

(2014) 07 DEL CK 0334
In the Delhi High Court
Case No : Co. Pet. 142/2014

In Re: Magic Eye Developers Private Limited

Date of Decision : 21-07-2014

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239
Income Tax Act, 1961 — Section 72A

Citation : (2014) 07 DEL CK 0334

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Santosh Kumar, Advocate, Atma Sah, Assistant Registrar and Rajiv Bhel, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.—This second motion joint Petition has been filed under sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as "Act"), seeking sanction to the Scheme of Amalgamation (hereinafter referred to as "Scheme") of Spire Developers Private limited (hereinafter referred to as "Transferor Company") with Magic Eye Developers Private Limited (hereinafter referred to as "Transferee Company") (hereinafter collectively referred to as "Petitioner Companies"). A copy of the proposed Scheme is filed along with the present petition.

2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The details of respective dates of incorporation of the Petitioner Companies, their authorised, issued, subscribed and paid up capital have been set out in the petition.

4. The copies of the Memorandum and Articles of Association of the Petitioner Companies have been enclosed with the petition.

5. The copies of resolutions passed by the Boards of Directors of the Petitioner Companies approving the Scheme have also been filed along with the petition.

6. Learned Counsel for the Petitioner Companies submits that no proceedings under Sections 235 to 251 of the Act is pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed CA (M) 82 of 2013 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 25th October, 2013, this Court allowed the application and requirement of convening all the meetings of shareholders and creditors of the Transferor Company. Since the Transferee Company has no secured creditor, hence the requirement of convening the meeting of the secured creditor does not arise. Further, this court dispensed with the requirement of convening meetings of shareholders and secured creditor of the Transferor Company. Since, none of the unsecured creditors had given their no objection to the Scheme, this Court directed to hold a meeting of the unsecured creditors of the Transferor Company. In pursuance of Order dated 25th October, 2013, a meeting of unsecured creditor of the Transferor Company was held in which all the unsecured creditors present in the meeting had casted their votes and none of the unsecured creditors voted against the proposed Scheme of Amalgamation. In this respect, a Chairman was appointed for the meeting vide Order 25th October, 2013. He submitted his report before this Hon"ble Court. Further this Court allowed the application.

8. The Petitioner Companies had thereafter filed the present petition seeking sanction to the Scheme of Amalgamation. Vide Order dated 28th February, 2014, notice of the petition was directed to be issued to the Regional Director, Northern Region, Ministry of Corporate Affairs and the Official Liquidator attached with this Court and the Registrar of Companies. Further, the citations were also directed to be published in The Statesman (English, Delhi Edition) and Veer Arjun (Hindi, Delhi Edition). An affidavit of service and publication has been filed showing compliance regarding service of the petition on the Regional Director, Northern Region, the Registrar of Companies and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper cuttings containing the publications have been filed along 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, learned Official Liquidator has filed his report dated 4th July, 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, which is subject matter of dissolution, 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 second 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 3rd July, 2014. In Para 4, of the Affidavit the Regional Director has mentioned the observation of the Income Tax Officer that "no business activities has been

performed by the company during the Financial Year 2011-12".

11. In response to the abovementioned observations, a submission along with affidavit dated 7th July, 2014 has been filed by Mr. Santosh Kumar, authorized signatory of the Petitioner Companies, wherein it is stated that the Transferee Company was incorporated on 18th April 2007 and the Business was duly Set up in Financial Year 2007-08, during which the Transferee Company, with the objective of conducting real estate business, entered into Agreements to Purchase Land and paid advances thereof. Further, the Company, during the Financial Year 2011-12, relevant to Assessment Year 2012-13, in fact, acquired lands through Registered Sale Deeds, applied for grant of Licences to Appropriate Authorities, to commence construction/Development of a Commercial Colony on land. The company being aggrieved against the Order of the ITO has preferred an appeal on 30th April before the Commissioner of Income Tax (Appeals) IX, New Delhi, which is pending Disposal.

12. The Regional Director submits that the Income Tax Authorities have framed the assessment in respect of Transferee Company for the assessment year 2012-2013 and the assessment order has resolved in an addition of Rs. 90,25,145/-. Learned counsel for the Transferee Company submits that the said assessment order has been challenged and an appeal has been filed against the assessment order for the year 2012-2013 and without prejudice to the said appeal, the Transferee Company, if it is held to be liable to pay additional tax, shall bear the said burden.

13. The Regional Director has further pointed out that the Income Tax Authorities have raised an issue that carry forward and set off of business losses of amalgamating company by the amalgamated company should be in accordance with provisions of Section 72A of the Income Tax Act, 1961.

14. Learned counsel for the petitioner submits that the Transferee Company shall claim set off or carry forward of business losses only in accordance with the provisions of Section 72A of the Income Tax Act, 1961 and all requisite formalities for set off of business losses shall be complied with in case any such setoff is claimed by the Transferee Company qua the losses of the Transferor Company.

15. The Regional Director submits that the Transferee Company should follow the provisions of the Companies Act, 1956 and the Companies Act, 2013 for the change/alternation of the name of the Company.

16. Learned counsel for the petitioner undertakes on behalf of the petitioner that the requisite statutory provisions for change/alternation of the name of the Company shall be complied with.

17. In view of the aforesaid clarification and undertaking given by the Petitioners, the concern of the Regional Director have been duly addressed.

18. No objection has been received to the Scheme of Amalgamation from any

other party. Mr. Ravinder Kumar Shukla, Director of the Petitioner Companies has filed an affidavit confirming that neither the Petitioner Companies nor their Counsel has received any objection pursuant to citations published in the newspapers.

19. 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 Act. The Petitioner Companies shall comply with the statutory requirements in accordance with law.

20. Certified copy of the formal 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 Act, all 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, 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.

21. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty 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.

22. The Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 75,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The Statement is accepted.

23. The Petition is allowed in the above terms.