

(2014) 12 DEL CK 0396
In the Delhi High Court
Case No : Co. Pet. 595/2014

In Re: Shree Shyam Spintex Pvt. Ltd.

Date of Decision : 19-12-2014

Acts Referred:

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

Citation : (2014) 12 DEL CK 0396

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Naresh Kumar, Advocates for the Appellant

Judgement

Sanjeev Sachdeva, J.

C.A No. 3011/2014 (application on behalf of the Regional Director)

This is an application on behalf of the Regional Director seeking condonation of delay in filing the report.

Learned counsel for the petitioners submits that the petitioner has no objection if the delay is condoned.

In view of the above, application is allowed, the delay is condoned.

The report is directed to be taken on record.

CO.PET. 595/2014

1. This second motion joint petition has been filed under sections 391 & 394 of the Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of Shree Shyam Spintex Pvt. Ltd. (hereinafter referred to as Transferor Company) with VSP Enterprises Pvt. Ltd. (hereinafter referred to as the Transferee Company) (hereinafter collectively referred to as Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.

2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Hon"ble 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 for the year ending 31st March 2013 and un-audited provisional account for the period ended 31st October 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 Company.
7. The Petitioner Companies had earlier filed C.A (M) No. 128 of 2014 seeking directions of this Court for dispensation of meetings. Vide order dated 15th September, 2014, this Court allowed the application and the requirement of convening the meetings of Shareholders of the Transferor Company and the Shareholders, Secured Creditors and the Unsecured Creditors of the Transferee Company were dispensed with. Since the Transferor Company does not have any Secured Creditors, hence the requirement for convening the meeting of the same does not arise.
8. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide order dated 26th September 2014, notice of the Petition was directed to be issued to the Regional Director, Northern Region, Ministry of Corporate Affairs, Noida and the Official Liquidator attached with this Court. Citations were also directed to be published in "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 also been filed along with the Affidavit of Service.
9. Pursuant to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, Learned Official Liquidator has filed his report dated 27th November, 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 Company, which is subject matter of dissolution, 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 5th December, 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme as per clause 7(a) of the Scheme, all the employees of the Transferor Company in service on the date immediately preceding the date on which the Scheme finally takes effect i.e., the effective date, shall become the employees of the Transferee Company without any break or interruption in their services and upon terms and conditions not less favourable than those subsisting in the Transferor Company on the said date.

11. Further, learned Regional Director in his affidavit has observed in Para 5 (iv) of his Affidavit, the learned Regional Director has submitted that Registrar of Companies vide Para 18 of his report has stated that the Transferor and Transferee Companies have not filed their Balance Sheets for the financial year ending 31.03.2014. Hence, the Petitioner Companies may be directed to file their due Balance Sheets.

12. In response to the above observation, the Petitioner Transferee Company in the Reply Affidavit dated 17th December, 2014, has submitted that the Transferor Company and the Transferee Company have filed their Balance Sheets for the Financial Year ending 31st March, 2014. A copy of the Challan has been annexed.

13. In view of the above said clarification the concern raised by the learned Regional Director has been duly addressed.

14. No objection has been received to the Scheme from any other party. Mr. Pala Ram, Director of the Transferee 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.

15. 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.

16. 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 of the Companies Act, 1956, all the property, 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.

17. 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.

18. Learned Counsel for the Petitioner states that the Petitioner Company would voluntarily deposit a sum of Rs.50,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

19. The Petition is allowed in the above terms.