(2012) 08 DEL CK 0237

In the Delhi High Court

Case No : Company Petition No. 223 of 2012

In Re: Pragati Fabrication Pvt Ltd. and Shiva Auto Car (India) Pvt. Ltd.

Date of Decision : 27-08-2012

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

Citation : (2012) 08 DEL CK 0237

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Sanjay K. Maria, Mr. K.S. Pradhan, Deputy Registrar of Companies for RD NR and Mr. Rajeev Bahl, for Official Liquidator, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—The present joint second motion Petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (for short "the Act") for sanction to the Scheme of Amalgamation of PRAGATI FABRICATION PVT LTD., (hereinafter referred to as the Transferor Company) with SHIVA AUTO CAR (INDIA) PVT LTD (hereinafter referred to as the Transferee Company). The registered offices of the Transferor Company and Transferee Company are situated at New Delhi, within the jurisdiction of this Court.

2. The Transferor Company was incorporated under the Companies Act, 1956 on 23 August 1989 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

3. The Transferee Company was incorporated under the Companies Act, 1956 on 31 March 2008 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

4. The Authorized Share Capital of Transferor Company is Rs. 55,00,000/- (Rs. Fifty Five Lakh only) divided into 5,50,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-Up Capital of Transferor Company is Rs. 53,00,000/- (Rs. Fifty Three Lakh Only) divided into 5,30,000 Equity Shares of Rs. 10/- each fully paid-up.

5. The Authorized Share Capital of Transferee Company is Rs. 50,00,000/- (Rs. Fifty Lakh only) divided into 5,00,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-Up Capital of Transferor Company is Rs. 42,00,000/- (Rs. Forty Two Lakh Only) divided into 4,20,000 Equity Shares of Rs. 10/- each fully paid-up.

6. The copies of the Memorandum and Articles of Association of the Transferor Company and Transferee Company have been filed on record. The Audited Balance Sheet as on 31st March, 2011 of the Transferor Company and Transferee Company, along with the report of the Auditors, have also been filed.

7. The Transferor Company and Transferee Company are closely held companies and their shares are not listed on any Stock Exchange.

8. A copy of the Scheme has been placed on record and the salient features of the Scheme have been incorporated and detailed in the Petition. It is claimed by the Petitioner Companies that the Scheme will result in pooling of their financial, commercial and other resources, economies of scale and reduction of overheads. It is further claimed that with enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility and strength to meet requirements for further growth of business activities.

9. It is stated that the Transferee Company will issue Two Hundred Thirty Four (234) Equity Shares of the Transferee Company of the face value of Rs. 10/- each credited as fully paid-up in the capital of the Transferee Company to the Shareholders of Transferor Company whose names are recorded in its Register of Members on a date (Record Date) to be fixed by the Board of Directors of the Transferee Company for every One Hundred (100) Equity share of Rs. 10/- each held by the said Shareholders in the Transferor Company.

10. It has been submitted that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner Companies.

11. The Board of Directors of the Transferor Company and Transferee Company in their separate meetings have unanimously approved the proposed Scheme. Copies of the Resolutions passed at the meetings of the Board of Directors of the Transferor Company and Transferee Company have been placed on record.

12. The Petitioner Companies had earlier filed CA (M) No. 76 of 2012 seeking directions of this Court to dispense with the requirement of convening meetings of the Equity Shareholders and Secured and Unsecured Creditors of the Petitioner Companies. Vide order dated 23 April 2012, this Court allowed the application and dispensed with the requirement of convening meetings of Shareholders and of the Secured and Unsecured Creditors of the Petitioner Companies.

13. The Petitioner Companies have thereafter filed the present joint Petition seeking sanction of the Scheme. Vide order dated 14 May 2012, 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 Business

Standard (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 Petition on the Regional Director, Northern Region and the Official Liquidator and also regarding publication of citations in the aforesaid newspapers. Copies of the newspapers cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

14. Pursuant 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 09.8.2012 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 their members, creditors or to public interest.

15. In response to the notice issued in the Petition, the Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 25 July 2012. Relying on Clause 7.2 of Part-III of the Scheme, he has stated that all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court. The Regional Director (NR) has stated in the affidavit that in the Scheme, there is no mention whether the petitioner companies have complied with the Accounting Standard-14 issued by the Institute of Chartered Accounts of India. The petitioner Companies have in their affidavit dated 09.8.2012 stated that the Clause 5.1 of the Scheme clearly states about the compliance of Accounting Standard- 14; this objection is thus baseless. The Regional Director (NR) has also stated that the memorandum of association (MOA) of a company can be altered only after following the procedure prescribed under the provisions of the Companies Act, 1956 which the petitioner companies have not specified. The petitioner companies in their affidavit dated 09.8.2012 have undertaken to comply with the procedures prescribed under the provisions of the Companies Act, 1956. Accordingly there is no merit in these objections.

16. No objection has been received to the Scheme from any other party. Mr. Anil Kumar Garg, Director of the Petitioner Companies has filed an affidavit dated 09.08.2012 confirming that the Petitioner Companies have not received any objection pursuant to citations published in the newspapers. Similarly, Mr. Sanjay Kr Maria, Counsel has also filed an Affidavit dated 09.08.2012 to this effect.

17. Even today, during the course of hearing, Mr. Rajeev Bahl, learned counsel for Official Liquidator and Mr.K.S.Pradhan, Deputy Registrar of Companies appearing for Regional Director, Northern Region state that they have no objection to the present Scheme being sanctioned.

18. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; affidavit/report filed by the Regional Director, Northern

Region and the Official Liquidator attached with this Court to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner Companies will comply with the statutory requirements in accordance with law.

19. A certified copy of the Order shall be filed with the Registrar of Companies, NCT of Delhi and Haryana within 30 days from the date of receipt of certified copy of the same. In terms of the provisions of Sections 391 and 394 of the Act, all the properties, 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. 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.

20. Mr. Sanjay Kr Maria, learned counsel states that the Petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- with the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted. The petition is allowed in the above terms.

Order Dasti.