

(2014) 12 DEL CK 0394
In the Delhi High Court
Case No : Co. Pet. 458/2014

In Re: Edini Steels Private Limited and Others

Date of Decision : 15-12-2014

Acts Referred:

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

Citation : (2014) 12 DEL CK 0394

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Rajeev Kumar and Mahesh Aggrawal, Advocates for the Appellant

Judgement

Sanjeev Sachdeva, J.

Co. Appl Nos. 2920/2014 (on behalf of Official Liquidator for condonation of delay)

This application is filed on behalf of the Official Liquidator for condonation of delay in filing, filing the report.

Learned Counsel for the Petitioner does not object to the delay being condoned.

In view of the above, the delay in filing the report is condoned, the report is taken on record.

The applications stand disposed.

Co. Appl Nos. 2921 /2014 (on behalf of Regional Director for condonation of delay)

This is an application filed on behalf of the Regional Director for condonation of delay in filing the report.

Learned Counsel for the Petitioner does not object to the delay being condoned.

In view of the above, the delay in filing the report is condoned, the report is taken on record.

The applications stand disposed.

1. This second motion petition has been filed under sections 391 & 394 of the Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of Edini Steels Private Limited (hereinafter referred to as Transferor Company) with Satish Autogas Private Limited (hereinafter referred to as the Transferee Company). (hereinafter collectively referred to as Petitioner Companies) A copy of the Scheme has been enclosed with the Petition.
2. The registered offices of the Transferor Company and Transferee Company are situated at New Delhi, within the jurisdiction of this Hon"ble Court.
3. Details with regard to the date of incorporation of the Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.
4. Copies of the Memorandum and Articles of Association as well as the latest audited Accounts for the year ending 31st March 2013 of the Petitioner Companies have also been enclosed with the Petition.
5. Copies of the Resolutions passed by the Board of Directors of the Transferor Company and Transferee Company approving the Scheme of Amalgamation have also been placed on record.
6. Learned Counsel for the Petitioner Companies submits that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Company.
7. The Petitioner Companies had earlier filed C.A (M) No. 111 of 2014 seeking directions of this Court for dispensation of meetings. Vide order dated 16.07.2014, this Court allowed the Application and dispensed with the requirement of convening meetings of Equity Shareholders of Transferor and Transferee Companies and Unsecured Creditors of Transferor Company. Since the Petitioner Companies had no Secured Creditors and the Transferee Company had no Unsecured Creditors, requirement for convening meeting of the same does not arise.
8. The Petitioner Companies has thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 28.07.2014, notice of the Petition was directed to be issued to the Official Liquidator, Registrar of Companies and The Central Government through Regional Director. Citations were also directed to be published in "Business Standard" (English) and "Business Standard" (Hindi). Affidavit of Service and Publication has been filed by the Petitioner Companies showing compliance regarding service of the Petition and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.
9. In response to the notice issued on the Petition, the Official Liquidator has

filed Report dated 20th October 2014. It has been stated that the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation. It has further been stated in the Report that the affairs of the Petitioner/Amalgamating Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the 2nd proviso of Section 394(1) of the Act.

10. In response to the notice issued on the Petition, the Learned Regional Director has filed Representation Affidavit dated 05.11.2014. Relying upon Clause 5.1 of Part B of the Scheme, the Regional Director has stated that all employees of the Transferor Company shall become the employees of the Amalgamated Company. Further, learned Regional Director submits that despite notice, Income Tax Authorities has not raised any observation with respect to the Scheme.

11. Further, learned Regional Director in his affidavit has observed in Para No. 10 that from the Balance Sheet as on 31st March 2013 of Edini Steels Private Limited (Transferor Company), the Company is having investment of Rs. 491 lacs in 879440 equity shares of Intec Capital Limited which is a listed company whereas as per Balance Sheet of the corresponding year of Intec Capital Limited, the Transferor Company is holding 855,440 equity shares in the said Company.

12. In response to the above said observation, the Petitioner Companies has filed an Affidavit stating that in the Balance Sheet of the Transferor Company as at 31.03.2013, it had by oversight, recorded its investment in Intec Capital Limited as 879,440 equity shares instead of 8,55,440 equity shares. The Petitioner Companies submits that as per the Balance Sheet of the Transferor Company as on 31.03.2014, the same has been rectified and has correctly been recorded at 8,55,440 equity shares in Intec Capital Limited. The Balance Sheet of the Transferor Company as on 31.03.2014 has been placed on record with the said affidavit.

13. In view of the above said clarification, the concern raised by the Learned Regional Director has been duly addressed.

14. No objection has been received to the Scheme from any other party. Mr. Khim Singh, Authorized Signatory of the Petitioner Companies, has filed an Affidavit dated 03.11.2014, confirming that neither the Petitioner Companies nor its Counsel has received any objection pursuant to citations published in the newspapers.

15. In view of the approval accorded by the shareholders of the Petitioner Company, Representation/Report filed by the Official Liquidator and the Regional Director, Northern Region and the submissions of the Petitioner Company, 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 391-394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance

with law.

16. Certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. 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 Company 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 Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without following the process of winding up.

17. 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 states that the Petitioner Company 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.