

(2014) 10 DEL CK 0045
In the Delhi High Court
Case No : C.O. Pet. 352/2014

In Re: R.E. Rogers India Pvt. Ltd.

Date of Decision : 28-10-2014

Acts Referred:

Companies Act, 1956 — Section 100, 101, 102, 103, 104
Income Tax Act, 1961 — Section 2(19AA)

Citation : (2014) 10 DEL CK 0045

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

**Advocate : Rajeev K. Goel, Advocate and Atma Sah, Assistant Registrar,
Advocate for the Appellant**

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 Arrangement ("Scheme") for De-merger of Real Estate Business of R E Rogers India Pvt. Ltd (hereinafter referred to as Demerged Company) into Arya RKR India Pvt. Ltd. (hereinafter referred to as Resulting Company) (hereinafter 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. Learned Counsel for the Petitioner Companies submits 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) 61 of 2014 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 4th April, 2014, this Court allowed the Application and requirement of convening meetings of Shareholders of the Demerged Company and the Resultant Company were dispensed with. The Resultant Company does not have any Secured and Un-secured Creditors. This Court further directed for convening a meeting of Un-secured Creditors of the Demerged Company under its supervision to consider and approve the proposed Scheme of Arrangement. In compliance with the order of this Court, meeting of Un-secured Creditors of the Demerged Company was duly convened and held on 17th May, 2014 under the supervision of this Court and the Scheme of Arrangement was unanimously approved and adopted in the said meeting.

8. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Arrangement. Vide order dated 26th May, 2014, notice of the Petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in "Business Standard" (English, Delhi Edition) and "Dainik Bhaskar" (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 also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

9. In response to the notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 18th September, 2014. Relying on the Scheme of Arrangement, he has stated that, upon sanction of the Scheme, all the employees of the Demerged Business of the Demerged Company shall become the employees of the Resultant Company without any break or interruption in their services. Further Learned Regional Director submits that despite of notice, Income Tax Authorities has not raised any observation with regard to the Scheme.

10. Further learned Regional Director in its Affidavit dated 18th September 2014 has raised an observation that certain charges are proposed to be transferred from the Demerged Company to the Resulting Company. Name of the Company cannot be substituted in the Charge Documents filed with the ROC, hence the Petitioner Demerged Company and Resultant Company may be asked to file necessary forms for satisfaction and creation of charge.

11. In response to the aforesaid observation the Petitioner Demerged Company in the Reply Affidavit dated 16th October, 2014, has submitted that charge has been created on some assets of the Demerged Company which are proposed to

be demerged into the Resultant Company pursuant to the Scheme of Arrangement. The Resultant Company will have to create charge in favour of the lenders and file necessary form(s) with the Registrar of Companies. Further learned Counsel for petitioners submits that Para 2.1.5 of the Scheme of Arrangement already provides that the Demerged Company and Resultant Company will file requisite form(s) with the Registrar of Companies for creation, modification and/or satisfaction of charge(s), to the extent required, to give effect to the provisions of the Scheme. The Petitioners have confirmed and undertaken that necessary forms will be filed with the ROC by the Demerged and Resultant Companies with regard to creation, modification or satisfaction of charges, to the extent required.

12. Further learned Regional Director in its affidavit has raised another observation that Para 2.1.6 of part 2 of the Scheme provides that de-merger shall be in accordance with section 2(19AA) of the Income Tax Act, 1961. The Petitioner Companies may be asked to submit an undertaking to comply with the conditions of Section 2(19AA).

13. In response to the aforesaid observation the Petitioner Demerged Company in the Reply Affidavit has submitted that with regard to the provisions of section 2(19AA) of the Income Tax Act, 1961, it was submitted that the Scheme of Arrangement already provides that the de-merger shall be in accordance with section 2(19AA) of the Income Tax Act, 1961 and other applicable provisions, if any. It is further submitted that the Petitioners have again confirmed and undertaken that the Petitioner Companies will comply with all the conditions of section 2(19AA) of the Income Tax Act, 1961 relating to the Demerger.

14. In view of the aforesaid clarifications and undertaking given by the Petitioners, that the concerns raised by the learned Regional Director have been duly addressed.

15. No objection has been received to the Scheme of Arrangement from any other party. Mr. Raj Kumar Sharma, Whole Time Director of the Demerged Company has filed an affidavit confirming that neither the Petitioner Companies nor their Counsel has received any objection pursuant to citations published in the newspapers.

16. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/report filed by the Regional Director, Northern Region 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 under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

17. 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; 100 to 104 of the Companies Act, 1956, all the property,

rights and powers of the Real Estate Business of the Demerged Company be transferred to and vest in the Resultant Company without any further act or deed. Similarly, all the liabilities and duties of the Real Estate Business of the Demerged Company be transferred to the Resultant Company without any further act or deed.

18. 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.

19. The Petition is allowed in the above terms.