

(2013) 09 MP CK 0081

In the Madhya Pradesh High Court

Case No : Company Petition No. 11 of 2013

Baheti Rotoplast Private Limited

APPELLANT

Vs

Vectus Industries Ltd.

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Companies Act, 1956 — Section 235, 251, 391, 392, 393

Citation : (2013) 09 MP CK 0081

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Anshuj Dhingra with Shri Udit Saxena, for the Respondent

Judgement

Sujoy Paul, J.—This is a first motion application under Sections 391 to 394 of the Companies Act, 1956 ("Act") in connection with a Scheme of Amalgamation ("Scheme") amongst Vectus Industries Limited ("applicant/transferee company") and Baheti Rotoplast Private Limited ("transferor company") and its members and creditors. A copy of the proposed Scheme is enclosed with the application. The registered office of the applicant company is situated at Gwalior, Madhya Pradesh and, therefore, this Court has jurisdiction to entertain the application.

2. The details of the dates of incorporation of the transferee company and transferor company, their authorized, issued, subscribed and paid up capital have been set out in the affidavit for summons.

3. The copies of the Memorandum and Articles of Association as well as the relevant audited annual accounts of the transferee and transferor companies have been enclosed with the application.

4. Shri Dhingra, learned counsel for the applicant submits that no proceedings under Sections 235 and 251 of the Act are pending against the applicant company as on date of the present application.

5. It is contended that the proposed Scheme is approved by the Board of

Directors of the applicant company. The Board resolution is filed along with the application.

6. The latest audited financial summary of the applicant/transferee company adopted by its shareholders, as on 31st March, 2012 is mentioned in a tabulated form at pages 15 and 16 of the application.

7. The applicant has made a prayer for dispensation of the requirements of convening the meeting of the shareholders, unsecured creditors including sundry business creditors. IA No. 3850/2013 is filed for this purpose. It is contended by the applicant that on the date of presentation of present application the company has seven shareholders/members with a total shareholding of 100% shares. List of shareholders is filed as Annexure "C" with the said IA. It is further contended that all the shareholders of the transferee company holding 100% shareholding have given their consent in writing towards the proposed merger between the transferor and transferee company. The consent letters of shareholders are collectively filed as Annexure "J". It is further stated that as per books verified on 31.03.2013, the sundry creditors, who are general business creditors, are being paid in normal course of business. It is prayed that since the sundry creditors are being paid in aforesaid manner and present scheme of amalgamation is not with the sundry creditors and certificate, Annexure "K" suggests the net worth of the transferee company is sufficient and enough to take care of the liabilities of sundry creditors of the applicant company, the order for dispensation of meeting of sundry creditors be given. List of sundry creditors certified by Chartered Account is filed as Annexure "I". It is further contended that transferor company has filed Company Appeal (M) No. 85/2013 for amalgamation, in which High Court of Delhi has passed the order dated 5.7.2013. Copy of the order is filed as Annexure "M". The consent letters of unsecured creditors for the proposed merger are annexed as Annexure "L". On the strength of this, dispensation aforesaid is prayed for.

8. In view of above, the requirement of convening the meeting of unsecured creditors is dispensed with and meeting of secured creditors alone is required.

9. In the light of aforesaid, it is clear that secured creditors have not given their consent. Accordingly, meeting needs to be convened for secured creditors of the applicant-company.

10. Consequently, I direct that a meeting of secured creditors of applicant company shall be held on 26th October, 2013 at 11.30 a.m. At the registered office of the applicant company at "Kanchan", Roshnighar Lane, Near Achleshwar Temple, Gwalior.

11. Mrs. Nandita Dubey, Advocate (Mob. No. 9425113571) is appointed as the Chairperson and Mr. Praveen N. Surange, Advocate (Mob. No. 9826237744) is appointed as the Alternate Chairperson for the meeting of secured creditors of the applicant company. They would be paid a fee of Rs. 50,000/- each. Mr. Yogesh Verma, official of this Court (Mob. No. 9826711199) shall provide

secretarial assistance to the Chairperson and Alternate Chairperson. He shall be paid a fee of Rs. 10,000/- for this purpose.

12. The applicant company is also directed to publish advance notice of the aforesaid meeting in "Hindustan Times" (English) and "Nai Duniya" (Hindi) at least 21 days in advance before the aforesaid date of meeting. The individual notice of the proposed meeting would be sent by ordinary post at least 21 days in advance before the scheduled date of meeting. The Chairperson will ensure that dispatch is made under her/his supervision or under the supervision of her/his authorized representative.

13. It is also directed that if the quorum is not present at the commencement of the meeting, the meeting would be adjourned for 30 minutes and thereafter the creditors meeting shall be deemed to be concluded and the proposed Scheme would be deemed as passed by secured creditors.

14. It is also directed that if the quorum is not present at the commencement of the meeting, the meeting would be adjourned for 30 minutes and thereafter the creditors present in person or through proxy, who would not be less than two, would be treated as the quorum.

15. Voting by proxy is permitted, provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the said meeting or by his authorized representative, is filed with the applicant company at their registered office, not later than 48 hours before the said meeting.

16. The Chairperson/Alternate Chairperson shall file their reports within 10 (ten) days of the conclusion of the meeting. The application is allowed in the aforesaid terms.

CC as per rules.