

**UNREPORTABLE**

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
COMPANY JURISDICTION**

**+ COMPANY PETITION Nos. 226-228/2006**

**% Date of Decision : 20<sup>th</sup> December, 2006.**

In the matter of:

The Companies Act, 1956;

**And**

Under Sections 391 & 394 of the Companies Act, 1956;

**Scheme of Amalgamation**

M/s M2K Leisure Private Limited      ...Petitioner/Transferor company No. 1.

M/s M2K Cinemas Private Limited      ..Petitioner/Transferor company No. 2.

**WITH**

M/s M2K Entertainment Pvt. Ltd.      ..Transferee company.

Mr. Amar Khera, Adv. for the petitioner. Mr. Jayant  
Nath, Sr. Adv. with Mr. Nitesh, Adv. for M/s Chawla  
Techno-Construct Limited

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

**SANJIV KHANNA, J:**

1. These petitions under Sections 391-394 of the Companies Act, 1956 (hereinafter referred to as the Act) have been filed by M/s M2K Leisure Pvt. Ltd. (hereinafter referred to as the transferor company no.1), M/s M2K Cinemas Pvt. Ltd. (hereinafter referred to as the transferor company no.2) and M/s M2K Entertainment Pvt. Ltd. (hereinafter referred to as the transferee company).
2. The registered offices of the two transferor companies and the transferee company are located in Delhi within the jurisdiction of this Court.

3. It is stated in the petitions that no proceedings under Sections 235-251 of the Act are pending against the two transferor companies and the transferee company.

4. The two transferor companies and the transferee company had earlier filed CA(M) Nos.67-69/2006. The said applications were disposed of vide order dated 25.4.2006. By the said order, requirement to hold and convene meeting of the shareholders of the two transferor companies and the transferee company was dispensed with. However, directions were issued to convene and hold meeting of the creditors of the transferor company no.1. Requirement to convene and hold meeting of the creditors of the transferor company no.2 and the transferee company was dispensed with. This Court had appointed a Chairperson for the purpose of meeting of the creditors of the transferor company no.1.

5. The Chairperson appointed by this Court has submitted his report. As per the said report, 18 creditors of the transferor company no.1 had participated in the meeting. 17 creditors of the value of Rs.35,29,133/- had voted in favour of the scheme. One creditor namely M/s Chawla Techno Construct Ltd. also wanted to participate in the said meeting but was not allowed to participate. Vote casted by M/s. Chawla Techno Construct Ltd was declared to be invalid

and the issue was directed to be placed before this Court. The Chairperson in his report has referred to Section 187 (1) (b) of the Act, which provides that a creditor, which is a corporate body, shall be represented by a person who is authorized by resolution of the Board of Directors or the other governing body. Mr.Ravi Sehgal had attended the said meeting on behalf of M/s. Chawla Techno Construct Ltd but had not produced any resolution authorizing him to attend the meeting.

6. M/s Chawla Techno Construct Ltd. had voted against the scheme though the vote was held to be void. In these circumstances, notice was issued to M/s Chawla Techno Construct Ltd. and they have filed their objections. In the objections, M/s Chawla Techno Construct Ltd. has referred to disputes between the parties relating to a construction contract. It is claimed that Rs.22,23,549/- remains unpaid to the objector. It is further stated that transferor company no.1 has acted dishonestly and illegally. Lastly, it is submitted that a person who seeks equity, must be equitable and, therefore, the scheme of amalgamation/ reconstruction should be rejected. However, on the question of lack of authority of Mr.Ravi Sehgal, no averment has been made.

7. Section 187 (1)(b) of the Act states that where a creditor is a body corporate, a resolution passed by the Board of Directors or the governing

body authorising creditor's representative is required to be produced at the time of general meeting and on such authorization being produced, the said representative would be entitled to vote. The authorized representative is also entitled to appoint a proxy.

8. Similarly, Rule 220 of the Companies (Court) Rules, 1959 (hereinafter referred to as the Rules, for short) stipulates that a person authorized in a manner provided in Section 187 to represent a corporate body should produce before the Chairperson copy of the resolution authorizing him. In the present case, no copy of the resolution was admittedly produced before the Chairperson. I, therefore, do not find any error/mistake in the Chairperson not allowing M/s Chawla Techno Construct Ltd. to participate in the meeting.

9. In the meeting held on 27<sup>th</sup> May, 2006, 18 creditors including M/s Chawla Techno-Construct Limited were present. 17 creditors of the value of Rs.35,29,133/- have voted in favour of the scheme without any modification. As already stated above, the vote of M/s Chawla Techno-Construct Limited was declared invalid. As per books of accounts of the transferor company No.1, Rs.7,83,419/- was shown as payable to M/s.Chawla Techno Construct Ltd. Thereafter, this amount has been written off as disputed. Even if we take into consideration the vote by M/s Chawla Techno-Construct Limited, the scheme was approved by 81.33% of the creditors present and voting in value

terms. The requirement of Section 391(2) of the Act is therefore satisfied. Thereafter, the petitioners have filed consent letters/no objection certificates of 12 other creditors to whom Rs.6,73,387/- is due and payable by the Transferor Company no.1. If these consent letters/no objection certificates are taken into account, then 84% of the creditors have voted in favour of the scheme.

