

(2010) 11 DEL CK 0272

In the Delhi High Court

Case No : Company Application (M) No. 208 of 2010

A.B. Movies Private Limited, Chadha Infrastructure
Developers Private Limited and Jessamine Fresheners Private
Limited

APPELLANT

Vs

Wave Infratech Private Limited

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Companies (Court) Rules, 1959 — Rule 67, 87
Companies Act, 1956 — Section 391, 394

Citation : (2010) 11 DEL CK 0272

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Nidhesh Gupta and Tarun Gupta, for the Appellant;

Judgement

Sanjiv Khanna, J.—This first motion under Sections 391 - 394 of the Companies Act, 1956 (Act, for short) and Rules 67 to 87 of the Company (Court) Rules, 1959 (Rules, for short) has been filed by A.B. Movies Private Limited, Chadha Infrastructure Developers Private Limited, Jessamine Fresheners Private Limited (hereinafter referred to as the transferor company Nos. 1, 2 and 3 respectively) and Wave Infratech Private Limited (hereinafter referred to as the transferee company) in respect of the scheme of amalgamation, which has been enclosed as Annexure D to this application.

2. The registered office of the three transferor companies and the transferee company are located within the National Capital Territory of Delhi. Along with the application, the three transferor companies and the transferee company have filed copy of Resolutions passed by their Board of Directors approving the proposed scheme of amalgamation. Details of authorized, paid up and subscribed capital along with copy of the balance sheet and Articles and Memorandum of Association have been filed with the application.

3. The transferor company Nos. 1, 2 and 3 and the transferee company have 3,

4, 3 and 3 shareholders respectively. The list of shareholders along with no objection certificates of the shareholders have been enclosed with the application. In view of the no objection certificates given by the shareholders of the three transferor companies and the transferee company, need and requirement to convene and hold meetings of the shareholders of the three transferor companies and the transferee company are dispensed with.

4. The transferor company Nos. 2 and 3 and the transferee company do not have any secured creditor. The requisite certificate to the said effect has been filed with the application. The transferor company No. 1 has two secured creditors, who have given their consents/no objection to the proposed scheme of amalgamation. In these circumstances, need and requirement to convene and hold meeting of the secured creditors of the transferor company No. 1 is dispensed with.

5. The transferor company Nos. 2 and 3 and the transferee company have 3, 1 and 2 unsecured creditors respectively. The said statement is duly certified with requisite certificates from the Directors/Chartered Accountants of the said companies, which have been placed on record. The unsecured creditors of the transferor company Nos. 2 and 3 and the transferee company have given their no objection/consent letters to the proposed scheme of amalgamation. In view of the consent letters given by the unsecured creditors of the transferor company Nos. 2 and 3 and the transferee company, there is no need to hold and convene meeting of the unsecured creditors of the said companies.

6. The transferor company No. 1 has 143 unsecured creditors as per the list given at pages 153 and 154. The said list has been certified by a Chartered Accountant. The transferor company No. 1 has been able to obtain consent letters/no objection certificates from unsecured creditors 75.5% in number and 99.50% in value terms. The total amount due and payable to the unsecured creditors as on 31st August, 2010 was Rs. 53,64,630/-. Thus, the transferor company No. 1 has been able to obtain consent letters/no objection certificates from all unsecured creditors except about 35 in number to whom amount of about Rs. 25 lacs is payable. My attention is drawn to the fact that as per the scheme post net worth of the transferee company will be more than Rs. 579 crores. In view of the aforesaid position, the request to dispense with calling of the meeting of the unsecured creditors of the transferor company No. 1 is allowed. The meeting is dispensed with.

7. This Court has not examined the share exchange ratio mentioned in the scheme Annexure D at this stage. This aspect will be examined at the time of the second motion. Along with the petition for second motion, the applicant companies will file valuation report with affidavit of the valuer whether he has any personal interest in any of the applicant companies, its shareholders or Directors. The valuer will also indicate in his affidavit the method adopted by him for valuation of shares and investment made by the companies.

The application is disposed of.