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(2008) 07 DEL CK 0031

In the Delhi High Court

Case No : Company Application (Main) No. 119 of 2008

In Re: Apeejay Surrendra Hotels (P.) Ltd.

Date of Decision : 03-07-2008

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

Citation : (2009) 89 SCL 252

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K. Datta and B.K. Roy, for the Appellant;

Judgement

S. Ravindra Bhat, J.—This is an application by M/s. Apeejay Surrendra Hotels (P.) Ltd. (hereafter "the applicant company/2nd transferor-company"), under Sections 391(1)-394 of the Companies Act, 1956 (hereinafter referred to as "the Act") seeking directions for meetings of shareholders and unsecured creditors. The applicant seeks approval of a proposal for a scheme of amalgamation between the applicant, the 1st transferor-company, the 1st transferee-company, Apeejay Surrendra Corporate Services (P.) Ltd. and Apeejay Surrendra Holdings (P.) Ltd.

2. The registered offices of the applicant companies is at Pragati Bhawan, Jai Singh Road, New Delhi-110 001, and, therefore, within the jurisdiction of this Court. The Board of Directors of the applicant company has passed a resolution on 28-4-200S, approving the composite scheme of arrangement between the applicant company and the other participant companies. A copy of the resolution has been filed on record.

3. The applicant company has filed its Memorandum and Articles of Association along with the application. The audited balance sheet of the applicant company, as on 31-3-2007 has been filed in court, and is part of the record.

4. The applicant companies has also filed a copy of the composite Scheme of Arrangement of Demerger and Amalgamation, the salient features of which has been set out in the pleadings in these proceedings. In terms of this scheme, the

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applicant company''s division is to be taken over by one of the transferee-companies.

5. The applicant company was incorporated on 31-8-1994. Its authorized share capital is Rs. 1,00,000, divided into 10,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the applicant company is Rs. 1,00,000, divided into 10,000 equity shares of Rs. 10 each. The applicant company seeks directions for holding of a meeting of its shareholders to approve the proposal for the scheme of amalgamation.

6. According to the application, the applicant/second transferor-company has unsecured creditors. A list of such unsecured creditors has been filed along with the applicant. The applicant has sought the holding of a meeting of its unsecured creditors for considering, and if thought fit, approving the scheme.

7. The court has heard counsel for the applicant, and considered the materials on record. The arrangement for which approval is sought has the concurrence of the applicant''s board of directors. It appears to be an internal reorganization of group companies. Considering the facts and circumstances, the court hereby is of the opinion that the request to hold the meetings should be acceded to.

8. It is accordingly directed that a meeting of the unsecured creditors of the transferee-company be held on 16-8-2008 at 10.30 a.m., at the premises of the applicant, at its office in Pragati Bhawan, Jai Singh Road, New Delhi-110 001. The court hereby appoints Mr. Sanat Kumar, Advocate Mobile No. 9810295798, (Chamber No. 399, New Lawyers Chamber, Delhi High Court) as the Chairperson and Mr. Dashrath, Advocate (Mobile No. 9818617593) as alternate Chairperson for the meeting of the unsecured creditors of the applicant company. The quorum for the said meeting shall be 10 unsecured creditors in number Constituting 25 per cent in value of the total unsecured debt. The Chairperson and the alternate Chairperson shall ensure that the notices convening the meeting of secured creditors of the applicant company along with copies of scheme and statement u/s 393 of the Companies Act, 1956, are sent to the unsecured creditors of the applicant Company by UPC at their registered or last known addresses at least 21 days before the date appointed for meeting, in their presence or in the presence of their authorized representatives. The notice shall also be published in newspapers '' The Indian Express'' (English edition) and ''Nav Bharat Times'' (Hindi edition) in terms of the Companies (Court) Rules, 1959, at least 21 days before the day appointed for the meeting.

9. The applicant company has shareholders who hold 10,000 shares. It has sought the holding of the meeting of its shareholders for considering, and if thought fit, approving the scheme. Considering the facts and circumstances, the meeting of the shareholders of the applicant company, be held on 16-8-2008 at 2:30 P.M., at Pragati Bhawan, Jai Singh Road, New Delhi-110 001. The court hereby appoints Ms. Annapoorni, Advocate, Mobile No. 9811059674, as the Chairperson and Ms. V. Mohana, Advocate, Mobile No. 9868110575 (E-14,

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Dronacharya Apartment, Mayur Vihar-I Extension, New Delhi 110 091) as the alternative Chairperson for the meeting of the shareholders of the applicant company. The quorum for the said meeting shall be shareholders in number Constituting 51 per cent in value of the total holdings of the company. The Chairperson and the alternate Chairperson shall ensure that the notices convening the meeting of un-secured creditors of the applicant company along with copies of scheme and statement u/s 393 of the Companies Act, 1956, shall be sent to the shareholders of the applicant company by UPC at their registered or last known addresses at least 21 days before the date appointed for meeting, in their presence or in the presence of their authorized representatives. The notice shall also be published in newspapers ''The Indian Express'' (English edition) and ''Nav Bharat Times'' (Hindi edition) in terms of the Companies (Court) Rules, 1959, at least 21 days before the day appointed for the meeting.

10. In all the aforesaid meetings, voting by proxy shall be permitted, if prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the registered office of the applicant company at least forty eight hours before the meeting. The Chairpersons and the alternate Chairpersons shall also ensure that the proxy registers are properly maintained and they shall inspect the same from time to time. In case the quorum for any of the aforesaid meeting is not met, then the meeting shall be adjourned by 30 minutes and then the members present and voting shall constitute the required quorum. For the purpose of quorum, the valid proxies shall also be considered.

11. The fees of each of the Chairpersons for the meetings aforesaid shall be Rs. 45,000 and the fees of each of the alternate Chairpersons shall be Rs. 40,000 in addition to meeting their incidental expenses. The Chairpersons appointed by this Court shall file their report within two weeks from the date of holding of the meeting. The alternate Chairpersons shall also attend the meeting and assist the respective Chairperson in conducting the meeting and in filing the report.

12. The Chairpersons and the alternate Chairpersons shall be at the liberty to issue directions to the management of the applicant companies so that all the aforesaid meetings are conducted in a just, free and fair manner.

13. The application is disposed of in terms of the above directions. Order Dasti.

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