

(2010) 11 DEL CK 0022
In the Delhi High Court
Case No : CO. Petition 257 of 2010

Eros Hospitality Pvt Ltd.

APPELLANT

Vs

Hotel Excelsior Ltd.

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Companies Act, 1956 — Section 391, 392, 393, 394

Citation : (2010) 11 DEL CK 0022

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Malini Sud and Rahul Dua, for the Appellant; K.S. Pradhan Dy. Registrar and Manisha Tyagi, for the Respondent

Judgement

Sanjiv Khanna, J.—This second motion u/s 391-394 of the Companies Act, 1956 (Act for short) has been filed by Eros Hospitality Ptv. Ltd (hereinafter referred to as transferor company) and Hotel Excelsior Ltd. (hereinafter referred to as transferee company) for approval/sanction of the scheme of amalgamation which has been enclosed as Annexure A.

2. The Petitioner has earlier filed Company Application (M) 66/10 which was disposed of vide order dated 30th April, 2010. By the said order in view of the no objection certificates, meetings of the shareholders and unsecured creditors of the transferor company and shareholders of the transferee company were dispensed with. The transferor company did not have any secured creditor. Meetings of secured creditors and unsecured creditors of the transferee company were directed to be held on 29th May, 2010. The court appointed Chairperson and Alternate Chairperson for the said meetings.

3. Mr. Surya Kant, Advocate and Chairperson, presided over the meeting of the secured creditors of the transferee company and has submitted his report. Four out of five secured creditors of the transferee company were present and had voted in favour of the scheme. Letter dated 28.5.2010 written by Axis Bank Ltd., the 5th creditor, was filed with the Chairperson and has been enclosed with his

report. The said bank has stated that the credit facility availed by the said company have been paid and squared and the bank has released it's charge. Thus, the secured creditors have approved the scheme.

4. M/s Prem Lata Bansal, Advocate and Chairperson, had presided over the meeting of unsecured creditors. In her report, she has stated that out of 232 unsecured creditors, 65 unsecured creditors of the transferee company were present personally or by proxy. These 65 unsecured creditors represent 77.66% of the total unsecured debt due and payable by the transferee company in value terms. 65 unsecured creditors have also voted in favour of the scheme of amalgamation.

5. After filing of the present petition, notices were issued to the Regional Director (Northern Division) and the Official Liquidator. Citations were also directed to be published in the newspaper "Statesman" (English) and "Jansatta" (Hindi). Affidavit has been filed on behalf of the Petitioners stating that the citations have been published. Copy of the citations have been placed on record.

6. Regional Director (Northern Region) has stated that Central Govt. has no objection to the proposed scheme of amalgamation. The official liquidator in his reply/response has stated that they have not received any complaint against the proposed scheme of amalgamation from any person / parties interested in the scheme. Official Liquidator, on the basis of the information submitted by the Petitioners, has stated that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of the members or public interest.

7. In view of the aforesaid, I allow the present petition and the scheme of amalgamation is approved /sanctioned. Transferor Company will stand dissolved from the effective date. This order will not be construed as an order exempting from payment of stamp duty. Stamp duty, if payable, will be paid.