
(2012) 07 DEL CK 0504

In the Delhi High Court

Case No : Co. Petition 151 of 2012

Doosan Power Systems India Private Limited

APPELLANT

Vs

Doosan Chennai Works Private Limited

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

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

Citation : (2012) 110 CLA 424 : (2012) 175 CompCas 139

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Mahesh Aggarwal and Mr. Rajeev, for the Appellant; K.S. Pradhan, Dy. Registrar of Companies for the Regional Director and Mr. Ashish Makhija, Advocate for the Official Liquidator, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This petition has been filed u/s 391 to 394 of the Companies Act, 1956 (for short "Act") by the Petitioner/Transferor Company seeking sanction of the Scheme of Amalgamation (for short "Scheme") of Doosan Power Systems India Private Limited (hereinafter referred to as "Petitioner Company" or the "Transferor Company") with Doosan Chennai Works Private Limited (hereinafter referred to as "Transferee Company"). The registered office of the Petitioner/Transferor Company is situated at New Delhi, within the jurisdiction of this Court. The registered office of the Transferee Company is situated at Chennai, outside jurisdiction of this court.

2. Details with regard to the date of incorporation of Petitioner/Transferor Company, its authorized, issued, subscribed and paid up capital have been given in the petition.

3. Copy of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31.03.2011 along with the unaudited Provisional Accounts as on 31.01.2012 of the Petitioner/Transferor Company

have also been enclosed with the petition.

4. Copy of the Resolution passed by the Board of Directors of the Petitioner/Transferor Company approving the Scheme of Amalgamation has also been placed on record with the petition.

5. It has been submitted that no proceeding under Sections 235 to 251 of the Companies Act, 1956 Act is pending against the petitioner/Transfer Company.

6. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Transferee Company shall issue shares in the following manner:

7(Seven) Equity Share of Rs.100/- each, credited as fully paid-up, of the Transferee Company for 1 (One) Equity Share of Rs. 100/- each held in the Transferor Company.

7. The Petitioner/Transferor Company had earlier filed CA(M) No. 57 of 2012 seeking directions of this Court for dispensation of meetings. Vide order dated 28.03.2012, this Court allowed the aforesaid application and dispensed with the requirement of convening meetings of Shareholders and Unsecured Creditors of the Petitioner/Transferor Company. The Petitioner/Transferor Company had no secured Creditors.

8. The Petitioner/Transferor Company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 13.04.2012, notice of the petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator.

9. Citations were also directed to be published in "Indian Express" (English edition) and "Nav Bharat Times" (Hindi edition). Affidavit of Service and Publication has been filed by the Petitioner showing compliance regarding service of the petition on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspaper on 10.6.2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

10. Pursuant to the notices issued, the Office Liquidator sought information from the Petitioner/Transferor Company. Based on the information received, the Official Liquidator has filed his report dated 05.7.2012 wherein he has stated that he has not received any complaint against the Scheme from any persons(s)/ parties) interested in the Scheme in any manner and that the affairs of the Petitioner/Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

11. In response to the notices issued in the petition, Mr. B.K. Bansal, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 20.6.2012. Relying on Clause 11.1 of Part-III of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of

Amalgamation, all the employees of the Petitioner/Transferor Company shall become the employee of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the respective jurisdictional High Court(s).

12. Further, the Regional Director, in para No. 5.1 & 6.1 of the affidavit dated 20.6.2012 has made an observation that the Name and Memorandum of Association of the Transferee Company can be changed/alterd only after following the procedure prescribed under the Companies Act, 1956.

13. In reply to the abovesaid observation, a rejoinder affidavit dated 06.7.2012 has been filed by Mr. Ja Yong Ku, Director and Authorised Signatory of the Transferor Company, stating that the said observation made by the Regional Director states to Doosan Chennai Works Private Ltd. being the Transferee Company which is incorporated under the provisions of the Companies Act, 1956 having its registered office in Chennai. Separate proceedings with regard to the Transferee Company in the High Court of Madras at Chennai are under progress. As a part of the High Court proceedings in Chennai, notices have been served to Regional Director (RD) and Regional Registrar of Companies (RoC). Without prejudice to the above, it is also submitted in the rejoinder that the approval of the Scheme in terms of Section 391-394 of the Act is a "Single Window Clearance" and no further fact on the part of Transferee Company is required to be done after the approval of the Scheme, for giving effect to the alteration in the Memorandum of Association and change in Name of the Transferee Company. Further, the proposed Scheme has been approved by the respective shareholders and unsecured creditors of both the Transferor and Transferee Company. The petitioner further submits that, as provided in the Scheme, the Transferee Company will file all the forms in respect of alteration of memorandum of association and change of name with the Registrar of Companies, Chennai as required under the relevant provisions of the Act.

14. The petitioner further relies upon the order dated 18.7.2011 passed by this Court in the matter of BSK Engineers Pvt. Ltd. (Company Petition NO. 44/2011), wherein similar objections raised by the Regional Director, had been rejected by this Court. Copy of the said order has been placed on record.

15. In view of the aforesaid submissions, objections raised by the Regional Director no longer Survive.

16. No objection has been received to the Scheme of Amalgamation from any other party. Mr.Ja Yong Ku, Director of the Petitioner/Transferor Company, has filed an affidavit dated 06.7.2012, confirming that neither the Petitioner Company nor its Legal Counsel has received any objection pursuant to citations published in the newspapers.

17. In view of the approval accorded by the Shareholders and Creditors of the Petitioner/Transferor Company, representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to

the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner/Transferor Company will comply with the statutory requirements in accordance with law. Certified copy of the order will be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act, and in terms of the Scheme, the whole of the undertaking, the property, rights and powers of the Petitioner/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 dues of the Petitioner/Transferor Company will be transferred to the Transferee Company without any further act or deed. 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 department which may be specifically required under any law. The Transferor Company shall stand dissolved without following the process of winding up.

Further, since the jurisdiction of the Transferee Company is before the High Court of Madras and the said Transferee Company has already move a petition over there, this order is subject to the sanction of the Scheme by the High Court of Madras.

18. Learned counsel for the Petitioner states that the Petitioner Company would voluntarily deposit a sum of Rs. 1,00,000/- in 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.