(2015) 09 DEL CK 0006

In the Delhi High Court

Case No : Company Application (Main) No. 138 of 2015

In Re: Jaisingh Wires Private Limited and Others

Date of Decision : 11-09-2015

Acts Referred:

Citation : (2015) 09 DEL CK 0006

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Mahesh Agarwal, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J—This application has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant/transferor company no. 5 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Jaisingh Wires Private Limited (hereinafter referred to as the transferor company no. 1); Polycab Wire Industries Private Limited (hereinafter referred to as the transferor company no. 2); Polycab Electrical Industries Private Limited (hereinafter referred to as the transferor company no. 3); Datar Nouveau Energietechnik Limited (hereinafter referred to as the transferor company no. 4); and Polycab Electronics Private Limited (hereinafter referred to as the applicant/transferor company no. 5) with Polycab Wires Private Limited (hereinafter referred to as the transferee company) and to dispense with the requirement of the transferee company to approach this Court for seeking sanction of the Scheme of Amalgamation.

2. The registered offices of the applicant/transferor company and the transferee company are situated at New Delhi, within the jurisdiction of this Court. However, the registered offices of the transferor company nos. 1 to 4 are situated at Maharashtra, outside the jurisdiction of this Court. Learned counsel for the applicant submitted that separate application has been filed by the transferor

company nos. 1 to 4 in the Bombay High Court for sanction of the Scheme of Amalgamation in their respect.

3. The applicant/transferor company no. 5 was originally incorporated under the Companies Act, 1956 on 11th November, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Vengaboys Electronics Private Limited. The company changed its name to Popli G Electronics Private Limited and obtained the fresh certificate of incorporation on 19th July, 2011. The company again changed its name to Polycab Electronics Private Limited and obtained the fresh certificate of incorporation on 21st June, 2014.

4. The present authorized share capital of the applicant/transferor company no. 5 is Rs. 15,00,00,000/- divided into 1,50,00,000 equity shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the company is Rs. 10,00,000/- divided into 1,00,000 equity shares of Rs. 10/- each.

5. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the applicant/transferor company no. 5 and the transferee company, along with the report of the auditors, have also been filed.

6. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is submitted by the applicant that all the transferor companies are wholly owned subsidiaries of the transferee company. It is claimed that the proposed amalgamation will result in simplicity & reduction in regulatory compliances which shall improve the compliance culture and governance structure and result in quick decision making. It is further claimed that the proposed amalgamation will result in improved financial efficiency i.e. financial resources shall be efficiently merged & pooled leading to more effective management of funds and rationalization of administrative & manpower expenses and overheads.

7. So far as the share exchange ratio is concerned, the Scheme provides that the transferor company is a wholly owned subsidiary of the transferee company, and the entire issued, subscribed and paid-up share capital of the transferor company is held by the transferee company. Therefore, the transferee company would not be required to issue and allot any shares to the shareholders of the transferor company and the shares so held by the transferee company shall stand cancelled and extinguished pursuant to implementation of the Scheme.

8. It has been submitted by the applicant that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or corresponding provisions under the Companies Act, 2013 are pending against the applicant/transferor company no. 5.

9. The Board of Directors of the applicant/transferor company no. 5 and the transferee company in their separate meetings held on 7th May, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the

Resolutions passed at the meetings of the Board of Directors of applicant/ transferor company no. 5 and the transferee company have been placed on record.

10. The applicant/transferor company no. 5 has 02 equity shareholders and 01 unsecured creditor. Both the equity shareholders and the sole unsecured creditor have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditor of the applicant/transferor company no. 5 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the applicant/transferor company no. 5, as on 31st May, 2015.

11. The applicant also seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its shareholders since all the transferor companies are wholly owned subsidiaries of the transferee company; no new shares will be issued by the transferee company in lieu of the shares of the transferor companies; and there will be no change in the control and management of the transferee company, therefore, the rights of the shareholders of the transferee company will not be affected in any manner whatsoever by the Scheme. It has been further submitted that aggregate of assets of all the companies are more than sufficient to meet their respective and combined aggregate liabilities towards their respective creditors. Therefore, the rights of the creditors of the transferee company will not be adversely affected.

12. In support of his submissions, learned counsel placed reliance on the judgments of several High Courts, including this Court, in many cases such as Prosell Field Marketing Pvt. Ltd. [CA(M) 63/2012]; Auto Tools India Pvt. Ltd. [CA(M) 41/2010]; In Re: Sharat Hardware Industries P. Ltd., (1978) 48 CompCas 23 ; Mahaamba Investments Ltd. Vs. IDI Limited, (2001) 105 CompCas 16 ; and Andhra Bank Housing Finance Limited Vs. Andhra Bank, (2003) 3 ALD 654 : (2004) 118 CompCas 295 : (2003) 47 SCL 513 , wherein it has been held that there is no requirement to file a separate or joint application on behalf of the transferee company for sanction of the Scheme.

13. I have carefully considered the aforesaid case laws cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of this settled legal position and considering the Scheme of Amalgamation, the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with.

14. The application stands allowed in the aforesaid terms.

