

(2012) 12 DEL CK 0256

In the Delhi High Court

Case No : Co. Application (M) No. 196 of 2012

In Re: M/s. Rajkripal Timber Industries Pvt. Limited and M/s. Sanjay Kumar and Co. Exim Limited

Date of Decision : 21-12-2012

Acts Referred:

Companies Act, 1956 — Section 235, 251, 391, 394

Citation : (2012) 12 DEL CK 0256

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Abhay K. Das with Shabnam Shalini, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This is first motion Application u/s 391 and 394 of the Companies Act, 1956, (for short, the Act) in connection with the Scheme of Amalgamation/Merger (for short Scheme) between M/s. Rajkripal Timber Industries Pvt. Ltd. (hereinafter referred to as the Transferee Company) and M/s. Sanjay Kumar & Co. Exim Ltd. (hereinafter referred to as the Transferor Company) and the Scheme of Amalgamation/Merger provides for the merger of M/s Sanjay Kumar & Co. Exim Ltd. with the Transferee Company viz. M/s. Rajkripal Timber Industries Pvt. Ltd. A copy of proposed Scheme of Arrangement is filed along with the Application as Annexure "G" It is stated that the Registered Offices of Applicant/transferee company and Transferor companies are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

2. Mr. Abhay K. Das, Learned Counsel for the Applicant Company submitted that no proceedings u/s 235 to 251 of the Companies Act, 1956 are pending against the Applicant Company as on the date of the present Application.

3. The proposed Scheme has been approved by the Board of Directors of both the Applicant/Transferee Company as well as the Transferor Company. Copies of Board Resolutions have been filed along with the Application.

4. The status of the Shareholders, Secured and Un-secured Creditors of the Applicant/Transferee Company and the consents obtained from them for proposed Scheme is clearly apparent from the chart given below:

5. A prayer has been made for dispensation of the requirement of convening meetings of Shareholders and Creditors of the Applicant/Transferee Company.

6. In View of the consent letters/NOC/board resolutions placed on record by the transferor company and averments made in the Application, the requirement of convening separate meeting of the Shareholders of the Applicant/Transferee Company is dispensed with.

7. The consent given by the unsecured creditors are less than the required percentage of total value of unsecured creditors as required under the provision of companies Act, 1956. As on 31.03.12, the Transferee Company has 15 (Fifteen only as one of the creditors is Shri Ganesh Ji of Rs. 1.25 which is formal) Unsecured Creditors to whom an aggregate amount of Rs. 17,10,44,442.25 (Rupees seventeen crore ten Lac forty four thousand four hundred forty two & twenty five paise only) is due to be paid. Separate meeting of Unsecured Creditors of the Transferee Company is proposed to be held under the supervision of this Hon"ble Court.

8. Consequently, I direct that the meeting of the Unsecured Creditors of the Transferee Company shall be held on 16.02.2013 at registered office of the transferee company viz. 21/08, Ground Floor, West Patel Nagar, New Delhi-110008 at 1.00 pm.

9. Mr. Suchitra Chitale, Advocate, Cell No. 9811081135 is appointed as Chairperson and Ms. Manashi Pathak, Cell No. 9899382465 is appointed as Alternate Chairperson for the meeting of the Unsecured Creditors of the Transferee Company. They would be paid Rs. 50,000/- each. Ms. Arjun Ram, Cell No. 931038388 and Ms. Rupa, Cell No. 9810274229 shall provide secretarial assistance to the Chairperson and they shall be paid fee of Rs. 10,000/- each for this purpose.

10. Notices for the meeting of the Unsecured Creditors of the Transferee Company shall be published in the Delhi edition of The Statesman (English, Delhi edition) and Veer Arjun (Hindi, Delhi edition). The said notices shall be published a minimum 21 days in advance before the scheduled date of the meeting.

11. Alternatively, individual notices for the proposed meeting of the Unsecured Creditors of the Transferee Company would be sent by ordinary post minimum 21 days in advance before the scheduled date of meeting. The Chairperson shall ensure that the dispatch is made under his/her supervision or his authorized representative.

12. The quorum for the meeting for the Unsecured Creditors of the Transferee Company is fixed as follows:

13. It is also directed that if the quorum is not present in the meeting, then the meeting would be adjourned for 30 minutes and thereafter, the persons present in the meeting would be treated as proper quorum.

14. Voting by proxy is permitted provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote in the aforesaid meeting or by his authorized representative, is filed with the company at its registered office, not later than 48 hours before the said meeting.

15. The Chairperson shall file his report within two weeks of the conclusion of the said meeting.

16. Transferee Company does not have any secured creditors. Copy of the certificate issued by the Chartered Accountant showing that the Transferor Company does not have any Secured Creditors have been placed on record. In these circumstances, no meeting of secured creditors of the Transferee Company is required to be convened. The Application stands allowed in the aforesaid terms.