(2010) 11 DEL CK 0270

In the Delhi High Court

Case No : Company Application (M) No. 187 of 2010

Euro Grain Limited. and Others — APPELLANT

Vs

Auro Sugar Pvt. Ltd. — RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:
Companies Act, 1956 — Section 391(1), 393, 394

Citation : (2010) 11 DEL CK 0270

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Varun Jain, for R. Menon, for the Appellant;

Final Decision : Dismissed

Judgement

1. The affidavits filed on behalf of the transferor company Nos. 1, 3 to 5 and the transferee company, are taken on record.

2. This first motion under Sections 391(1), 393 and 394 of the Companies Act, 1956 (Act for short) has been filed in respect of the proposed scheme of arrangement and amalgamation enclosed with the application as Annexure A-1 between Euro Grain Ltd. (transferor company No. 1), Business Oriented Software & Solutions Pvt.

(transferor company No. 3), Odimco Technologies Pvt. Ltd. (transferor company No. 4), Glenasia Commodities Pvt. Ltd. (transferor company No. 5) and Auro Sugar Pvt. Ltd. (transferee company).

3. Registered office of the transferor company Nos. 1, 3 to 5 and the transferee company are located in the National Capital Territory of Delhi and the present joint application has been filed by the said companies. Registered office of the transferor company No. 2 is located in Kolkata in the State of West Bengal. The present application has not been filed on behalf of the transferor company No. 2.

4. Along with the application, the transferor company Nos. 1, 3 to 5, and the

transferee company have filed their balance sheets and Articles and Memorandum of Association. Other details with regard to the authorized, subscribed and paid up share capital said companies are mentioned in the application. Copy of the resolutions passed by the Board of Directors of the transferor company Nos. 1, 3 to 5, and the transferee company approving the scheme of arrangement and amalgamation have been placed on record.

5. The transferor company No. 1 has 7 shareholder and the said shareholders have given their no objections/consents to the proposed scheme. In these circumstances, the need and requirement to hold meeting of the shareholders of the transferor company No. 1 is dispensed with.

6. As per the affidavit filed on 27th November, 2010, the transferor company No. 1 has one unsecured creditor. The said unsecured creditor has given its consent/ no objection certificate to the proposed scheme of arrangement and amalgamation, which has been enclosed with affidavit dated 27th November, 2010. In view of the no objection certificate given by the unsecured creditor of the transferor company No. 1, the need and requirement to convene and hold meeting of the unsecured creditors of the transferor company No. 1 is dispensed with. As per the application, transferor company No. 1 does not have any secured creditor. Thus, there is no need to hold meeting of the secured creditOrs.

7. Transferor company No. 3 has 3 shareholders and the said share holders have given their consent/no objection certificates to the proposed scheme. In these circumstances, the need and requirement to hold meeting of the shareholders of the transferor company No. 3 is dispensed with. As per the affidavit filed on 27th November, 2010, the transferor company No. 3 does not have any secured or unsecured creditors and, therefore, there is no need to hold meeting of the creditors of the transferor company No. 3.

8. Transferor company No. 4 has 2 shareholders. The said 2 shareholders have given their consents/no objections to the proposed scheme. In these circumstances, the need and requirement to hold meeting of the shareholders of the transferor company No. 4 is dispensed with. Transferor company No. 4 does not have any secured or unsecured creditors as per the certificate placed on record. Thus, there is no need to hold meeting of the secured and unsecured creditor of the transferor company No. 4.

9. Transferor company No. 5 has 2 shareholders and the said shareholders have given their no objections/consents to the proposed scheme. In these circumstances, the need and requirement to convene and hold meeting of the shareholders of the transferor company No. 5 is dispensed with. The transferor company No. 5 has one secured creditor and there are no unsecured creditors as per the affidavit dated 27th November, 2010. The said secured creditor has given no objection certificate, which has been enclosed with the affidavit dated 27th November, 2010. In view of the no objection certificate given by the secured creditor of the transferor company No. 5, the need and requirement to convene

and hold meeting of the secured creditors of the transferor company No. 5 is dispensed with. It is not necessary to call for meeting of the unsecured creditors of the transferor company No. 5 as the said company does not have any unsecured creditor.

10. The unsecured creditors of the transferee company have given their consents/ no objections to the proposed scheme and the no objection certificates have been enclosed with the affidavit dated 27th November, 2010. In view of the no objection certificates given by the unsecured creditors of the transferee company, the need and requirement to convene and hold meeting of the unsecured creditors of the transferee company is dispensed with. Transferee company does not have any secured creditors. Thus, there is no need to hold meeting of the secured creditors.

11. Transferee company has two shareholder and the said shareholders have given their no objection/consent to the proposed scheme. In these circumstances, the need and requirement to convene and hold the meetings of shareholders of the transferee company is dispensed with.

12. The applicants had earlier filed C.A.(M) No. 48/2010, which was dismissed on 19th April, 2010 for technical reasons as the applicants had not placed on record copy of the order passed by the Company Law Board, Kolkata on the petition filed for shifting of registered office of the transferor company No. 4. Photocopy of the said order has been placed on record as annexure A/24 (page Nos. 386 to 388). Another reason given for rejection was that the consent given by M/s. Asia Sugar & Chemical Co., an unsecured creditor of the applicant/transferor company No. 3 was not supported by authorization of the person, who had signed the consent letter. It is pointed out that the transferor company No. 3 does not now have any unsecured creditor as stated in the affidavit dated 27th November, 2010.

13. The application is disposed of.

14. The share exchange ratio has not been examined and the said aspect will be examined at the time of second motion. Along with second motion the applicant companies will file the valuation report with affidavit of the valuer. The valuer will state whether he has any personal interest in any of the applicant companies, its directors and shareholders. He shall also indicate in the affidavit the basis of the valuation and how the investments of the applicant companies have been valued. It is clarified that this order will not be construed as order accepting the exchange/swap ratio.