

(2010) 12 DEL CK 0026

In the Delhi High Court

Case No : Company Application (M) No's. 184 of 2010 and 185 of 2010

Cosmopolitan Estates Private Limited

APPELLANT

Vs

Capitol Estates Private Limited

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

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

Citation : (2010) 12 DEL CK 0026

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Rekha Aggarwal, for the Appellant; Vatsala Kak, for the Respondent

Judgement

Sanjiv Khanna, J.—Additional affidavits filed on behalf of Cosmopolitan Estates Private Limited (hereinafter referred to as the transferor company) and Capitol Estates Private Limited (hereinafter referred to as the transferee company) in Company Application (M) No. 184/2010 and Company Application (M) No. 185/2010 respectively are taken on record. Learned Counsel appearing for the transferor company seeks and is granted permission to place on record another affidavit dated 10th December, 2010 executed by Mr. Deepak Manchanda. By this affidavit, Mr. Deepak Manchanda wants to place on record the corrected list of shareholders of the transferor company as on 31st July, 2010.

2. The transferor company and the transferee company have filed these applications for first motion seeking dispensation of holding of the meeting of the shareholders and creditors in respect of the scheme of amalgamation. The scheme has been enclosed with the applications filed by the transferor company and the transferee company. The transferor company and the transferee company have also filed their Memorandum and Articles of Association and their last audited balance sheets. In the applications, the applicants have stated the date of incorporation, authorized, issued, subscribed and paid up share capital of the transferor company and the transferee company. Copy of the Resolutions passed by the Board of Directors of the transferor company and the transferee

company approving the proposed scheme has also been filed. It is stated in the applications that no proceedings under Sections 235-251 of the Companies Act, 1956 (Act, for short) are pending against the transferor company and the transferee company.

3. As per Annexure-A-1 filed with the affidavit of Mr. Deepak Manchanda, Director of the transferor company, the transferor company is a wholly owned subsidiary of the transferee company. All shares of the transferor company except ten shares are held by the transferee company. Ten shares of the transferor company are held by Mr. Deepak Manchanda as nominee of the transferee company. No objection certificates/consent of the shareholders have been enclosed with the application. In these circumstances, need and requirement to call for and hold meeting of the shareholders of the transferor company is dispensed with.

4. The transferor company has one creditor as per the additional affidavit filed on 7th December, 2010. The said creditor Euronet Services India Private Limited has given no objection/consent to the proposed scheme of amalgamation. It is, however, stated that the transferee company after the amalgamation shall be bound by the terms and conditions of the lease deed dated 17th March, 2004 and the indemnity bond dated 10th January, 2005 and shall indemnify the Euronet Services India Private Limited. Learned Counsel for the transferor company states that they shall file an undertaking/affidavit of the transferor company and the transferee company along with the second motion agreeing to the terms mentioned by Euronet Services India Private Limited. In these circumstances, need and requirement to convene and hold meeting of the creditors of the transferor company is dispensed with.

5. The transferee company has two shareholders as per the list enclosed at page 29 of Company Application (M) No. 185/2010. The said shareholders have given their no objection/consent letters to the proposed scheme of amalgamation. In these circumstances, need and requirement to convene and hold meeting of the shareholders of the transferee company is dispensed with.

6. As per the additional affidavit filed on 18th November, 2010, the transferee company has only one creditor, viz., HDFC Limited. The said creditor has given their no objection/consent to the proposed scheme of amalgamation, which has been enclosed at page 33 of Company Application (M) No. 185/2010. It is, however, stated in this letter that their consent is subject to the condition that the lease deed dated 8th December, 2009 between the transferee company and HDFC Limited will not be affected in any manner whatsoever. The transferor company and the transferee company will file affidavits in this regard along with the second motion. In these circumstances, need and requirement to convene and hold meeting of the creditors of the transferee company is dispensed with.

The applications are disposed of.