10. In these circumstances, I feel this Court is not required to go into the allegations and counter allegations between the transferor company no.1 and M/s Chawla Techno Construct Ltd. This is a matter which requires adjudication by a Civil Court in accordance with law. This Court in view of limited jurisdiction cannot decide inter se disputes between the transferor company no.1 and M/s.Chawla Techno Construct Ltd.

11. After filing of the present petitions, citations were directed to be published. Affidavit of service has been filed and citations have been duly published in the newspapers "The Statesman" (English) and "Veer Arjun" (Hindi) in accordance with Companies (Court) Rules, 1959.

12. The O.L. and the Regional Director (NR) were also issued notices. The O.L. in his report has stated that he has not received any complaint /objection to the proposed scheme of amalgamation. The O.L. has stated that on the basis of information given by the two transferor companies, he is of the view

that the affairs of the said companies do not appear to have been conducted in a manner, which is prejudicial to the public interest.

13. The Regional Director (NR) in his report has submitted that the authorized share capital of the two transferor companies as per the proposed scheme is to be added to the authorized share capital of the transferee company. It is stated on behalf of the Regional Director (NR) that the authorized share capital of the transferee company cannot be increased without payment of fee and stamp duty. A similar objection by the Regional Director (NR) was considered by this Court in the case of Hotline Hol Celdings Pvt. Ltd. and Ors. (2005) 127 Comp. Cases 165. It was held that in case of complete merger, authorized share capital of a transferor company can be added to the authorized share capital of a transferee company. Stamp duty and fee paid by the transferor companies is treated as paid by the transferee company. The first objection raised by the Regional Director (NR) is accordingly overruled.

14. The Regional Director (NR) has also referred to para 13.2 (c) of the scheme, which provides that the amalgamation reserve will be considered as a part of free reserve in the hands of the transferee company. It is stated that amalgamation reserve is of capital nature and not a general reserve and as such cannot be utilized for distribution of dividend and issue of bonus shares. In the affidavit dated 04.12.2006 filed on behalf of the petitioner companies, it

is stated that they have no objection if the amalgamation reserve is treated as capital reserve. In view of the affidavit, the objection raised by the Regional Director (NR) has become infructuous. However, it is clarified that the amalgamation reserve will be treated as a capital reserve and not as a general reserve.

15. The Regional Director (NR) has also referred to para 9.3 of the scheme and pointed out certain discrepancies/errors with regard to the share exchange ratio. It is stated in the scheme that the share exchange ratio in the case of Transferor Company no.1 is 10:4 and in the case of Transferor Company no.2 is 1:10, whereas in the Petitions the share exchange ratio in both the cases is mentioned as 1:1. The Regional Director (NR) has accordingly stated that the two companies should be asked to file an amendment application or be directed to file a revised petition. The petitioner companies have filed affidavits enclosing therewith valuation certificate given by Chartered Accountant. The affidavits gives the basis for allotment of shares to the shareholders of Transferor Company no.1 and Transferor Company no.2. *The shareholders of Transferor Company no.2 will be allotted 1000 equity shares in the Transferee company for every 10,000 shares held by them and in case of Transferor Company no.1, shareholders of the said company will be allotted 10 shares in the Transferee company for every 04*



*shares held by them*. The petitioner companies are family based and closely held companies. Keeping in view the affidavit and the certificate given by the Chartered Accountant, I accept the affidavits filed by the petitioners. It has been clarified that the share exchange ratio in the Scheme is correct. This also takes care of the objections raised by the Regional Director (NR).

16. The last objection raised by the Regional Director is with regard to the invalid vote of M/s.Chawla Techno Construct Ltd. This aspect has already been examined and the objections raised by M/s.Chawla Techno Construct. Ltd have been rejected.

17. In these circumstances, the present petitions are allowed. The proposed Scheme of Amalgamation is accordingly sanctioned by this Court. The transferor companies and the transferee company will comply with the requisite procedure prescribed under the Act and the Rules. Formal order will be filed with the Registrar of Companies within five weeks. This Order will not be construed as an Order granting exemption or waiver of stamp duty. Stamp duty, if payable, will be paid in accordance with law.

18. The petitioner companies will also deposit costs of Rs.10,000/- each (total Rs.30,000/-) with the Official Liquidator. The said costs will be deposited in the common pool fund.

The Petitions are disposed of.

DASTI.

**SANJIV KHANNA, J.**

**December 20, 2006.**

**RN/VKR/P**

**SANJIV KHANNA, J.**

**February 23, 2007.**

**P**

[1](#)Modified vide Order dated 23.02.2007 in CA.No.57/2006