(2008) 03 DEL CK 0244

In the Delhi High Court

Case No : Company Application (Main) No. 38 of 2008

In Re: Dhara Vegetable Oil and Foods Co. Ltd.

Date of Decision : 03-03-2008

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

Citation : (2008) 86 SCL 211

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Manoj Kumar and Shweta Bharti, for the Appellant;

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—This is a joint application u/s 391(1) read with Sections 393 and 394 of the Companies Act, 1956 (''the Act'') by applicants Dhara Vegetable Oil and Foods Company Ltd.(Transferor-company) and Mother Dairy Fruits and Vegetables Pvt. Ltd.(Transferee-company), seeking directions from the Court for convening, holding and conducting separate meetings of the shareholders, secured and unsecured creditors, which are statutorily required for sanctioning the scheme of amalgamation of applicant companies.

2. The registered office of the applicant/Transferor-company is situated at NDDB House, Safdarjung Enclave, New Delhi - 110029 and of the transferee-company is at Mother Dairy, Patparganj, Delhi - 110092, that is, within the jurisdiction of this Court.

3. The Board of Directors of the Transferor-company and the Transferee-company have passed separate resolutions approving the scheme of amalgamation of Transferor-company with the Transferee-company on 12-2-2008 and 14-2-2008 respectively, copies of which have been filed on record.

4. The Transferor-company and the Transferee-company have filed their respective Memorandums and Articles of Association along with the application. The audited balance sheets of Transferor-company and the Transferee-company as on 31-3-2007 have been filed on record.

5. The Transferor-company and Transferee-company have also filed the scheme of amalgamation and salient features of the amalgamation have been incorporated and detailed in the application.

6. The applicant companies have stated that no proceedings under Sections 235 to 251 of the Act are pending against the Transferor-company and Transferee-company.

7. The Applicant/Transferor-company was incorporated on 11-12-2000 and the authorized share capital of the Transferor-company is Rs. 450 crores divided into 45 crore equity shares of Rs. 10 each. The issued, subscribed and paid up share capital of the applicant/Transferor-company is Rs. 100,00,00,700 divided into 10,00,00,070 equity shares of Rs. 10 each.

8. The Applicant/Transferee-company was incorporated on 24-3-2000 and the authorized share capital of the Transferee-company is Rs. 417,00,00,000, divided into 41,70,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid up share capital of the Transferee-company is Rs. 150 crores divided into 15 crores equity shares of Rs. 10 each.

9. The applicant/Transferor-company has 7 shareholders. All the shareholders of the applicant/transferor-company have given their consent in writing to the scheme of amalgamation, which have been filed on record. Since the consents to the scheme of amalgamation have been filed on behalf of the respective shareholders of the applicant/transferor-company, thus it is just and appropriate to dispense with convening the meeting of the equity shareholders of the transferor-company to consider the scheme of arrangement.

10. The applicant/Transferee-company has 2 shareholders. Both the shareholders of the applicant/transferee-company have given their consent in writing to the scheme of amalgamation, which have been filed on record. Since the consents to the scheme of amalgamation have been filed on behalf of the respective shareholders of the applicant/transferee-company, thus it is just and appropriate to dispense with convening the meeting of the equity shareholders of the transferee-company to consider the scheme of arrangement.

11. The applicant/transferor-company has no secured creditors. Thus, it is just and appropriate to dispense with convening the meeting of the secured creditors of the transferor-company to consider the scheme of arrangement.

12. The applicant/Transferee-company has 7 secured creditors. All the secured creditors of the applicant/transferee-company have given their consent in writing to the scheme of amalgamation, which have been filed on record. Since the consents to the scheme of amalgamation have been filed on behalf of the respective secured creditors of the applicant/transferee-company, thus it is just and appropriate to dispense with convening the meeting of the secured creditors of the transferee-company to consider the scheme of arrangement.

