(2012) 12 DEL CK 0255

In the Delhi High Court

Case No : Company Petition No. 430 of 2012 Connected With Company Application (M) No. 95 of 2012

In Re: Amalgamation of Shanu Estates Private Limited and Nightingale Farms Private Limited

Date of Decision : 11-12-2012

Acts Referred:
Companies Act, 1956 — Section 235, 251, 391, 394

Citation : (2012) 12 DEL CK 0255

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Ashish Middha and Ms. B. Maragatha Nithya, Pradhan, Dy. Registrar, Registrar of Companies for the Regional Director, Rajeev Behl, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This joint Petition has been filed under sections 391 & 394 of the Companies Act, 1956 by the Petitioner Companies seeking sanction to the Scheme of Amalgamation of Shanu Estates Private Limited, Petitioner/Transferor Company with Nightingale Farms Private Limited. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

2. Details with regard to the date of incorporation of Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

3. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2011 of the Petitioner Companies have also been enclosed with the Petition.

4. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme of Amalgamation have also been placed on record.

5. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

6. The Petitioner Companies had earlier filed CA (M) 95 of 2012 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 24th July, 2012, this Court allowed the Application and requirement of convening all the meetings of Shareholders and Creditors of the Transferor Company and of the Transferee Company were dispensed with.

7. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide order dated 12th September 2012, 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" in English and "Veer Arjun" in Hindi and the same were published on 22nd November'' 2012 as per the orders of the court. Affidavit and Publications has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator, Delhi and also regarding publication of citations in the aforesaid newspaper. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

8. In response to the notice issued in the Petition, Mr Rakesh Chandra, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 29th November, 2012. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor entity shall become the employees of the Transferee Company without any break or interruption in their services. The Learned Regional Director has submitted that the Central Government has no objection to the proposed Scheme of Amalgamation. The Regional Director has stated in his affidavit that the Balance Sheet for the period ending 31st March'' 2012 has not been filed to till date. The counsel for the petitioner companies had stated at Bar that the same has been filed on 8th December'' 2012 and the Regional Director has verified the receipts.

9. The Official Liquidator has also filed its report and in its report it had raised the objection that the valuation report is not on the basis of Book Value of shares. The counsel for the petitioner companies had relied on the Judgment dated 19th October, 2011 in M/s. Preet Machines Limited and Judgment dated 1st June'' 2012 in M/s. Indrama Investment Pvt. Limited wherein it both the judgments the courts had relied upon the Mihir H. Mafatlal Vs. Mafatlal Industries Limited and have held that the once the exchange ratio of the shares have been worked out by the Chartered Accountants, who are expert in the field of valuation and if no mistake is pointed out in the said valuation, it is not for the court to substitute is exchange ratio, especially when it has been accepted without demur unanimously by all the shareholders of the two companies or to say that the shareholders in their collective wisdom shall not have accepted the said exchange ratio on the ground that it would be detrimental to their interest. The objection raised by the Official Liquidator is thus without merit.

10. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Ajay K. Gupta and Ms. Sonia Gupta, Directors of the Petitioner Companies has filed an affidavit confirming that neither the Petitioner Companies nor their Counsel has received any objection pursuant to citations published in the newspapers.

11. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation filed by the Regional Director, Northern Region and no objection by the Official Liquidator, the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law. Certified copy of the formal order 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 property, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or any other charges, if payable, in accordance with any law; or permission/ compliance with any other requirement which may be specifically required under any law.

12. The Petitioner Companies would voluntarily deposit a sum of Rs. 1 Lac in the Common Pool fund of the Official Liquidator within three weeks from today. The Petition is allowed in the above terms.