

(2014) 11 DEL CK 0094
In the Delhi High Court
Case No : Co. Pet. 407/2014

In Re. H.H. Auto Private Limited

Date of Decision : 18-11-2014

Acts Referred:

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

Citation : (2014) 11 DEL CK 0094

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Mukesh Sukhija, Advocate, Rajneesh Kumar Singh, Assistant Registrar of Companies and Rajiv Behl, Advocate for the Appellant

Judgement

Sanjeev Sachdeva, J.

CA No. 2641/2014 (application seeking condonation of delay on behalf of the Regional Director)

This is an application by the Regional Director seeking condonation of delay in filing the report.

Learned Counsel for the Petitioners submits that he has no objection to the delay being condoned.

The application is allowed and the delay in filing the report is condoned.

The report is directed to be taken on record.

CO Pet. 407/2014

1. This second motion joint petition has been filed under sections 391(2) & 394 of the Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of M/s. H H Auto Private Limited (hereinafter referred to as Transferor Company) with Viney Corporation Private Limited (hereinafter referred to as the Transferee Company) (hereinafter referred to as Petitioner Companies) . A copy of the Scheme has been enclosed with the Petition.

2. The registered offices of the Petitioner Companies 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 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. 98 of 2014 seeking directions of this Court for dispensation/convening the meetings. Vide order dated 28th May 2014, this Court dispensed with the requirement of convening meetings of Shareholders of the Petitioner Companies, the Secured Creditors and Un-secured Creditors of the Transferee Company. Since there were no Secured Creditors and Un-secured Creditors in the Transferor Company, requirement for convening a meeting of the same did not arise.

8. The Petitioner Companies has thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated 8th July 2014, notice in the petition was directed to be issued to the Registrar of Companies and the Central Government through Regional Director and the Official Liquidator. Citations were also directed to be published in "Business Standard" (English, Delhi Edition) and "Business Standard" (Hindi, Delhi Edition) . Affidavit of Service and Publication has been filed by the Petitioner Companies showing compliance regarding service of the petition on the Regional Director, Northern Region, the Registrar of Companies, 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 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 11th 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 Company 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 notices issued in the petition, Mr. A.K. Chaturvedi, learned

Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 5th November 2014. Relying on Clause 8 of the Scheme of Amalgamation he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the Transferor Companies 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. 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 has submitted that the Registrar of Companies has pointed out certain observations, which are found to be of serious nature and the Registrar of Companies has been requested to examine the balance sheets of the Transferor and the Transferee Companies on the non-invasive method for the last three years.

12. It is clarified that sanction of the Scheme will not come in the way of the Registrar of Companies examining the balance sheets of Transferor Company and Transferee Company on the non-invasive method for the last three years. It is further directed that in case any violation or breach of any statutory provision is found, the Transferee Company and/or the Directors or Officers of the Transferor Company and Transferee Company shall be liable irrespective of the sanction of the Scheme.

13. No objection has been received to the Scheme from any other party. Mr. Mahesh Agarwal, the Director of the Transferor Company and Mr. Anil Prakash Agarwal, Director of the Transferee Company have filed an affidavit dated 11th November 2014, confirming that neither the Petitioner Company nor its Legal Counsel has received any objection pursuant to the citations published in the newspapers.

14. 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.

15. 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.

16. 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.

17. Learned Counsel for the Petitioners states that the Petitioner Companies (collectively) 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.

18. The Petition is allowed in the above terms.