has been duly addressed.

14. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Yogesh Bharadwaj, learned Counsel for the Petitioner Companies has filed an Affidavit dated 7th July, 2014, confirming that neither the Petitioner Companies nor their Counsel have received any objection pursuant to citations published in the newspapers.

15. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

16. Certified copy of the formal order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, all the property, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up.

17. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty 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.

18. Learned Counsel for the Petitioner submits that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 50,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted.

19. The Petition is allowed in the above terms.