

(2014) 07 DEL CK 0143
In the Delhi High Court
Case No : Co. Pet. 230/2014

In Re: Enquest Offshore Private Limited

Date of Decision : 18-07-2014

Acts Referred:

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

Citation : (2014) 07 DEL CK 0143

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Ashish Middha, Advocate and Atma Sah, Assistant Registrar of Companies for the Regional Director Rajiv Behl, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.—This second motion joint Petition has been filed under sections 391 to 394 of the Companies Act, 1956 ("ACT"), seeking sanction to the Scheme of Amalgamation of Enquest Offshore Private Limited (Transferor Company) with EnQuest Petro Solutions Private Limited (Transferee Company) (Collectively referred as Petitioner Companies). A copy of the Proposed Scheme is filed along with the present petition.

2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The details of respective dates of incorporation of the petitioner companies, their authorised, issued, subscribed and paid up capital have been set out in the petition

4. The copies of the Memorandum and Articles of Association of the Petitioner Companies have been enclosed with the Petition.

5. The copies of resolutions passed by the Boards of Directors of the Petitioner Companies approving the scheme have also been filed along with the petition.

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 Companies.

7. The Petitioner Companies had earlier filed CA (M) 47 of 2014 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 14th March 2014, this Court allowed the Application and requirement of convening all the meetings of Shareholders and Creditors of the Transferor Companies and the Transferee Company were dispensed with.

8. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide order dated 22nd April, 2014, notice of the Petition was directed to be issued to the Regional Director, Northern Region, Ministry of Corporate Affairs, Noida and the Official Liquidator attached with this Court. Citations were also directed to be published in "Business Standard" (English and Hindi) editions. Affidavit of Service and Publication has 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 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, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, learned Official Liquidator has filed his report dated 11th July, 2014, 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 the Transferor Companies, which are subject matter of dissolution, do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per the second proviso of Section 394(1) of the Companies Act, 1956.

10. In response to the notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 10th July, 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services. Despite notice, the Income Tax Authorities have not raised any objection with regard to the scheme.

11. No objection has been received to the Scheme of Amalgamation from any other party. Ms. Mohinder Kaur, Director of the Petitioner Companies has filed an affidavit confirming that neither the Petitioner Companies nor their Counsel has received any objection pursuant to citations published in the newspapers.

12. 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.

13. Certified copy of the formal 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, all 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, 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 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 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. The Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 50,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The Statement is accepted.

16. The Petition is allowed in the above terms.