

(2014) 12 DEL CK 0079
In the Delhi High Court
Case No : Co. Pet. 399/2014

In Re: Greenwood Furnitures Private Limited

Date of Decision : 02-12-2014

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239
Companies Act, 2013 — Section 2(43)

Citation : (2014) 12 DEL CK 0079

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Praveen Kumar Mittal, Advocate, Rajneesh Kumar Singh, Assistant Registrar of Companies and Rajpal Singh, Deputy Official Liquidator, Advocate for the Appellant

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 Greenwood Furnitures Private Limited (hereinafter referred to as Transferor Company No. 1), Mahal Eatables Private Limited (hereinafter referred to as Transferor Company No. 2), (hereinafter referred to as the Transferor Companies) with Panchsheela Prop-Build Private Limited (hereinafter referred to as the Transferee Company) (hereinafter collectively all companies are 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 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 Petitioner Companies 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 Companies.

7. The Petitioner Companies had earlier filed C.A (M) No. 100 of 2014 seeking directions of this Court to dispense with the requirement of convening meetings of the Equity Shareholders. Vide order dated 29th May, 2014, this Court allowed the application and dispensed with the requirement of convening meetings of Shareholders of the Petitioner Companies. Since there were no secured and unsecured Creditors in Applicant Companies.

8. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 4th July, 2014, 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 "Statesman" (English, Delhi Edition) and "Veer Arjun" (Hindi, Delhi Edition). 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 newspapers 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 8th September 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 9th September 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. Further, it is submitted that despite notice, the Income Tax Authorities has not raised any observation with respect of the said Scheme.

11. The learned Regional Director in his Affidavit has observed that there is no mention in the Scheme whether the Petitioner Companies will comply with the Accounting Standard - 14 issued by the Institute of Chartered Accountants of India and the Petitioner Companies may be directed asked to comply with/adopt

accounting treatment as prescribed under Accounting Standard 14 and will comply with the provisions of section 2(43) of the Companies Act, 2013.

12. In response to the aforesaid observation, the Petitioner Companies have filed their Affidavit dated 10th September 2014 wherein they have undertaken to comply with Accounting Standard - 14 issued by the Institute of Chartered Accountants of India and the provisions of section 2(43) of the Companies Act, 2013.

13. Further, the learned Regional Director in his Affidavit has observed that in the Exchange Ratio, the valuation has been arrived at Net Assets Value Method on the basis of Balance Sheet as at 31.03.2013 and it has been observed that the face value of equity Shares of the Transferee Company is Rs.100/- each whereas in the petition as well as in the Scheme of Amalgamation, it has been shown as Rs. 10/- and the Petitioner Companies may be asked to file the amended Scheme of Amalgamation as well as Petition to rectify this mistake before sanction of Scheme of Amalgamation.

14. In response to the aforesaid observation, the Petitioner Companies have filed their Affidavit, wherein it is submitted that the Petitioner Companies have filed the correct Scheme of Amalgamation with the Company Application (Main) No. 100 of 2014 wherein the value of equity share of Transferee Company has been shown as Rs. 100/-. It is further stated that due to typographical mistake, the value of equity share of Transferee Company had been shown as Rs. 10/- instead of Rs. 100/- in the petition as well as Scheme of Amalgamation and the Petitioner Companies has moved the application for rectification of typographical mistake. By Order dated 26.11.2014, the application for amendment was allowed and the Petitioners were permitted to file the amended scheme. The amended Scheme has been filed by the Petitioners.

15. In view of the aforesaid clarification and undertaking and the concerns of the Regional Director have been duly addressed.

16. No objection has been received to the Scheme from any other party. Learned Counsel for the Petitioner Companies submits that neither she nor her clients have received any objection pursuant to the citations published in the newspapers.

17. 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.

18. 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.

19. 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.

20. Learned Counsel for the Petitioners 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.

21. The Petition is allowed in the above terms.