

(2012) 12 DEL CK 0340

In the Delhi High Court

Case No : Company Petition No. 404 of 2012

**In Re: Hovel Developers Private Ltd., Ace HR Services Pvt. Ltd. and
Railtech Infraventure Pvt. Ltd.**

Date of Decision : 13-12-2012

Acts Referred:

Companies Act, 1956 — Section 159, 220, 235, 236, 237

Citation : (2013) 112 CLA 643 : (2013) 178 CompCas 251 : (2013) 1 CompLJ 366

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : N. Kumar, Rajiv Bahl, S.K. Pradhan, Dy. Registrar on behalf, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This joint Petition has been filed under sections 391 & 394 of the Companies Act, 1956 by the Petitioner Companies seeking sanction to the Scheme of Amalgamation of M/s Hovel Developers Pvt. Ltd. & M/s Ace HR Services Pvt. Ltd., the transferor companies with M/s Railtech Infraventure Pvt. Ltd. The registered offices of all the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court. It has been submitted that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

2. The Petitioner Companies had earlier filed CA (M) 129 of 2012 seeking directions of this Court for dispensation/convening of meetings. Vide order dated August 17th, 2012, this Court allowed the Application and dispensed with the requirement of convening all the meetings of Shareholders and Creditors of the Applicant Transferor Companies and Transferee Company.

3. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide order dated September 3, 2012, notice of the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator attached with this Court. Citations were also

directed to be published in "Indian Express" (English, Delhi Edition) and "Jansatta" (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 newspaper. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

4. Pursuant to the notice issued, the Learned Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Learned Official Liquidator has filed his report dated December 10, 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, which is a 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.

5. In response to the notice issued in the Petition, Mr. Rakesh Chandra, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated December 7, 2012. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the staff/employees of both the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Hon'ble Court.

6. Under para 5 of the said report, Regional Director has further stated that on perusal of balance sheet as at 31.03.2011 of the transferor company no. 1, it was observed that the company had allotted 77,290 shares at a premium of Rs. 190 during the financial year 2010-2011. the net worth of the transferor company no. 1 as on 31.03.2010 was also calculated in the report of the Sh. Rakesh Chandra, Regional Director and stated further that the net worth per share of the transferor company no. 1 was Rs. 14.93 only and therefore, the equity capital raised as at 31.03.2011 could not command such high premium of Rs. 190 per share. Under para 6 of the said report, it is further stated by Sh. Rakesh Chandra, Regional Director that all the transferor and transferee companies have not filed their balance sheets as well as the annual returns for the year 2012 so far and thus, a contravention of provisions of Section 159/220 of the Companies Act was reported.

7. In response to the points raised by Sh. Rakesh Chandra, Regional Director, Sh. Ajai Kumar Bansal has filed his affidavit dated 12.12.2012 on behalf of the petitioner companies wherein it is stated that the transferor company no. 1 is a closely held private limited company in which neither any public is interested nor there is any guideline prescribed for fixation of premium on shares and the promoters, directors, their family members and close associates decided the premium on shares applying their wisdom considering their future plans of business. It is further submitted that all the three companies are under the same

management and all the shares in all the three petitioner companies are owned, controlled and held by the same family and their associates who have in their respective extra ordinary general meetings, after considering all relevant facts as regards the financial statements, net worth, share valuation report etc., have unanimously approved the scheme of amalgamation. Even the shareholders of transferee company have approved the same unanimously. Under para 7 of the said affidavit, the authorized signatory of the petitioner companies further states that annual general meeting of all the companies have already been held and the balance sheet and annual return of the transferee no. 1 has already been filed. It is further stated that transferor company no. 2 and the transferee company have obtained extension of two months for holding their annual general meetings from the Office of Registrar of Companies. The petitioner companies have also filed necessary documents along with the said affidavit in support of their submissions.

8. In view, of the aforesaid, the observations made by the regional Director no longer survives.

9. It is further submitted by the petitioner companies that no objection has been received to the Scheme of Amalgamation from any other party.

10. 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. 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 Companies be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Companies shall stand dissolved without winding up. 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.

11. The Petitioner Companies would voluntarily deposit a sum of Rs. One lac in the Common Pool fund of the Official Liquidator within three weeks from today. The Petition is allowed in the above terms.

Order Dasti.