

(2012) 07 DEL CK 0516

In the Delhi High Court

Case No : Company Petition No. 120 of 2012

Eicher Investment Private Limited

APPELLANT

Vs

Eicher Goodearth Private Limited

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Companies Act, 1956 — Section 21, 235, 251, 31, 391

Citation : (2012) 07 DEL CK 0516

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Shweta Bharti, Vivek Choudhary and Mr. Vivek Pathak, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.

1 This Petition has been filed by the Petitioner Companies under Sections 391-394 of the Companies Act, 1956 praying for the sanction of the Scheme of amalgamation of M/s Eicher Investments Private Limited (Transferor Company) and M/s Eicher Goodearth Private Limited (Transferee Company) The registered office of both the Transferor Company and the Transferee Company is situated at Delhi and is therefore within the Territorial Jurisdiction of the Court.

2. The Petitioners have placed on record the copy of the Scheme of amalgamations. The salient features of the Scheme and the circumstances necessitating the Scheme have been explained in the Petition.

3. The Transferor Company was incorporated on 10.08.1978 in the name and style of " SATYAM INVESTMENTS PRIVATE LIMITED " as a Private Limited Company with Limited Liability with the Registrar of Companies NCT of Delhi & Haryana and a certificate of incorporation was issued by the Registrar of Companies in this respect. The name of the Transferor Company in consequence of special resolution in terms of Section 31 & 21 of the Companies Act, 1956 was

changed From SATYAM INVESTMENTS PRIVATE LIMITED " to " EICHER INVETSMENTS PRIVATE LIMITED" and a fresh Certificate of Incorporation for change of name of the company has been obtained on 10.01.1997 from Registrar of Companies. Its present Authorized Share Capital of Transferor Company is Rs. 2,00,000/-(Rupees Two Lac Only) divided into 20,000 (Twenty Thousand) equity shares of Rs. 10/-(Rupees Ten Only) each with voting rights. The Issued and Paid Up share capital of Transferor Company is Rs. 105,500/-(Rupees One Lakh Five Thousand Five hundred only) divided into 10,550 /-(Ten Thousand five hundred fifty only) equity shares of Rs. 10/-(Rupees Ten Only) each with voting rights, fully paid up.

4. The Transferee Company was incorporated on 03.12.2007 in the name and style of "EICHER GOODEARTH INDIA PRIVATE LIMITED name of the Transferee Company in consequence of special resolution in terms of Section 31 & 21 of the Companies Act, 1956 was changed From "EICHER GOODEARTH INDIA PRIVATE LIMITED" to "EICHER GOODEARTH PRIVATE LIMITED "A fresh Certificate of Incorporation for change of name of the company has been obtained on 14.05.2008 from Registrar of Companies, NCT of Delhi & Haryana. At present, the Authorized Share Capital of Transferee Company is Rs. 57,00,00,000/ - (Rupees Fifty Seven Crore Only) divided into 1,00,000/-(One Lakh) equity shares of Rs. 100/-(Rupees Hundred Only) each with voting rights and 56,00,000/-(fifty Six Lacs) redeemable Cumulative preference share of Rs 100/-(Rupees Hundred Only each). The Issued, subscribed and Paid Up share capital of Transferee Company is Rs. & 78,81,600/-(Rupees Seventy Eight Lac Eighty One Thousand six hundred only) divided into 78,816/-(Seventy Eight Thousand eight hundred sixteen) equity shares of Rs. 100/-(Rupees Hundred Only) each with voting rights, fully paid up. However by a circular resolution, dated 31st March 2011, of the Board of Directors of the Transferee Company has approved redemption of 1000(8%) redeemable preference share of Rs. 100/-each fully paid up along with dividend at the rate of 8% and paid on 18.04.2011.

5. The Transferor Company has placed on record the proposed Scheme of Amalgamation. The salient features are thus as follows :

(a) To facilitate management, administration and financial efficiencies, and alignment, coordination and streamlining of day to day operations of both the Transferor and the Transferee Companies and with a view to improving cash flows and returns to shareholders on the investments made and proposed to be made.

