

(2014) 09 DEL CK 0026
In the Delhi High Court
Case No : Co. Pet. 123/2014

Good Living and Healthy Environment Constructions Pvt. Ltd.

Date of Decision : 15-09-2014

Acts Referred:

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

Citation : (2014) 09 DEL CK 0026

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Rajeev K. Goel, Naresh Kumar, Abhishek Singh Baghel, Advocates, Balbir Singh , Sr. Standing Counsel, Rajneesh Kumar Singh , Assistant Registrar and S.B Gautam, Official Liquidator, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.—This second motion joint petition has been filed under sections 391 to 394 of the Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of Good Living and Healthy Environment Constructions Pvt Ltd (hereinafter referred to as Transferor Company No. 1) and Emerald Homes Pvt Ltd (hereinafter referred to as Transferor Company No. 2) (hereinafter collectively referred to as Transferor Companies) with Hyline Buildtech Pvt (hereinafter referred to as Transferee Company) (hereinafter all Companies collectively referred to as Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.

2. The registered office of the Petitioner Companies is situated at New Delhi, within the jurisdiction of this Court.

3. The details of the respective dates of incorporation of the Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4. The copies of the Memorandum and Articles of Association as well as the Annual Accounts of the Petitioner Companies for the year ended 31st March 2013 have also been enclosed with the Petition.

5. The copies of Resolutions passed by the Board of Director of the Petitioner Companies approving the Scheme of Amalgamation have also been filed along with the Petition.

6. Learned Counsel for the Petitioner Companies submits that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed C.A (M) 17 of 2014 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 22nd January, 2014, this Court allowed the Application and requirement of convening the meetings of the Shareholders and Creditors of the Transferor Companies and the Transferee Company were dispensed with.

8. The Petitioner Company had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide Order dated 21st February 2014, notice of the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator attached with this Court. Citations were also directed to be published in "Business Standard" (English, Delhi Edition) and "Dainik Bhaskar" (Hindi, Delhi 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. Copies of the newspaper cuttings, containing the publications have also been filed along with the Affidavit of Service.

9. In response to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his Report dated 20th May 2014, wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per the 2nd proviso of section 394(1) of the Act.

10. In response to the notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 14th August, 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services.

11. Further learned Regional Director in his Affidavit has observed that Income Tax Officer (Hqrs.), CIT (IV) vide its Letter dated 15.04.2014 had forwarded a Letter dated 04.04.2014 issued by Income Tax Officer, Ward 12(2) stating that the assessment proceedings u/s 143(2) were pending against the Assessee Transferor Company No. 1 for the year 2012-2013. The Income Tax Department has requested that the Scheme of Amalgamation may be kept in abeyance till

the completion of assessment proceedings, as the amalgamation proceedings may create technical problems in the assessment proceedings.

12. By Order dated 28.08.2014, notice was issued to the Chief Commissioner, Income Tax through Standing Counsel, Income Tax, Delhi High Court. Mr. Balbir Singh, Standing Counsel, Income Tax, on instructions, submits that the Income Tax has no objection to the sanction of the scheme subject to the right of the Income Tax authorities to continue assessment and proceedings, if any, against the Transferee Company and the Transferee Company undertaking to discharge the liability, if any of the Transferor Company.

13. In response to the aforesaid observation, the learned counsel for Petitioner Companies submits that Para "2.c" of the Scheme already provides that all liabilities, provisions, duties and obligations including Income Tax and other statutory liabilities, if any, of every kind, nature and description of the Transferor Companies, whether provided for or not in the books of accounts of the Transferor Companies, shall devolve and shall stand transferred or be deemed to be transferred without any further act or deed, to the Transferee Company and shall be the liabilities, provisions, duties and obligations of the Transferee Company. Leaned Counsel for Petitioner Companies further submits that Para "4" of the Scheme also provides that all legal proceedings of whatever nature by or against the Transferor Companies pending on the Effective Date, shall not be abated, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the Transferor Companies or of anything contained in this Scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies as if the Scheme had not been made.

14. It is clarified that the Income Tax Department is free to proceed against Transferee Company in respect of any liability arising out of the assessment of the Transferor Company despite the sanction of the Scheme.

15. In view of the aforesaid undertaking and clarifications given by the Petitioners, the concerns of the Regional Director have been duly addressed.

16. No objection has been received to the Scheme from any other party. Mr. Sudershan Malik, Director of the Transferee Company has filed an Affidavit dated 22nd May 2014 confirming that neither the Petitioner Companies nor their 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 Companies, representation/report filed by the Regional Director, Northern Region and Official Liquidator attached with this Court to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 391 and 394 of the Companies Act, 1956, subject to the sanction of the Scheme

by the Gujarat High Court. The Petitioner Companies will comply with the statutory requirements in accordance with law.

18. 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 Companies Act, 1956, all the properties, rights and powers of the Transferor Companies 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 duties of the Transferor Companies be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Companies shall stand dissolved without winding up.

19. 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.

20. Learned Counsel for the Petitioner states that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 75,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

21. The Petition is allowed in the above terms.