(2011) 07 DEL CK 0249

In the Delhi High Court

Case No : Company Petition No. 44 of 2011

In Re: BSBK Engineers P. Ltd.

Date of Decision : 18-07-2011

Acts Referred:
Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2013) 112 CLA 125 : (2012) 175 CompCas 135

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Rishi Aggarwal, Bhagvan Swarup Shukla and Rajiv Kumar, for the Appellant; K.S. Pradhan, Deputy Registrar of Companies for the Regional Director (NR) and Rajiv Bahl for the Official Liquidator, for the Respondent

Final Decision : Allowed

Judgement

Manmohan, J.—This joint petition has been filed under sections 391 to 394 of the Companies Act, 1956 (for short ""the Act"") by transferor

company No. 1, transferor company No. 2 and transferee company seeking sanction of the scheme of amalgamation (for short ""scheme"") of M/s.

BSBK Engineers P. Ltd. (transferor company No. 1) and M/s. BSBK AKG (India) Ltd. (transferor company No. 2) with M/s. BSBK Enviro

Systems Ltd. (transferee company). The registered offices of the transferor companies and transferee company are situated at New Delhi, within

the jurisdiction of this court.

2. Details with regard to the date of incorporation of transferor companies and transferee company, their authorised, 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 March 31, 2010, of the

transferor companies and transferee company 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 have also been placed on record.

5. It has been submitted that no proceedings under sections 235 to 551 of the Act is pending against either of the petitioner-companies.

6. So far as the share exchange ratio for amalgamation is concerned, the scheme provides that, upon the scheme finally coming into effect, the

transferee company shall issue shares in the following manner :

--53 equity shares of Rs. 10 each, credited as fully paid-up, of the transferee company for every 100 equity shares of Rs. 10 each held in

transferor company No. 1.

--15 equity shares of Rs. 10 each, credited as fully paid-up, of the transferee company for every 200 equity shares of Rs. 10 each held in

transferor company No. 2.

7. The petitioner-companies had earlier filed C. A. (M) No. 12 of 2011 seeking directions of this court for dispensation of meetings. Vide order

dated January 19, 2011, this court allowed the aforesaid application and dispensed with the requirement of convening meetings of the shareholders

and creditors of transferor company No. 1, shareholders and unsecured creditors of transferor company No. 2 and shareholders of transferee

company. Transferor company No. 2 does not have any secured creditors and transferee company does not have any creditors.

8. The transferor companies and the transferee company have thereafter filed the present petition seeking sanction of the scheme. Vide order dated

January 31, 2011, notice in the petition was directed to be issued to the Regional Director, Northern Region and the official liquidator.

9. Citations were also directed to be published in Statesman (English, Delhi edition) and Jansatta (Hindi, Delhi edition). Affidavit of service and

publication have been filed by the petitioners 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 on June 16, 2011. Copies of the newspaper cuttings, in

original, containing the publications have been filed along with the affidavit of service.

10. Pursuant to the notices issued, the official liquidator sought some information

from the petitioner-companies. Based on the information

received, the official liquidator has filed his report dated May 3, 2011, wherein he has stated that he has not received any complaint against the

proposed scheme from any person (s)/party(ies) interested in the scheme in any manner and that the affairs of transferor company Nos. 1 and 2 do

not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

11. In response to the notices issued in the petition, Mr. B. K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed

his affidavit/report dated April 7, 2011. Relying on clause 8.1 of the scheme, he has stated that, upon sanction of the scheme of amalgamation, all

the employees of both the transferor companies shall become the employees of the transferee company without any break or interruption in their

services upon sanctioning of the scheme by this court.

12. In paragraph No. 4.1 of the affidavit dated April 7, 2011, Mr. B. K. Bansal has observed that ""status of a company from public limited

company to private limited company can be changed/altered only after following the procedure prescribed under the relevant provisions of the

Companies Act, 1956"". Further, in paragraphs Nos. 5.1 and 6.1 of the affidavit dated April 7, 2011, he has observed that the memorandum of

association and name of a company can be changed only after following the procedure prescribed under the relevant provisions of the Act.

13. In reply to the aforesaid observation, a rejoinder affidavit dated July 13, 2011, has been filed on behalf of transferee company by Mr. Ajay

Kumar, director and authorised signatory of the transferee company. It is submitted that approval of the scheme in terms of sections 391 to 394 of

the Act is a ""single window clearance"" and no further act on the part of the company is required to be done after the approval of the scheme, for

giving effect to conversion of public company to private company, alteration in the memorandum of association of the company and change in the

name of the company. Further, the proposed scheme has been approved by all the shareholders of petitioner-company No. 3/transferee company.

The transferee company has no secured and unsecured creditors. Further, petitioner-company No. 3 has undertaken to file all the forms in respect

of conversion into a private company, alteration of the memorandum of association and change of name with the Registrar of Companies as

required under the relevant provisions of the Act.

14. In view of the aforesaid, objections raised by the Regional Director no longer survive.

15. No objection has been received to the scheme of amalgamation from any other party. Authorised signatories of the petitioner-companies have

filed their affidavit dated July 15, 2011, confirming that neither the petitioner-companies nor their legal counsel has received any objection pursuant

to citations published in the newspapers.

16. Even today, during the course of hearing both Mr. K. S. Pradhan, Deputy Registrar of Companies and Mr. Rajiv Bahl, learned counsel for the

official liquidator state that they have no objection to the present petition being allowed.

17. In view of the approval accorded by the shareholders and creditors of the petitioner-companies, representation/reports filed by the Regional

Director, Northern Region and the official liquidator, attached with this court to 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 order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. The transferor companies

shall be dissolved without following the procedure of winding up. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956,

and in terms of the scheme, the whole or part of the undertaking, the property, 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. 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 requirement which may be specifically required under any law.

18. Learned counsel for the petitioner-companies states that the petitioner-companies would voluntarily deposit a sum of Rs. 1,00,000 in the

common pool fund of the official liquidator within three weeks from today. The statement is accepted.

19. The petition is allowed in the above terms. Order dasti.