(b)The amalgamation will facilitate consolidation of the businesses of both the Transferor Company and the Transferee Company into single corporate operations. The arrangements resulting from the amalgamation of the Transferor Company into the Transferee Company would create synergies of operations besides economies in administrative and managerial costs by combining operations and this would result in improved performance for the amalgamated Transferee Company and would enhance the shareholder value.

(c) The amalgamation will improve the financial structure and cash flow management of the Transferee Company, while combining the Management strengths and reserves of the Transferor Company and the Transferee Company.

6. The Board of Directors of the Transferor and the Transferee Companies have separately passed the resolutions unanimously approving the Scheme of Amalgamation.

7. The Petitioners, M/s Eicher Investments Private Limited and Eicher Goodearth Private Limited which are respectively Transferor and Transferee Companies have filed the application under Sections 391-394 of the Companies Act, 1956 which was registered as C.A (M) No. 42/2012 praying for directions seeking dispensation from convening the meeting of the Equity Shareholder of the Transferor Company and Equity Shareholder, Secured and Unsecured Creditors of the Transferee Company. The said Application was disposed off by an order dated 06.03.2012, dispensing with the requirement of convening the meetings of the Equity Shareholders, Secured and Unsecured Creditors as the respective consents to the Scheme of amalgamations have been already filed.

8. Thereafter, the present Petition being CP No 120/2012 has been filed for the sanction of the Scheme of Amalgamation u/s 391-394 of the Companies Act read with Companies (Court) Rules, 1959.

9. The Petitioner have also stated that no proceedings are pending against them under Sections 235-251 of the Companies Act, 1956.

10. Vide order dated 16.03.2012, the Hon"ble Court directed the Petitioner Companies to issue notice to the Regional Director, Department of Company Affairs, Registrar of Companies and the Official Liquidator and directions were made to publish the notices in the News papers "Financial Express" " (English Language) and "Dainik Bhaskar" (Hindi Language). Notice of the Petition was duly served on the Regional Director, Department of Company Affairs, Noida, Registrar of Companies and the Official liquidator attached to this Court and the Notice was duly advertised by the Petitioner Companies in News papers "Financial Express"(English Language) and "Dainik Bhaskar" (Hindi Language) on 20.04.2012 in due compliance of the Court's order.

11. The Regional Director (NR) representing the Department of Company Affairs in its report dated 06.07.12 have stated that that Memorandum of Association of a Company can be changed and altered only after the following the procedure prescribed under the relevant provisions of the Companies Act, 1956 and therefore the Petitioner Companies may be asked to follow the procedure under the relevant provisions of the Companies Act, 1956. No other objection has been pointed out.

12. In response to this observation of the Regional Director the Petitioner Companies have filed an affidavit dated 19.07.12 agreeing to abide and comply with the procedure to be followed as per the Companies Act, 1956 to effectuate

change in the Memorandum of Association of the Transferee Company.

13. The official Liquidator has also filed a report dated 04.07.12. Perusal of the report shows that the official liquidator has no objection to the grant of sanction to the Scheme of Amalgamation.

14. No Third party has filed any objection to the Scheme of the Amalgamation.

15. In the aforesaid circumstances and having regard to the averments made in this Petition and the materials placed on record and the affidavits filed by the Regional Director, Ministry of Company Affairs, Noida, and the Official Liquidator. I am satisfied that the prayer made in the Petition deserves to be allowed. I also do not find any legal impediment to the grant of sanction to the Scheme of Amalgamation. Hence, sanction is hereby granted to the above mentioned Scheme of Amalgamation u/s 391(2) read with Section 394 of the Companies Act, 1956. Consequent upon the merger /Amalgamation of the Companies the Transferor Company shall stand dissolved without being wound up.

16. Learned counsel for the petitioners states that the petitioner Companies 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.

17. The petition is allowed in the above terms. Order Dasti