

(2014) 09 DEL CK 0136
In the Delhi High Court
Case No : CO. PET. 577/2013
In Re: Golden Strand Pvt. Ltd.

Date of Decision : 19-09-2014

Acts Referred:

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

Citation : (2014) 09 DEL CK 0136

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Rajneesh Kumar Singh, Assistant Registrar of Companies, Rajiv Behl and Aditi Sharma, 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 of the Scheme of Amalgamation ("Scheme") of Golden Strand Pvt Ltd. (hereinafter referred to as Transferor Company No. 1) and Timeless Fashions Pvt Ltd (hereinafter referred to as Transferor Company No. 2) with Golden Trends Pvt Ltd. (hereinafter referred to as Transferee Company) (hereinafter all Companies collectively referred to as Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.

2. The registered office of the Petitioner Companies is situated at New Delhi, within the jurisdiction of this 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 as at 31st March 2012 of the Petitioner Companies have also been enclosed with the Petition.

5. 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.

6. It has been submitted 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 C.A (M) No. 111 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 6th September 2013, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders and Unsecured Creditors of the Petitioner Companies and the meeting of the sole Secured Creditor of the Transferor Company No. 1 is dispensed with. There are no Secured Creditor in Transferor Company No. 2 and the Transferee Company.

8. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide Order dated 8th November 2013, 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 "Business Standard" (English) and "Jansatta" (Hindi). 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 newspaper. Copies of the newspaper cuttings, in original, containing the publications have 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, the Official Liquidator has filed his Report dated 10th 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 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 2nd proviso of section 394(1) of the Act.

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 24th July, 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services.

11. The learned Regional Director in its Affidavit has raised a concern that the Appointed Date as per the Scheme is 01.04.2012 and since the Petitioner Companies have prepared their Balance Sheet and Profit and Loss Account on 31.03.2013 and filed the same with the Registrar of Companies, the Appointed Date be shifted to 01.04.2013 to avoid any revision of Balance Sheet and Profit and Loss Account and other returns including Income Tax Returns filed in the earlier period.

12. Learned Counsel for the Petitioners submits that the Appointed Date is 01.04.2012 and the Board of Directors have given their consent on 27.01.2013 and also the equity share holders have also approved the scheme during the Financial Year 2012-13.

13. Learned Counsel for the Petitioners further submits that all matters and events with respect to the approval of the present Scheme by the Petitioner Companies and its shareholders took place in financial year 2012-13 and accordingly, there is no justification whatsoever for any change in the Appointed Date as sought to be contended by the Regional Director.

14. In this regard, Learned Counsel relies upon the judgments of this court in Vodafone Spacotel Limited And Anr. Dated 03.07.2014 IN C.P. NO. 187 OF 2013 and of the Bombay High Court In M/s. Jindal Iron and Steel Dated 02.09.2004 IN C.P. NO.76 OF 2004 and of the Gujarat High Court In Shree Balaji Cinevision Dated 23.09.2009 IN O.J. Appeal No.65 OF 2009.

15. No objection to the Appointed Date has been raised by any shareholder or creditor of the Petitioner Companies. In view of the above, the facts do not necessitate any change in the Appointed Date as sought for by the Regional Director. However it is clarified that in case there is any necessity of filing of any revised returns with the Income Tax and other Authorities. The petitioner would also pay all requisite fees that may be payable in law for revising any returns and the Registrar of Companies and the Income Tax Authorities would also be at liberty to examine all returns on merits including the returns pertaining to the past periods as may be permissible in accordance with statutory provisions of the Companies Act and the Income Tax Act.

16. The learned Regional Director has stated that a letter has been written to the Income Tax Department. However, no objection has been received from the Income Tax Department.

17. In view of the aforesaid clarifications, the concerns of the Regional Director have been duly addressed.

18. No objection has been received to the Scheme from any other party. Ms. Malini Sud, Counsel for Petitioner Companies, has filed an Affidavit dated 03.09.2014 confirming that neither the Petitioner Companies nor she has received any objection pursuant to citations published in the newspapers.

19. 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.

20. 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 Companies 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 be transferred to the Transferee Company without any further act or deed.

21. 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 department which may be specifically required under any law.

22. Learned Counsel for the Petitioner states that 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.

23. The Petition is allowed in the above terms.