13. The applicant/Transferor-company has 213 unsecured creditors in all. The

applicant has sought the holding of the meeting of its unsecured creditors for considering and if thought fit approving the scheme. Considering the facts and circumstances, the meeting of the unsecured creditors of the Transferor-company, be held on 19-4-2008 at 11.00 am, at Mother Dairy, Patparganj, Delhi-110092.1 appoint Ms. Maninder Acharya, Advocate Mobile No. 9810163078 as the Chairperson and Ms. Santosh Kohli, Advocate, Mobile No. 931300950, as the Alternate Chairperson for the meeting of the unsecured creditors of the Transferor-company. The quorum for the said meeting will be 60 unsecured creditors in number and 25 per cent of unsecured debt in value. The Chairperson and the Alternate Chairperson will ensure that the notices convening the meeting of unsecured 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 unsecured creditors of the Transferor-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 ''Statesman'' (English edition) and ''Amar Ujala'' (Hindi edition) in terms of the Companies (Court) Rules, 1959, at least 21 days before the day appointed for the meeting.

14. The fees of the Chairperson for the meeting aforesaid shall be Rs. 50,000 and the fees of the Alternate Chairperson 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 Chairperson shall also attend the meeting and assist the Chairperson in conducting the meeting and in filing the report.

15. The applicant/Transferee-company has 16841 unsecured creditors in all. The applicant has sought the holding of the meeting of its unsecured creditors for considering and if thought fit approving the scheme. Considering the facts and circumstances, the meeting of the unsecured creditors of the Transferee-company, be held on 19-4-2008 at 2.00 pm, at Mother Dairy, Patparganj, Delhi-110092.1 appoint Mr. Arun Kishore, Chartered Accountant Mobile No. 9811117590 as the Chairperson and Mr. Amrit Pal Singh Gambhir, Advocate, Mobile No. 9810182347 as the Alternate Chairperson for the meeting of the unsecured creditors of the Transferee-company. The counsel for the applicant has submitted that the sending of individual notices to the unsecured creditors whose credit is upto Rs. 25,000 be dispensed with as they collectively constitute only 3 per cent of the total value of the unsecured debt. It is submitted that these unsecured creditors are the rotational creditors/suppliers of milk and/or safal booth vendors having running account relationship with the transferee-company. Considering the facts and circumstances, I am of the view that the sending of individual notices to the unsecured creditors of the value upto Rs. 25,000 can safely be dispensed with considering the small amount of debt they represent and their stated association. However, all such unsecured creditors shall be entitled to attend and participate in the meeting. The quorum for the said meeting will be 400 unsecured creditors in number Constituting at least 15 per

cent of the value of total debt. The Chairperson and the Alternate Chairperson will ensure that the notices convening the meeting of unsecured 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 unsecured creditors of the Transferee-company who represent debt of Rs. 25,000 and above 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 ''Statesman'' (English edition) and ''Amar Ujala'' (Hindi edition) in terms of the Companies (Court) Rules, 1959, at least 21 days before the day appointed for the meeting. The notice should state that the copies of the proposed scheme of arrangement and amalgamation, the proxy forms and the statement u/s 393 of the Companies Act, 1956 can be obtained free of charge from the registered office of the applicant company.

16. Reconsidering the extremely large number of unsecured creditors of the Transferee-company, the fees of the Chairperson for the meeting aforesaid shall be Rs. 75,000 and the fees of the Alternate Chairperson shall be Rs. 60,000 in addition to meeting their incidental expenses. The Chairperson appointed by this Court shall file his report within two weeks from the date of holding of the meeting. The Alternate Chairperson shall also attend the meeting and assist the Chairperson in conducting the meeting and in filing the report.

17. In both 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 companies 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.

18. The Chairpersons and the Alternate Chairpersons shall be at the liberty to issue directions to the management of both the Applicant companies so that meetings of the unsecured creditors are conducted in a just, free and fair manner. Considering the large body of unsecured creditors who are likely to attend the aforesaid meetings, the applicants shall ensure adequate security, traffic and other arrangements, and for this purpose the SHO, of the local police station shall provide the necessary force and support.

The application is allowed in terms of the above order.

