

(2012) 09 DEL CK 0141

In the Delhi High Court

Case No : Company Petition No. 523 of 2010

CDP Real Estate Advisory India Private Limited

APPELLANT

Vs

SITQ India Private Limited

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Companies Act, 1956 — Section 391, 394, 394(1)

Citation : (2012) 09 DEL CK 0141

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Gyanendra Kumar, for the Appellant; H.S. Parihar, Advocate, Mr. Rajiv Bahl, Advocate for Official Liquidator and Mr. K.S. Pradhan, Dy. Registrar of Companies, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This Second Motion petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (for short "Act") jointly by the Transferor and Transferee Companies seeking sanction of the Scheme of Amalgamation (for short "Scheme") of CDP Real Estate Advisory Private Limited (the Transferor Company) with SITQ India Private Limited (the Transferee Company). The registered offices of the Transferor and Transferee Companies are situated at New Delhi, within the jurisdiction of this Court.

2. The details of the Transferor and Transferee Companies including their date of incorporation, their authorized, issued, subscribed and paid up capital have been mentioned in the Petition. Copies of the Memorandum of Association, Articles of Association as well as audited annual accounts of the Transferor and Transferee Companies have been placed on record. The Scheme has been annexed as Annexure A.

3. The Petitioner Companies had earlier jointly filed C.A. (M) No. 200 of 2010 seeking directions of this Court for dispensation of meetings of its equity

shareholders and creditors. The Petitioner Companies had stated that they do not have any creditors, whether secured or unsecured. Vide order dated November 15, 2010, this Court allowed the application and dispensed with the requirement of convening meeting of the equity shareholders and creditors of the Transferor and Transferee Companies.

4. The Transferor and Transferee Companies/ Petitioner Companies thereafter have jointly filed the present Petition u/s 391 read with 394 of the Act seeking sanction of the Scheme. Vide order dated December 20, 2010, this Court directed that notices be issued to the Regional Director (Northern Region) and the Official Liquidator attached to this Court. Citations were directed to be published in the Statesman (English, Delhi Edition) and the Jansatta (Hindi, Delhi Edition) in accordance with Rule 80 of the Companies (Court) Rules, 1959. The newspaper cuttings, in original, containing the publication of citations alongwith copies of notices sent to the Regional Director (Northern Region) and the Official Liquidator have been filed by the Petitioner Companies on March 30, 2011.

5. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received from the Petitioner Companies, the Official Liquidator has filed his report 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 till the date of filing of this report. The Official Liquidator has further stated in his report that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the second proviso of Section 394 (1) of the Act. Accordingly, the Official Liquidator has not expressed any objection to the proposed Scheme.

6. In response to the notices issued in the Petition, the Regional Director (Northern Region), Ministry of Corporate Affairs has filed his Affidavit dated January 16, 2012. Relying on Clause 10.1 of the Scheme, he has stated that all the employees of the Transferor Company shall become the employees of Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court. The Regional Director in para 4 of his Affidavit dated January 16, 2012 has raised concerns regarding the Transferor Company's buy-back of 10,000 shares at par in the year 2009 while having allotted 93,906 equity shares of Rs. 10/- each to 9197-6431 Quebec Inc., Canada and 1 equity share of Rs. 10/- each to SITQ Mauritius Advisory Services, Mauritius, at a premium of Rs. 253/- per share.

7. In response to the report filed by Regional Director, the Petitioner Companies filed a reply affidavit on March 05, 2012 wherein they stated that (a) the participation by the exiting shareholders pursuant to a buy back was based on a valuation of the Transferor Company in accordance with law; (b) The participation by the exiting shareholders was a voluntary act where they participated in the buy-back as offered by the Transferor Company to all the shareholders; (c) The investment by 9197-6431 Quebec Inc., Canada and SITQ

Mauritius Advisory Services, Mauritius was made as a part of further investments in a group entity where paying of a higher premium would not impact either the shareholders or the Transferor Company; (d) The investment resulted in inflow of foreign exchange into the country and hence had no adverse impact on the foreign exchange reserves of the country either; and (e) This investment, if anything, was beneficial both to the shareholders and the Transferor company.

8. On March 29, 2012, the Petitioner Companies filed an additional affidavit clarifying the background of the shareholders whose shares had been bought back by the Transferor Company. The Petitioner Companies have also stated that the Reserve Bank of India was duly informed of the allotment of 93,906 equity shares and being satisfied with the Transferor Company's compliance with laws and regulations, had accordingly allotted the Unique Identification Number (UIN) to it. The Company further submitted that the essential concern before this Court was whether the interests of the shareholders, debtors and general public was not adversely effected. The lower pricing given to a person who was a shareholder in the past but is no more a shareholder therefore is not a matter of concern before this Court.

9. The Regional Director has thereupon filed an additional representation by way of an Affidavit dated April 26, 2012 wherein he has stated that since the Company has stated that filings have been with the Reserve Bank of India for the investment made by foreign companies, the views of the Reserve Bank of India may be called. The Regional Director has clearly stated that he has nothing further to add in the matter.

10. Notice was also issued to the standing counsel of the Reserve Bank of India on July 05, 2012. The standing counsel for the Reserve Bank of India appeared and submitted that the Transferor Company had completed all filings and undertaken all compliances required under the Foreign Exchange Management Act for issuance of shares to nonresident shareholders. He further submitted that apart from the above, the Reserve Bank of India had no further role in the matter and did not have any objection to the proposed merger.

11. On perusal of the affidavit dated March 28, 2012 filed by the Petitioner Companies, it is seen that it is clearly stated that the Transferor Company has not received any objections or notices from the RBI or any other authority regarding any non-compliance in the processes followed by it.

12. No objection has been received against the Scheme from any other party. In this regard, Mr. Gyanendra Kumar, Learned Counsel for the Transferor Company has filed an affidavit dated January 20, 2012 confirming that neither the Petitioner Companies nor the advocate has received any notice from any person opposing the Petition pursuant to the citations published in the newspapers.

13. Mr. Rajiv Bahl, Advocate for Official Liquidator and Mr. K.S. Pradhan, Dy. Registrar of Companies on behalf of Regional Director (North) who are present in Court today have not raised any further objections in sanctioning the Scheme.

14. In view of the approval accorded by the Shareholders of the Petitioner Companies, Affidavits/ Report filed by the Regional Director (Northern Region) and the Official Liquidator attached with this Court to the proposed Scheme, and the reply affidavit filed by Petitioner Companies on March 05, 2012 and additional affidavit filed on March 29, 2012, there appears to be no impediment to the grant of sanction to the Scheme. Consequently sanction is hereby granted to the Scheme u/s 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 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 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 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. 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.

15. Learned Counsel for the Petitioners states that Petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- with the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted. The Petition is allowed in the above terms.

Order Dasti.