(2012) 10 DEL CK 0048

In the Delhi High Court

Case No : Co. Application (M) No. 160 of 2012

In Re: International Airconditioning Product Pvt. Ltd., Systemair Software Private Ltd. and Systemair India Pvt. Ltd.

Date of Decision : 17-10-2012

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

Citation : (2012) 10 DEL CK 0048

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Abhishek Seth, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This is a first motion application under sections 391 to 394 of the Companies Act, 1956 filed by International Airconditioning Products Private Limited (hereinafter referred to as Transferor Company 1) and Systemair Software Private Limited (hereinafter referred to as Transferor Company 2) and Systemair India Private Limited (hereinafter referred to as Transferee Company) in respect of a Scheme of Amalgamation (Scheme for short) between the said Transferor Companies and the Transferee Company. Registered office of the Applicant Companies is situated in Delhi within the jurisdiction of this Court. Board of Directors of Applicant Companies have passed resolutions approving the proposed scheme and the said resolutions have been attached along with the present application.

2. Details with regard to the date of incorporation of the Applicant Companies and their authorized, issued, subscribed and paid up capital have been given in the present application.

3. Copies of the Memorandum and Articles of Association of the Applicant Companies have also been enclosed with the Application. The last audited Annual Balance Sheet along with the provisional balance sheets of the Applicant Companies have been enclosed with the Application.

4. Learned Counsel for the Applicant Companies submits that no proceedings u/s 235 to 251 of the Companies Act, 1956 are pending against the Applicant Companies.

5. The status of equity shareholders, secured and unsecured creditors of the Applicant Companies and the consents obtained by them for the proposed scheme is as below:

6. A prayer has been made for dispensation of the requirement of convening meeting of the Equity Shareholders of the Applicant Companies.

7. In view of the consent letters/NoC''s placed on record by the Applicant Companies, the meeting of the Equity Shareholders of the Applicant Companies are dispensed with.

8. The Applicant Transferor Company 1 has 1 (one) Secured Creditors. A prayer has been made for dispensation of the requirement of convening the meeting of the Secured Creditors of the Transferor Company 1. In view of the consent letters/NoC''s placed on record by the Applicant Transferor Company 1, the meeting of the Secured Creditors of the Applicant Transferor Company 1 is dispensed with.

9. The Applicant Transferor Company 2 has Nil Secured Creditors. Copy of the Certificate issued by the Chartered Accountant showing that the Applicant Transferor Company 2 does not have any Secured Creditors has been placed on record. In these circumstances, no meeting of the Secured Creditors of the Applicant Transferor Company 2 is required to be convened.

10. The Applicant Transferee Company has 2 (two) Secured Creditors and as on date, the said 2 (two) Secured Creditors have been paid off. A prayer has been made for dispensation of the requirement of convening meeting of the Secured Creditors of the Applicant Transferee Company. A Copy of the Certificate issued by the Chartered Accountant showing that the Applicant Transferee Company has paid off the said 2 (two) Secured Creditors has been placed on record. In these circumstances, no meeting of the Secured Creditors of the Applicant Transferee Company is required to be convened.

11. The Applicant Transferor Company 1 has 117 Unsecured Creditors out of which 94 have been paid off as on date by the Applicant Transferor Company 1. Out of remaining 23 unpaid unsecured creditors, 17 unsecured creditors have given their consents to the scheme. Learned Counsel of the Transferor Company 1 submits that out of the total unsecured creditors, 94.87% in numbers representing 99.25% in value have either been paid off or Consent Letters have been received. Therefore meeting of the Unsecured Creditors of the Transferor Company 1 may be dispensed with. In view of the aforesaid submissions, meeting of the Unsecured Creditors of the Applicant Transferor Company 1 is dispensed with.

12. The Applicant Transferor Company 2 has 3 (three) Unsecured Creditors. A

prayer has been made for dispensation of the requirement of convening meeting of the Unsecured Creditors of the Applicant Transferor Company 2. In view of the Consent letters/NoC''s placed on record by the Applicant Transferor Company 2, the meeting of the Unsecured Creditors of the Applicant Transferor Company 2 is dispensed with.

13. The Applicant Transferee Company has 210 Unsecured Creditors out of which 193 have been paid off as on date. Out of remaining 17 unpaid unsecured creditors, 11 unsecured creditors have given their consents to the scheme. Learned Counsel of the Transferor Company 1 submits that out of the total unsecured creditors, 97.14% in numbers representing 98.96% in value have either been paid off or Consent Letters have been received. Therefore meeting of the Unsecured Creditors of the Transferee Company may be dispensed with. In view of the aforesaid submissions, meeting of the Unsecured Creditors of the Transferee Company is dispensed with. The application stands allowed in the above terms.

Order Dasti.

