

(2012) 10 DEL CK 0242

In the Delhi High Court

Case No : CO. Petition 316 of 2012

In Re: Gibson Developers Pvt. Ltd. and Others

Date of Decision : 08-10-2012

Acts Referred:

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

Citation : (2012) 10 DEL CK 0242

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Mukesh Sukhija, 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

Indermeet Kaur, J.—This joint Petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 by the Petitioner Transferor Companies and Transferee Company seeking sanction of the Scheme of Amalgamation of M/s Gibson Developers Private Limited (Transferor Company No. 1), Suru Properties Private Limited (Transferor Company No. 2), GORDON Developers Private Limited (Transferor Company No. 3), Andros Properties Private Limited (Transferor Company No. 4), EDWARD Properties Private Limited (Transferor Company No. 5), Moore Developers Private Limited (Transferor Company No. 6), Zanskar Estates Private Limited (Transferor Company No. 7), Dhauladhar Projects Private Limited (Transferor Company No. 8), Richmond Infrastructures Private Limited (Transferor Company No. 9), Gordon Projects Private Limited (Transferor Company No. 10), Nene Properties Private Limited (Transferor Company No. 11), Deoria Estates Private Limited (Transferor Company No. 12), Dhauladhar Properties Private Limited (Transferor Company No. 13), Unitech Real-Tech Developers Private Limited (Transferor Company No. 14), Unitech Hitech Realtors Private Limited (Transferor Company No. 15), Levender Builders Private Limited (Transferor Company No. 16), Lavender Infra-Developers Private Limited (Transferor Company No. 17), Sibia Builders Private Limited (Transferor Company No. 18), Vostok Builders Private Limited (Transferor Company No. 19), Samus

Properties Private Limited (Transferor Company No. 20), Angers Properties Limited (Transferor Company No. 21), Cardus Properties Private Limited (Transferor Company No. 22), Sironi Properties Private Limited (Transferor Company No. 23), Cynara Airlines Private Limited (Transferor Company No. 24), Unitech Hi-Tech Infrastructures Private Limited (Transferor Company No. 25), Ficus Projects Private Limited (Transferor Company No. 26), Unitech Landmark Builders Private Limited (Transferor Company No. 27), Unitech Scotia Realtors Private Limited (Transferor Company No. 28), Unitech Simpson Projects Private Limited (Transferor Company No. 29), with Havelock Investments Limited (Transferee Company). The registered offices of the Petitioner Transferor and Transferee Companies are situated at New Delhi, within the jurisdiction of this Court.

2. Details with regard to the date of incorporation of Transferor and Transferee Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

3. Copies of the memorandum and Articles of Association as well as the latest audited Accounts as on 31st March, 2011 of the Petitioner Transferor and Transferee Companies have also been enclosed with the Petition.

4. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme of Amalgamation have also been placed on record.

5. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

6. So far as the share exchange, ratio for amalgamation is concerned, the Scheme of Amalgamation provides that, upon the Scheme finally coming into effect, the Transferee Company will not issue and allot any shares as the entire issued, subscribed and paid up share capital of Transferor Companies, is held by the Transferee Company or its nominees and shall stand cancelled upon the scheme becoming effective.

7. The Petitioner Companies had earlier filed CA (M) No. 106 Seeking directions of this Court for dispensation/convening of meetings. Vide order dated June 01, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders of Transferor Companies Nos. 1 to 29 and Transferee Company and also the Un-secured Creditors of the Transferor Companies (there being no un-secured creditors in Transferor Companies Nos. 14, 17 and 20) and the Transferee Company. While the Transferor Companies Nos. 1 to 29 and the Transferee Company had no Secured Creditor.

8. The Petitioner Transferor Companies and the Transferee Company have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated July 10, 2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region and the Official

Liquidator. Citations were also directed to be published in the "Statesman" (English, Delhi Edition) and "Veer Arjun" (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the petitioner 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 newspaper on September 19, 2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

9. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report dated October 03, 2012 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 Nos. 1 to 29 do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

10. In response to the notices issued in the Petition, Mr. Rakesh Chandra, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 18th September, 2012. Relying on Clause 7 of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the Transferor Companies Nos. 1 to 29 shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble Court.

11. No objection has been received to the Scheme of Amalgamation from any other party. Ms. Monika Kashyap, Authorized Signatory of the Petitioner Companies No. 1 to 17 and Transferee Company and Mr. Rishi Tandon, Authorized Signatory of the Petitioner Companies Nos. 18 to 29 have filed affidavit(s) dated 5th October, 2012 confirming that neither they nor the counsel for the Petitioner companies, Mr. Mukesh Sukhija, Advocate have received any objection pursuant to citations published in the newspapers.

12. In view of the approval accorded by the Shareholders and Citations 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. Certified copy of the order is to be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the Scheme, the whole or part of the undertaking, the property, rights and powers of the Transferor Company Nos. 1 to 29 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 Nos. 1 to 29 will be transferred to the Transferee Company without any further act or deed. 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.

13. Learned counsel for the Petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs. 1 lac in the Common Pool Fund of the Official Liquidator within three weeks from today. The statement is accepted. Petition is allowed in the above terms.

Order dasti.