

(2013) 07 DEL CK 0110

In the Delhi High Court

Case No : Co. Petition 105 of 2013 With C.A. (M) 184 of 2012

In Re: Cyrilla Builders and Constructions Limited and Others

Date of Decision : 30-07-2013

Acts Referred:

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

Citation : (2013) 6 AD 488

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

Bench : Single Bench

Advocate : Ravi Bassi, Mr. K.S. Pradhan, Dy. Registrar of Companies for the Regional Director and Mr. Rajiv Bahl, for the Official Liquidator, for the Appellant;

Final Decision : Allowed

Judgement

R.V. Easwar, J.—This second motion joint petition has been filed u/s 391(2) and 394 of the Companies Act 1956 ("Act") by the Petitioners seeking sanction of the Scheme of Amalgamation ("Scheme") among Cyrilla Builders & Constructions Limited, DLF New Gurgaon Homes Developers Private Limited, DLF New Gurgaon Offices Developers Private Limited and Valini Builders & Developers Private Limited (hereafter referred to as "Transferor companies") with DLF Home Developers Limited (hereafter referred to as "Transferee company") [hereafter collectively referred to as "Petitioner companies"]. The registered offices of the Petitioner companies are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

2. The details of the dates of incorporation of the Petitioner companies, their authorized, issued, subscribed and paid up capital have been set out in the petition.

3 The copies of the Memorandum and Articles of Association as well as the latest audited annual accounts for the years ended 31st March 2012 of Petitioner companies have also placed on record.

4. The copies of the resolutions passed by the Boards of Directors ("BoDs") of the Petitioner companies approving the Scheme have also been placed on record.

5. Learned counsel for the Petitioners submits that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner companies.

6. The Petitioner companies had earlier filed CA (M) No. 184 of 2012 in this Court seeking directions to convene/dispense with the requirements of convening the meetings of the shareholders, secured and the unsecured creditors of the Petitioner companies. By order dated 3rd December 2012, this Court allowed the application and dispensed with the requirements of convening the meetings of the shareholders of the Petitioner companies. Further, the requirement of convening the meetings of the unsecured creditors of the Petitioner company 1, 3 & 4 and of the secured creditors of the Transferee company are also dispensed with. Further, this Court has directed the Transferor company 2 to convene the meeting of its unsecured creditors and to convene the meeting of unsecured creditors of the Transferee company. In compliance of the said order, the meetings were held on 9th February 2013. The Chairpersons have filed their respective reports of the meetings before this Court on 15th February 2013 whereby it has been stated that the proposed Scheme was unanimously approved, without any modification.

7. The Petitioner companies had thereafter filed the present Petition seeking sanction of the Scheme. By order dated 26th February 2013, notice in the petition was directed to be issued to the Regional Director ("RD") and the Official Liquidator ("OL"). Citations were also directed to be published in "The Indian Express" (English) and "Navbharat Times" (Hindi). An affidavit of service and publication has been filed by the Petitioner companies showing compliance regarding service of the petition on the RD and the OL and also regarding publication of citations in the aforesaid newspapers on 10th April 2013. Copies of newspapers, in original, containing the publication have been filed along with the said affidavit.

8. Pursuant to the notices issued, the OL sought information from the Petitioner companies. Based on the information received, he has filed his report dated 29th July 2013 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 Transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

9 In response to the notices issued, the RD has filed his affidavit/report dated 20th May 2013. Relying on the Scheme, he has stated that the Memorandum and Articles of Association of the company can be changed/altered only after following the procedure prescribed under the relevant provisions of the Act and the Transferee company may be asked to follow the procedure prescribed under the Act.

10 In reply to the above objection raised by the RD, authorized representative of the Transferee company filed an undertaking by way of affidavit dated 22nd May

2013 that the Transferee company will follow and comply with all the relevant provisions of the Act for changing/altering its Memorandum and Articles of Association. Hence, objection raised by the RD no longer survives.

11 No objection has been received to the Scheme from any other party. Mr. Rajib Routray, authorized representative of the Petitioner companies has filed an affidavit dated 21st May 2013 confirming that neither the Petitioner companies nor their counsel have received any objection from public pursuant to publication of citations in the newspapers.

12 In view of the approval accorded by the shareholders and creditors of the Petitioner companies; representation/reports filed by the RD and the OL to the proposed Scheme, there appears to be no impediment to grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner companies will comply with the statutory requirements in accordance with law.

13 The certified copy of the order shall be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of Section 391 and 394 of the Act and in terms of the Scheme, the whole or part of the undertakings, the properties, rights and powers of the Transferor companies shall 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 shall 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.

14 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.

15 Learned counsel for the Petitioners submits that the Petitioner companies would voluntarily deposit a sum of Rs. 1,00,000/- with the Common Pool Fund of the OL within three weeks from today. The statement is taken on record. The petition stands allowed in the above terms.

Order be given dasti.