

(2014) 12 DEL CK 0242
In the Delhi High Court
Case No : CO.Pet. 571/2014

In Re: Lurgi India International Services Private Limited

Date of Decision : 19-12-2014

Acts Referred:

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

Citation : (2014) 12 DEL CK 0242

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Niraj Kumar, Achint Singh Gyani, Advocates, Rajneesh Kumar Singh, Assistant Registrar and D.P. Ojha, Official Liquidator, Advocate for the Appellant

Judgement

Sanjeev Sachdeva, J.—This second motion petition has been filed under sections 391 & 394 of the Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of Air Liquide Engineering India Private Limited (hereinafter referred to as Transferor Company) with Lurgi India International Services Private Limited (hereinafter referred to as the Transferee Company/ Petitioner Company) . A copy of the Scheme has been enclosed with the Petition.

2. The registered office of the Transferee Company is situated at New Delhi, within the jurisdiction of this Hon''ble Court. While the registered office of the Transferor Company is situated at Hyderabad, Telangana, outside the jurisdiction of this Hon''ble Court.

3. Learned Counsel for the Petitioner submits that the Transferor Company has filed a separate petition before the Hon''ble High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh.

4. Details with regard to the date of incorporation of the Petitioner Company, their authorized, issued, subscribed and paid up capital have been given in the Petition.

5. Copies of the Memorandum and Articles of Association as well as the latest audited Accounts for the year ending 31st March 2014 of the Petitioner Company have also been enclosed with the Petition.

6. Copies of the Resolutions passed by the Board of Directors of the Transferor Company and Transferee Company approving the Scheme of Amalgamation have also been placed on record.

7. Learned Counsel for the Petitioner Company submits that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Company.

8. The Petitioner Companies had earlier filed C.A (M) No. 122 of 2014 seeking directions of this Court for dispensation of meetings. Vide order dated 25.08.2014 This Court allowed the Application and dispensed with the requirement of convening meetings of Equity Shareholders of Transferee Company. Since the Petitioner Company had no Secured Creditors and Unsecured Creditors, requirement for convening meeting of the same does not arise.

9. The Petitioner Companies has thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 15.09.2014, notice of the Petition was directed to be issued to Registrar of Companies and the Central Government through Regional Director. Citations were also directed to be published in "Business Standard" (English) and "Business Standard" (Hindi) . Affidavit of Service and Publication has been filed by the Petitioner Companies showing compliance regarding service of the Petition and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

10. In response to the notice issued on the Petition, the Learned Regional Director has filed Representation Affidavit dated 02.12.2014. Relying upon Scheme, the Regional Director has stated that all employees of the Transferor Company shall become the employees of the Amalgamated Company. 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 in his Affidavit has observed that Petitioner Company has not filed its Balance Sheet for the Financial Year ending 31.03.2014. Hence, the Petitioner Company may be directed to file the due Balance Sheet.

12. In response, the Petitioner Companies filed reply affidavit, stating that the Petitioner Company has filed the Balance Sheet for the Financial Year ending 31.03.2014, placing on record the financial statement and Challan issued by the Ministry of Corporate Affairs.

13. In view of the above said clarification concern raised by the Regional Director has been duly addressed.

14. No objection has been received to the Scheme of Arrangement from any other party. Mr. Anil Mehra, Authorized Signatory of the Petitioner Company, has filed an Affidavit dated 02.12.2014, confirming that neither the Petitioner

Company nor its Counsel has received any objection pursuant to citations published in the newspapers.

15. In view of the approval accorded by the shareholders of the Petitioner Company, Representation/Report filed by the Regional Director, Northern Region and the submissions of the Petitioner Company, 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 391-394 of the Companies Act, 1956. The Petitioner Company will comply with the statutory requirements in accordance with law.

16. 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 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.

17. 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.

18. The Petition is allowed in the above terms.