(2014) 12 DEL CK 0118

In the Delhi High Court

Case No : Co. Pet. 388/2014

In Re: HRG Impex Pvt. Ltd.

Date of Decision : 23-12-2014

Acts Referred:
Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2014) 12 DEL CK 0118

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Ashim Sood, Rajiv Behl, Advocates and Atma Sah, Assistant Registrar, Advocate for the Appellant

Judgement

Sanjeev Sachdeva, J.

C.A No. 2914/2014 (application for condonation of delay on behalf of the Regional Director)

This is an application on behalf of the Regional Director seeking condonation of delay in filing reply. Learned counsel for the petitioners does not oppose the condonation of delay.

In view of the above, the application is allowed and the delay in filing the reply is condoned.

The reply is directed to be taken on record.

CO.PET.388/2014

1. 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 HRG Impex Pvt. Ltd (hereinafter referred to as the Transferor Company) with Bry-Air (Asia) Pvt. Ltd (hereinafter referred to as the 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 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. 84 of 2013 seeking directions of this Court for dispensation of the meetings. Vide Order dated 05.07.2013 this Court allowed the Application and dispensed with the requirement of convening meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Companies.

8. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide Order dated 08.07.2014, 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 "Indian Express" (English) and "Danik Bhaskar" (Hindi). 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 and to the Official Liquidator and also regarding Publication of Citations in the aforesaid newspapers on 09.10.2014. Copies of the newspapers cuttings, in original, containing the publications have been filed 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 30th 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 notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs, has filed his Affidavit/Report dated 15th October 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Company shall become the employees of the Transferee Company without any

break or interruption in their services.

11. Further, the learned Regional Director has submitted that Income Tax Department has observed that amalgamation is prima facie on the book value of lease hold land at Bhiwadi, Rajasthan amounting to Rs. 9,81,76,324/-.

12. It is directed that the Income Tax Authorities are at liberty to assess the income of the Transferor and Transferee Companies for the irrespective of the sanction of the Scheme and are also at liberty to examine the issue of valuation of the leasehold land and in case any tax liability arises, the Transferee Company shall be liable to pay the same, irrespective of the sanction of the Scheme.

13. It is further clarified that the sanction of the Scheme would not affect the powers of the Income Tax Department for recovery, including imposition of penalties, etc. as permissible under law.

14. In view of the aforesaid clarification and the concerns of the Income Tax Authorities have been duly addressed.

15. No objection has been received to the Scheme from any other party. The Counsel for Petitioner Companies, by an Affidavit dated 10th November 2014 has also confirmed that no objection has been received pursuant to the citations published in the newspapers.

16. 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.

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

18. 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.

19. 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.

20. The Petition is allowed in the above terms.

