(2013) 07 DEL CK 0523

In the Delhi High Court

Case No : CO. Application (M) No. 85 of 2013

In Re: Baheti Rotoplast Private Limited

Date of Decision : 05-07-2013

Acts Referred:
Companies Act, 1956 — Section 235, 251, 391, 392, 393

Citation : (2013) 07 DEL CK 0523

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Anshuj Dhingra and Mr. Anubhav Mehrotra, for the Appellant;

Judgement

R.V. Easwar, J.—This is a first motion application under Sections 391 to 394 of the Companies Act, 1956 (''Act'') in connection with a Scheme of Amalgamation (''Scheme'') amongst Baheti Rotoplast Private Limited (hereafter referred to as ''Transferor company''), Vectus Industries Limited (hereafter referred to as ''Transferee company'') and its members and creditors. A copy of the proposed Scheme is enclosed with the application. The registered office of the Applicant company is situated within the National Capital Territory of Delhi and is within the jurisdiction of this Court.

2. The details of the dates of incorporation of the Transferor company and Transferee company, their authorized, issued, subscribed and paid up capital have been set out in the affidavit for summons.

3. The copies of the Memorandum and Articles of Association as well as the latest audited annual accounts for the year ended 31st March 2012 of the Transferor company and the Transferee company have been enclosed with the application.

4. Learned counsel for the Applicant company submits that no proceedings under Sections 235 and 251 of the Act are pending against the Applicant company as on date of the present application.

5. The proposed Scheme has been approved by the Board of Directors (''BoDs'') of the Applicant company. Copy of the board resolution has been filed along with the application.

6. The status of the equity shareholders, secured and unsecured creditors of the Applicant company is set out in a table forming part of the application which reads as under:-

7. The prayer has been made for dispensation of the requirements of convening the meeting of the equity shareholders of the Applicant company. There are 5(Five) equity shareholders of the Applicant and the consent letters of all the shareholders have been placed on record with the present application. In view of the above, the requirement of convening their meeting is dispensed with.

8. The Applicant company has 2(two) secured creditors and 11(eleven) unsecured creditors (unsecured loans). None of the secured and the unsecured creditors have given their no objection to the Scheme. Accordingly, it is prayed to convene separate meetings of the secured and unsecured creditors of the Applicant company.

9. Consequently, I direct that separate meetings of the secured creditors and the unsecured creditors of the Applicant company shall be held on 13.08.2013 at 11:30 a.m. and at 02:30 p.m. respectively at the registered office of the Applicant company at 302, Channa Complex, 2215, Gurudwara Road, Karol Bagh, New Delhi - 110 005.

10. Mr. Prakash Chand Yadav, Advocate, Mob. No. 9891142308 is appointed as the Chairperson and Mr. Ravi Dutt Sharma, Court Officer, Mobile No. 9810115345 is appointed as the Alternate Chairperson for the meeting of secured creditors of the Applicant company. They would be paid a fee of Rs. 50,000/- each. Ms Vijaya Lakshmi Dobhal, Mob. No. 8447913720 and Mr. Dharmender Singh, Mob. No. 9911747643, officials of this Court shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs. 10,000/- each for this purpose.

11. Ms Swati Gupta, Advocate, Mob. No. 9711566266 is appointed as the Chairperson and Ms. Sunita Bisht, Court Officer, Mob. No. 9717991823 is appointed as the Alternate Chairperson for the meeting of unsecured creditors of the Applicant company. They would be paid a fee of Rs. 50,000/- each. Mr. Hariom, Mob. No. 9268942797 and Mr. Sanjay Rawat, Mob. No. 9540183605, officials to this Court shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs. 10,000/- each for this purpose.

12. The Applicant company has 44(forty four) sundry creditors who are business/ trade creditors, and is seeking dispensation as regards the meeting of its sundry creditors. It has been submitted by the Applicant company that the Applicant company is paying the sundry creditors in the normal course of business and the net worth of the Transferee company is sufficient to take care of the day to day sundry creditors of the Applicant company, and who shall also be paid in the normal course of business. It is further submitted that in terms of the Scheme, there is no variation in the rights of the sundry creditors and there is no variation

in the amounts owed to such sundry creditors. It is further submitted that the current net worth of the Applicant company is Rs. 53,830,042.00 and the net worth of the Transferee company as certified by the chartered accountant as per certificate annexed is sufficient to meet the debts owed to the sundry creditors of the Applicant company. In view of the above, the requirement of convening the meeting of sundry creditors of the Applicant company is dispensed with.

13. The Applicant company is also directed to publish advance notice of the aforesaid meetings in ''The Statesman'' (English) and ''Veer Arjun'' (Hindi). The advertisements shall be published at least 21 days in advance before the scheduled date of the meeting. Individual notice of the proposed meetings would be sent by ordinary post at least 21 days in advance before the scheduled date of the meeting. The Chairpersons will ensure that dispatch is made under his/her supervision or under the supervision of his/her authorized representative.

15. The quorum of the secured creditors of the Applicant company is fixed as follows:-

16. It is also directed that if the quorum is not present at the commencement of the meetings, the meeting would be adjourned for 30 minutes and thereafter the creditors meeting shall be deemed to be concluded and the proposed Scheme would be deemed as passed by secured creditors.

17. The quorum of the unsecured creditors of the Applicant company is fixed as follows:-

18. It is also directed that if the quorum is not present at the commencement of the meetings, the meeting would be adjourned for 30 minutes and thereafter the creditors present in person or through proxy, who would not be less than two, would be treated as the quorum.

19. Voting by proxy is permitted, provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the said meeting or by his authorized representative, is filed with the Applicant company, at their registered office, not later than 48 hours before the said meeting.

20. The Chairperson/Alternate Chairperson shall file their reports within 7(seven) days of the conclusion of the meeting.

The Application is allowed in the aforesaid terms.

Order Dasti

