

(2010) 07 KAR CK 0005
In the Karnataka High Court
Case No : COP No. 03 of 2010

In Re: Dusters Hospitality Services (P.) Ltd.

Date of Decision : 08-07-2010

Acts Referred:

Companies Act, 1956 — Section 391, 394, 97

Citation : (2010) 102 SCL 423

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : A. Murali, for the Appellant; Muthkur NA. Manohar, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—This petition is filed under Sections 391 to 394 of the Companies Act, 1956 (for short "the Act") by the petitioner - Dusters Hospitality Services Private Limited - Transferee-Company seeking sanction of scheme of arrangement produced at Annexure A to the petition by which the company M/s. Total Solutions Facility Management Private Limited - the transferor/demerged company is proposed to be merged with the petitioner-company.

2. The petitioner-company was incorporated on 8-5-2007 under the provisions of the Companies Act, 1956 with the Registrar of Companies. Karnataka at Bangalore having its registered office at No. 32, 2nd Floor. K.R. Colony, Domlur Layout, Domlur, Bangalore - 560071. The authorised share capital of the transferee-company is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each. Issued, subscribed and paid-up capital is Rs. 1,00,000 divided into 10,000 equity shares of Rs. 10 each fully paid-up.

3. The main objects of the petitioner-company as set out in its Memorandum and Articles of Association furnished at Annexure-B to the petition are, to act as professional consultants and undertake contracts in facility maintenance services like offices, administrative, buildings, Hospitals, any other commercial organizations support services, electromechanical maintenance, housekeeping of offices and etc.

4. The Board of Directors of the applicant company in its meeting held on 6-11-2009 have approved and accepted the scheme of arrangement by virtue of which the demerged undertaking of the transferor/demerged company will be demerged into the petitioner company subject to confirmation of this Court and the Hon'ble High Court of Judicature at Bombay, within whose jurisdiction the registered office of the transferor/demerged company are respectively situated.

5. This Court vide order dated 18-11-2009 passed in CA No. 810/2009 directed the applicant company to hold the meetings of the secured creditors and unsecured creditors. Accordingly, the Chairman appointed by this Court has filed the result of the meetings in the form of report stating that both secured and unsecured creditors have approved the scheme unanimously.

6. Thereafter, the present petition has been filed and this Court directed to issue notice to the Regional Director and directed the petitioner to take out advertisement of the petition in "The Hindu" and "Kannada Prabha" on or before 10-2-2010 fixing the date of hearing as 3-3-2010. Accordingly, the petitioner has furnished the copy of the "The Hindu" and "Kannada Prabha" both dated 5-2-2010 along with a memo dated 19-3-2010. Pursuant to the notice issued to the Regional Director, the Registrar of Companies, Karnataka has filed affidavit dated 20-4-2010 on behalf of the Regional Director with the following observations:

I. As the transferor-company has its registered office in the State of Maharashtra, the scheme is subject to sanction of the Hon'ble High Court at Bombay also.

II. The company has to increase its authorised capital to meet the requirement of issue of new equity shares to the members of the demerged company as required u/s 97 of the Companies Act, 1956.

7. The counsel for the petitioner has filed the affidavit dated 7-6-2010 in the form of reply to the affidavit filed by the Registrar of Companies wherein the petitioner company undertakes to increase the authorised capital, if the available authorised capital is not sufficient to allot the shares proposed to be issued to the shareholders of the demerged company.

8. Upon the scheme becoming effective, all employees of the Facility Maintenance Services (FMS) undertaking of transferor/demerging company in service on the effective date shall be deemed to have become the employees of the transferee-company with effect from the appointed date without any interruption in their service as a result of the transfer of the FMS undertaking to transferee-company on the same terms and conditions of employment as were with the transferor/demerged company. On the basis of continuity of service, the terms and conditions of their employment with transferee-company shall not be less favourable than those applicable to them with reference to the FMS undertaking of transferor/demerged company on the effective date.

9. Pursuant to the advertisement of the petition, no shareholders, creditors and

employees of the transferee-company have appeared and objected the proposed scheme of arrangement.

10. Heard learned Counsel for the petitioner and learned Central Government Standing Counsel and perused the entire papers.

11. In the circumstances, the petitioner has made out a case for sanction of scheme of arrangement at Annexure A. Hence, the following:

ORDER

(i) The company petition is allowed.

(ii) The scheme of arrangement at Annexure A to the petition is hereby sanctioned subject to sanction of scheme of arrangement by the High Court of judicature at Bombay in respect of the transferor/demerged company and the petitioner company complying with the observations made by the Registrar of the Companies, and the same shall be binding on the shareholders, creditors of the company and also on the said company.

(iii) The petitioner company shall file copy of this order with the Registrar of Companies, Karnataka and Registrar of Companies, Bombay within thirty days from the date of receipt of copy of this order.