(2012) 12 DEL CK 0257

In the Delhi High Court

Case No : Company Petition No. 423 of 2012

In Re: Mundra Credit and Investment Pvt. Ltd.

Date of Decision : 18-12-2012

Acts Referred:
Companies Act, 1956 — Section 235, 251, 391, 394

Citation : (2012) 12 DEL CK 0257

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Ashish Aggarwal, K.S. Pradhan, Deputy Registrar of Companies, Rajiv Bahl, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This Second motion joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter Co. P. No. 423 of 2012 referred to as "Act") by the petitioner Companies seeking sanction of the Scheme of Arrangement (hereinafter referred to as "Scheme"). The petitioner companies had earlier filed C.A. (M) No. 126 of 2012 seeking directions of this Court for dispensation of the meetings. Vide Order dated 28.08.2012 this court allowed the application and dispensed with the requirement of convening meetings of Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Companies. The registered offices of the Transferor and Transferee Company are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

2. Details with regard to the date of incorporation of Transferor and Transferee Companies, their authorized, issued, subscribed and paid up capital have been given in the petition.

3. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2012 of both the Applicant Companies have also been filed alongwith the Application bearing Co. Appl.(M) No. 126 of 2012.

4. Learned Counsel for the Applicant Companies submits that no proceedings under Sections 235 to 251 of the Companies Act are pending against either of the Applicant Companies.

5. The proposed Scheme has been approved by the Board of Directors of both the Applicant Companies. Copies of the Board Resolutions have been filed along with the Application bearing Co. Appl.(M) No. 126 of 2012. As per the Scheme the Transferee M/s. Mundra Credit and Investment Pvt. Ltd. shall allot to the Shareholders of Transferor Company i.e. Kinsfolk Industries Pvt. Ltd. 7 equity shares of Rs. 10/- each in equity capital of Transferee Company, Mundra Credit and Investment Pvt. Ltd., as fully paid up for every 10 paid up equity shares of Rs. 10/- each held by them in the Transferor Company i.e. Kinsfolk Industries Pvt. Ltd.

6. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 10.09.2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region, the Official Liquidator Citations were also directed to be published in "Times of India" (English, Delhi Edition) and "Veer Arjun" (Hindi, Delhi Edition). Affidavit of service and publication has been filed by the petitioners showing compliance regarding service of the Co. P. No. 423 of 2012 on the Regional Director, Northern Region and the Official Liquidator and also regarding Publication of Citations in the aforesaid News papers on 09.10.2012, copies of the news papers cuttings, in original, containing the publications have been filed with the affidavit of service.

7. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received the official liquidator has filed his report dated 15.12.2012 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 do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

8. Ms. Gurkamal Hora Arora, counsel for the petitioner company has filed an affidavit dated 07.12.2012 confirming that neither the petitioner companies nor their Legal Counsel has received any objection pursuant to the citations published in the Newspapers.

9. In response to the notices issued in the petition, Mr. R.K. Chandra, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 23.11.2012. In Para 5, of the Affidavit of the Learned Regional Director, it has been observed that the Petitioner Companies are Non Banking Finance Companies and registered with the Reserve Bank of India and may be required to give an undertaking for compliance of all the Rules and Regulations of the Reserve Bank of India being the concerned regulator of its activities for proposed amalgamation.

10. In response to the above mentioned observations an affidavit-cum-undertaking has been filed on 10.12.2012 by Mr. Ashok Kumar Kathuria, Director of the petitioner no. 1 company, undertaking that the Transferee Company will comply with all the Rules and Regulations of Reserve Bank of India. In view of the above said undertaking, the observation made by the Regional Director no longer survive.

11. In view of the approval accorded by the Shareholders and Creditors of the petitioner Companies, representations/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the Scheme of Arrangement u/s 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with Law. Certified copy of the order be filed with the Registrar of Companies within 30 days from receipt of the same. In terms of the provisions of Section 391 and 394 of the Companies Act, 1956 and in terms of the Scheme, the whole or part 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.

12. 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. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up. 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. Learned counsel for the petitioners states that the petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool Fund of the Official Liquidator within three weeks from today. The statement is accepted. The petition is allowed in the above terms.

Order dasti.