(2017) 01 DEL CK 0414

In the Delhi High Court

Case No : 165 of 2016

GENESIS ECOTECH PRIVATE LIMITED AND?ALP AEROFLEX INDIA PRIVATE LIMITED Vs NIL

Date of Decision : 30-01-2017

Acts Referred:

Companies Act, 1956, Section 391, Section 251, Section 394, Section 235 - Power to compromise or make arrangements with creditors and members. - Savin

Citation : (2017) 01 DEL CK 0414

Hon'ble Judges : Siddharth Mridul

Bench : SINGLE BENCH

Advocate : Hemant Sharma, Palash Agarwal

Judgement

1. The present application has been filed, under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as ''the Act'') by Genesis Ecotech Private Limited (hereinafter referred to as ''the Transferor Company'') in connection with the Scheme of Amalgamation (hereinafter referred to as ''the Scheme'') of the Transferor Company with ALP Aeroflex India Private Limited (hereinafter referred to as ''Transferee Company'').

2. The registered offices of the Transferor Company as well as the Transferee Company are situated in the National Capital Territory of Delhi, within the jurisdiction of this Court.

3. The Transferor Company was incorporated under the Act, on 29.01.2013 vide certificate of Incorporation issued by the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

4. The Transferee Company was incorporated under the provisions of the Act vide certificate of incorporation dated 27.05.2011 issued by the Deputy Registrar of Companies, NCT of Delhi and Haryana.

5. The authorized share capital of the Transferor Company as on 31.03.2016, is Rs.16,00,000/-, divided into 1,60,000 equity shares of Rs.10/- each. The issued,

subscribed and paid-up share capital of the Transferor Company as on 31.03.2016, is Rs.15,87,750/-, divided into 1,58,775 equity shares of Rs.10/- each.

6. The authorized share capital of the Transferee Company as on 31.03.2016, is Rs.17,00,00,000/-, divided into 1,70,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferee Company as on 31.03.2016, is Rs.17,00,00,000/-, divided into 1,70,00,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum of Association and Articles of Association of the Transferor Company and Transferee Company have been filed on record. The audited balance sheets, as on 31.03.2016, pertaining to the Transferor Company and Transferee Company, along with the reports of the auditors, have also been filed and the same are on record.

8. A copy of the Scheme has been enclosed along with the application and the same is on record. It has been stated on behalf of the Transferor Company that the amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits: a) Reduced managerial overlap, reduced administrative cost, and strengthened leadership in the industry in terms of the asset base, revenue.

b) Improved organizational capability arising from pooling of assets, human capital, and technical resources.

c) Achieving operational and management efficiency.

d) Lead to simplified corporate structure, more efficient utilisation of capital and create a consolidated base for future growth of the Transferee Company.

e) To strengthen the business and financial operations of the companies.

9. So far as the Share Exchange Ratio is concerned, it has been stated that since the Transferor Company is wholly owned subsidiary of the Transferee Company as on appointed date of the Scheme coming into effect, as defined in the Scheme, no consideration shall be payable by the Transferee Company pursuant to the amalgamation of the Transferor Company with the Transferee Company, and accordingly the entire investments in the Transferor Company held by the Transferee Company would stand cancelled.

10. It has been stated that no proceedings under sections 235 to 251 of the Act (or corresponding provisions of the Companies Act, 2013) are pending against the Transferor Company and Transferee Company as on the date of institution of the present application.

11. Further, it has been stated that the Scheme has been approved by the respective Board of Directors (BOD) of the Transferor Company and Transferor Company. Copies of the resolutions dated 26.09.2016 passed by the Board of Directors of both, the Transferor Company and Transferee Company, whereby the

scheme has been approved have been filed with the application and the same are on record.

12. The status of the Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and the consents obtained from them for the proposed Scheme has been set out in a table as hereinunder:-

Company No. of equity Shareholders Consent given No. of Secured Creditors Consent given No. of Unsecured Creditors Consents given

Transferor Company 2 ALL NIL N.A. NIL N.A.

13. A prayer has been sought for dispensing with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the Transferor Company to consider and if thought fit, approve, with or without modifications, the proposed Scheme.

14. The Transferor Company does not have any Secured Creditors and Unsecured Creditors, therefore, the question of requirement of convening the meetings of the Secured Creditors and Unsecured Creditors of the Transferor Company, to consider and if thought fit, approve, with or without modifications, the proposed Scheme, does not arise.

15. The Transferor Company has 02 equity shareholders. Both the shareholders have given their written consents/NOCs, to the Scheme. The said written consents/NOCs have been placed on record. The same have been examined and found in order.

16. In view of the foregoing, the requirement of convening a meeting of the equity shareholders of the Transferor Company, to consider and if thought fit, approve, with or without modifications, the proposed Scheme, is dispensed with.

17. A prayer has also been made in the present application seeking dispensation of the requirement of publishing notices of meeting of equity shareholders of the Transferor Company in newspapers. In view of the circumstance that the requirement of convening meeting of equity shareholders of the Transferor Company, to consider and if thought fit, approve, with or without modifications, the proposed Scheme, has been dispensed with hereinabove, the question of requirement of publishing notices of the said meeting in newspapers does not arise.

18. Further, another prayer has been sought which reads as hereunder: "(d) Transferee Company be exempted from filing any application or petition or to seek any consequential direction(s) from this Hon''ble Court including seeking dispensation from holding any meeting of shareholders or creditors of the transferee company and publication thereof."

19. In this behalf, it has been stated on behalf of the Transferor Company/ Applicant that that the Transferor Company is a wholly owned subsidiary of Transferee Company and that no shares of the Transferee Company shall be

allotted in lieu of, or exchange of its holding in Transferor Company & the share capital of Transferor Company shall stand cancelled as per the scheme. Thus, it has been stated that the rights of the stakeholders are not affected in any manner under the Scheme. Further, it has been stated that the creditors of the Transferee Company would not be adversely affected pursuant to the sanction being granted to the scheme without Transferee Company filing any application before the Court, as the scheme does not envisage any compromise or arrangement by the Transferee Company with its creditors.

20. In this behalf, learned counsel appearing on behalf of the Transferor Company would place reliance on the decisions of this Court in Company Application (Main) No. 112 of 2016, in the matter of Kailash Healthcare Limited rendered on 26.07.2016; Company Application (Main) No. 29 of 2015 in the matter of Satyam Cineplexes Limited rendered on 25.03.2015; Company Application (Main) No.137 of 2015 in the matter of Convergys Stream Private Limited, rendered on 28.08.2015; Company Petition No.115 of 1974 in ''In Re: Sharat Hardware Industries Private Limited'' rendered on 10.05.1976.

21. In view of the settled position of law as enunciated in these decisions and considering the proposed scheme herein, the prayer sought by way of the prayer clause (d) in the present application, as extracted hereinabove, is granted. The Transferee Company/Non-Applicant is hereby exempted from filing any application or petition or to seek any consequential directions from the Court, including seeking dispensation from holding any meeting of shareholders or creditors of the Transferee Company and publication thereof.

22. The application stands allowed in the aforesaid terms and is disposed of accordingly.

