(2013) 07 DEL CK 0017

In the Delhi High Court

Case No : CO. Appl (M) No. 81 of 2013

In Re: Madhusudan Auto Limited and Another

Date of Decision : 03-07-2013

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

Citation : (2013) 5 AD 527

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Ashok Sharma and Mr. Praveen Kumar Mittal, for the Appellant;

Final Decision : Allowed

Judgement

R.V. Easwar, J.—This first motion joint application has been filed under Sections 391 and 394 of the Companies Act, 1956 (''Act'') in connection with the Scheme of Arrangement (''Scheme'') of Madhusudan Auto Limited (hereinafter referred to as transferor Company'') and Strong Vintrade Private Limited (hereinafter referred to 33 Transferee Company'') [hereinafter collectively referred to as ''Applicant Companies'']. A copy of the proposed Scheme is enclosed with the application as Annexure-VII. The registered offices of the Applicant Companies are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court

2. The details of the dates of incorporation of the Applicant Companies, their authorized, issued, subscribed and paid up capital have been set out in the Affidavit in support of summons. It is further stated in the Affidavit that Transferee Company is the wholly owned subsidiary of the Transferor Company.

3. The copies of the Memorandum of Association and Articles of Association as well as the latest audited annual accounts for the year ended 31st March 2012 of the Applicant Companies have also been enclosed with the application as Annexure-I to II and III to IV respectively.

4. The learned counsel for the Applicant Companies submits that no proceedings under Sections 235 to 251 of the Act are pending against any of the Applicant

Companies as on the date of the application.

5. The proposed Scheme has been approved by the Board of Directors (''BoDs'') of the Applicant Companies. The copies of the board resolutions have been filed with the application.

6. The status of the shareholders, secured creditors, unsecured creditors and the unsecured debenture holders of the Applicant Companies and the consents obtained from them for the proposed Scheme is provided in the application which reads as under:-

7. A prayer is made in the application for dispensing with the requirement to convene the meeting of equity shareholders. It is stated that the said shareholders have duly given their no objection certificates for the approval of the proposed Scheme.

8. It is stated that the Transferor Company has 42 (Forty Two) unsecured creditors and 1 (One) unsecured debenture holder and the Transferee Company has 1 (One) unsecured creditor. Out of the 42 (Forty Two) unsecured creditors of the Transferor Company, 35 unsecured creditors in terms of number and more than 93 % in terms of debt have given their NOC to the Scheme. It is further stated that the unsecured debenture holder in the Transferor Company and the unsecured creditor in the Transferee Company have also given their NOC to the Scheme. Therefore, a prayer has been made for dispensation of the requirement of convening the meetings of the secured creditors and the unsecured creditors.

9. In view of the written consents/NOC obtained and averments made in the application, the requirement of convening the above said meetings are hereby dispensed with. Since there is no secured creditor in the Transferee Company, the question of convening their meeting does not arise. The Application stands allowed in the aforesaid terms.

Order be given dasti.

