

(2014) 09 DEL CK 0322
In the Delhi High Court
Case No : CO. APPL (M) No. 115/2014
In Re: RPS Vikas Casting Private Limited

Date of Decision : 04-09-2014

Acts Referred:

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

Citation : (2014) 09 DEL CK 0322

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Shankh Sengupta and Srishti Jain, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.—This is a first motion joint application under Sections 391 and 394 of the Companies Act, 1956 ("Act") in connection with the Scheme of Amalgamation ("Scheme") of RPS Vikas Castings Private Limited (hereinafter referred to as the Transferor Company) and Garima Vikas Metals Private Limited (hereinafter referred to as the Transferee Company) (hereinafter collectively referred to as Applicant Companies). A copy of the proposed Scheme is enclosed with the application.

2. The registered offices of both the Applicant Companies are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

3. The details with regard to the date of incorporation of the Applicant Companies, their authorized, issued, subscribed and paid up capital have been given in the Application.

4. Copies of the Memorandum and Articles of Association as well as the Annual Accounts for the year ended 31st March, 2013 of both the Applicant Companies have also been enclosed with the Application.

5. Learned Counsel for the Applicant Companies submits that no proceedings under sections 235 to 251 of the Act are pending against any of the Applicant Companies as on the date of the present Application.

6. 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.

7. The status of the Shareholders, Secured and Unsecured Creditors of the Applicant Companies is apparent from the chart given in the Application which is as below:-

8. In view of the above, a prayer has been made for dispensation of the requirement of convening meetings of Secured Creditors of the Applicant Companies.

9. In view of the written consent/NOC given by the sole Secured Creditor of Transferor Company, namely Oriental Bank of Commerce, the requirement of convening a meeting of the Secured Creditor of the Transferor Company is dispensed with. As there is no resolution of the Board of Directors accompanying the said consent/NOC, the Transferor Company is directed to issue specific notice to the said Secured Creditor at the time of moving of the second motion calling for their objection, if any, to the Scheme.

10. In view of the written consents/NOC given by one out of three Secured Creditors of the Transferee Company (i.e. State Bank of Bikaner and Jaipur), constituting 90.8% of the value, the requirement of convening a meeting of the Secured Creditors of the Transferee Company is dispensed with. As there is no resolution of the Board of Directors accompanying the said consent/NOC, the Transferee Company is directed to issue specific notice to all the Secured Creditors at the time of moving of the second motion calling for their objection, if any, to the Scheme.

11. While, substantial number of shareholders and unsecured creditors of the Applicant Companies have given their written consents/NOC, the said shareholders and unsecured creditors of the Applicant Companies have not accompanied the written consents/NOC with a board resolution authorizing each of them to issue the written consent/NOC. A prayer has been made for (a) requirement of convening separate meetings of the Shareholders and Unsecured Creditors of the Transferor Company and (b) for convening meetings of the Shareholders and Unsecured Creditors of the Transferee Company.

12. It is directed that the meeting of the Shareholders of the Transferor Company shall be held on 30th October, 2014 at 2:00 P.M. at Apsara Grand Banquets, A-1/20 B, Pashchim Vihar, Rohtak Road, New Delhi, Near Metro Station Pashchim Vihar (West), Pillar No. 255, under the supervision of the Court. Ms. Hina Bhargava, Advocate Cell No. 9810467055 is appointed as the Chairperson and Ms. Ushma Malik, Advocate Cell No. 9999202372 is appointed as the Alternate Chairperson for the meeting of Shareholders of the Transferor Company. They would be paid a fee of Rs. 50,000/- each. Mr. Kiran Kumar Kalra Cell No. 9873405863 and Mr. Khushi Ram Cell No. 9868942333, officials to this Court shall provide secretarial assistance to the Chairperson and the Alternate

Chairperson. They shall be paid a fee of Rs.10,000/- each for this purpose.

13. Further, it is directed that the meeting of the Un-Secured Creditors of the Transferor Company shall be held on 30th October, 2014 at 12:30 P.M. at Apsara Grand Banquets, A-1/20 B, Pashchim Vihar, Rohtak Road, New Delhi, Near Metro Station Pashchim Vihar (West), Pillar No. 255, under the supervision of the Court. Ms. Smriti Sinha, Advocate Cell No. 9818199498 is appointed as the Chairperson and Ms. Sumi Anand, Advocate Cell No. 9871670769 is appointed as the Alternate Chairperson for the meeting of Un-Secured Creditors of the Transferor Company. They would be paid a fee of Rs. 50,000/- each. Mr. Sanjay Pokhriyal Cell No. 9910855729 and Mr. Vijay Kumar Chauhan Cell No. 9718687879, officials to this Court shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs.10,000/- each for this purpose.

14. Further, it is directed that the meeting of the Shareholders of the Transferee Company shall be held on 30th October , 2014 at 3:00 P.M. at Apsara Grand Banquets, A-1/20 B, Pashchim Vihar, Rohtak Road, New Delhi, Near Metro Station Pashchim Vihar (West), Pillar No. 255, under the supervision of the Court. Ms. Pusshp Gupta, Advocate Cell No. 9810150907 is appointed as the Chairperson and Ms. Priyanka Kapoor, Advocate Cell No. 9873345546 is appointed as the Alternate Chairperson for the meeting of Shareholders of the Transferee Company. They would be paid a fee of Rs. 50,000/- each. Mr. Praveen Keshwan Cell No. 7838927452 and Mr. Jagdish Chand Cell No. 9711901297, officials to this Court shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs.10,000/- each for this purpose.

15. Further, it is directed that the meeting of the Un-Secured Creditors of the Transferee Company shall be held on 30th October, 2014 at 12:30 P.M. at Apsara Grand Banquets, A-1/20 B, Pashchim Vihar, Rohtak Road, New Delhi, Near Metro Station Pashchim Vihar (West), Pillar No. 255, under the supervision of the Court. Mr. Vibhav Srivastava, Advocate Cell No. 9868123901 is appointed as the Chairperson and Mr. Amir Khan, Advocate , Cell No. 9811123168 is appointed as the Alternate Chairperson for the meeting of Un-Secured Creditors of the Transferee Company. They would be paid a fee of Rs. 50,000/- each. Ms. Shakun Anand Cell No. 9717306078 and Mr. Manish Kumar Cell No. 8750513545, officials to this Court shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs.10,000/- each for this purpose.

16. The Applicant Companies are directed to publish advance notices of the aforesaid proposed meetings in "Indian Express" (English), Delhi Edition and in "Danik Jagran" (Hindi) Delhi Edition. The advertisements shall be published minimum 21 days in advance before the scheduled date of meetings.

17. Individual notice of the proposed meetings of Secured Creditors and

Unsecured Creditors of the Applicant Companies would be sent by ordinary post minimum 21 days in advance before the scheduled date of meeting. The Chairperson will ensure that dispatch is made under his / her supervision / or his authorized representative.

18. The quorum of the Shareholders and Unsecured Creditors of the Transferor Company and Transferee Company is fixed as follows:

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

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

21. The Chairman/Alternate Chairman shall file their reports within two weeks of the conclusion of the said meeting.

22. The Application stand allowed in the aforesaid terms.