

(2014) 09 DEL CK 0191
In the Delhi High Court
Case No : CO.PET.335/2014

In Re: Palm Greens Infrastructures Private Limited

Date of Decision : 16-09-2014

Acts Referred:

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

Citation : (2014) 09 DEL CK 0191

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Mukesh Sukhija, Advocate, Rajneesh Kumar Singh, Assistant Registrar of Companies, S.B Gautam, Official Liquidator, 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 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of M/s. Palm Greens Infrastructures Private Limited (hereinafter referred to as Transferor Company No. 1), Arcon Properties Private Limited (hereinafter referred to as Transferor Company No. 2), Arcplan Properties Private Limited (hereinafter referred to as Transferor Company No. 3), D D Pal Builders Private Limited (hereinafter referred to as Transferor Company No. 4) with Pal And Paul Builders Limited (hereinafter referred to as Transferee Company) (hereinafter all Companies collectively referred to as Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.

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

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

4. Copies of the Memorandum and Articles of Association as well as the latest audited Accounts as at 31st March, 2013 of the Petitioner Companies have also

been enclosed with the Petition.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme of Amalgamation have also been placed on record.

6. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed C.A (M) No. 77 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 30th April, 2014, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders of the Petitioner Companies. In view of the written consent/NOC given by the sole Secured Creditor and 20 out of 39 Unsecured Creditors (being 90.14% in value) in the Transferee Company, the meetings of Secured and Unsecured Creditors of the Transferee Company were dispensed with. Since there are no Secured or Unsecured Creditors in either of the applicant Transferor Companies No. 1 to 4, the question of convening the meeting of Secured and Unsecured Creditors in the Applicant Transferor Companies No. 1 to 4 did not arise.

8. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide Order dated 22nd May 2014, notice in the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in the "Business Standard" (English, Delhi Edition) and "Business Standard" (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspaper. Copies of the newspaper cuttings, in original, 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, the Official Liquidator has filed his Report dated 2nd September 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 Companies 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 2nd 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 29th August 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services.

11. The learned Regional Director has stated that a letter has been written to the Income Tax Department. However, no objection has been received from the Income Tax Department.

12. No objection has been received to the Scheme from any other party. Mr. Pawan Kumar, the Director of the Transferor Company No. 1 & Mr. Daljit Singh Pal Transferor Company No. 2, 3, 4 and the Transferee Company given their affidavit dated 30th August 2014 confirming that neither the Petitioner Transferor Company No. 1 nor their Counsel has received any objection pursuant to citations published in the newspapers.

13. 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 Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

14. 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 or part of the undertaking, the property, rights and powers of the Transferor Companies 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 Companies be transferred to the Transferee Company without any further act or deed.

15. 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 department which may be specifically required under any law.

16. Learned Counsel for the Petitioner states that the Petitioner Companies (collectively) 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.

17. The Petition is allowed in the above terms.