

(2014) 09 DEL CK 0319

In the Delhi High Court

Case No : Co. Pet. 16/2014

In Re: Silverglades Developers Private Limited

Date of Decision : 05-09-2014

Acts Referred:

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

Citation : (2014) 09 DEL CK 0319

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Santosh Kumar, Advocate Atma Sah , Assistant Registrar and Rajiv Behl, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.

CA No.53/2014 (exemption)

Exemption allowed subject to all just exceptions.

CA No.54/2014 (for condonation of delay of 17 days in filing the second motion petition for scheme of amalgamation) It is submitted that the Company Secretary, who was looking after and coordinating the scheme of amalgamation, fell seriously ill and was indisposed.

It is submitted that on account of illness, the second motion petition could not be filed within time and the delay occurred. It is submitted that the delay occurred on account of bona fide reasons.

For the reasons stated in the application, the delay in filing the second motion petition is condoned. The application is accordingly allowed.

CA No.1607/2014 (application for exemption and for placing on record affidavit of NOC alongwith its annexures)

In view of the averments in the application, the application is allowed. Exemption is granted and annexures to the application are taken on record.

1. 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 Silverglades Developers Private Limited (hereinafter referred to as Transferor Company No. 1), Silverglen Infrastructure Private Limited (hereinafter referred to as Transferor Company No. 2), Neelkamal Marts Private Limited (hereinafter referred to as Transferor Company No. 3), Silverglades Investments Private Limited (hereinafter referred to as Transferor Company No. 4) and Everlike Buildcon Private Limited (hereinafter referred to as Transferor Company No. 5) (hereinafter collectively referred to as Transferor Companies) and Silverglen Buildmart Private 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 offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.
3. The details of the respective dates of incorporation of the Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.
4. The copies of the Memorandum and Articles of Association as well as the Annual Accounts of the Petitioner Companies for the year ended 31st March 2013 have also been enclosed with the Petition.
5. The copies of Resolutions passed by the Board of Director of the Petitioner Companies approving the Scheme of Amalgamation have also been filed along with the Petition.
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) 97 of 2013 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 6th November, 2013, this Court allowed the Application and requirement of convening all the meetings of Shareholders and Creditors of the Transferee Company and the Transferor Companies were dispensed with.
8. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide Order dated 10th January 2014, notice of the Petition was directed to be issued to the Official Liquidator, Registrar of Companies and the Central Government through Regional Director. Citations were also directed to be published in ""Statesman" (English, Delhi Edition) and "Veer Arjun" (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioner Companies showing compliance regarding service of the Petition 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, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report dated 05.05.2014 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 notices issued, the Regional Director has filed its Affidavit dated 06.05.2014. Relying on Clause 9.1 of the Scheme amalgamation he has stated that all the staff/employees of all the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon''ble Court. Further, the learned Regional Director submits that despite notice, the Income Tax Authorities have not raised any objection with regard to the Scheme.

11. Further Learned Regional Director has raised the concern that there are losses in the Balance Sheet of the Transferor Company for the year ending 31.03.2013 and profits are shown in the Balance Sheet of the Transferee Company in the year ending 31.03.2013. It is submitted that in case the appointed date is taken as 01.04.2012 then there is a possibility that the Transferee Company may claim set off of the losses of the Transferor Company which would result in evasion of tax.

12. In response to the aforesaid observation, learned Counsel for the Petitioners submits that the Balance Sheet and Profit and Loss Account and other returns under the Companies Act, 1956 for the period ending 31.03.2013 have been prepared and filed. He submits that though the consolidated Balance Sheet and Profit and Loss Account for the period ending 31.03.2013 will have to be prepared, but the same need not be filed again under the Companies Act, 1956. As per Tax Return for earlier period, the Petitioner Companies will revise them, if required as per the law.

13. It is directed that the Income Tax Authorities shall be permitted to proceed against the Transferee Company in respect of any liability that may arise on account of sanction of the Scheme.

14. Further it is directed that the Registrar of Companies would also be at liberty to examine all returns on merits including the returns and books of accounts pertaining to the past periods.

15. Further, learned Regional Director has observed that the petitioners are doing a business of NBFC without registration with the Reserve Bank of India.

16. In response to the aforesaid observation, the petitioners have filed an Affidavit, undertaking that none of the Petitioner Companies are NBFC or are

carrying out the activities of NBFC and there is no requirement of "No Objection Certificate" from the Reserve Bank of India.

17. It is directed that in case it is found that Transferor Companies has violated any provision of the Reserve Bank of India Act then the Directors of the Transferor and Transferee Companies guilty of breaching the provisions the Reserve Bank of India Act shall continue to be liable irrespective of the sanction of the Scheme.

18. In view of the aforesaid clarification and undertaking given by the Petitioners, the concern raised by the Learned Regional Director has been duly addressed.

19. Learned Counsel for the Petitioner Companies submits that no objection has been received to the Scheme of Arrangement from any other party confirming that neither the Petitioner Companies nor their Counsel has received any objection pursuant to Citations published in the newspapers.

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

21. Certified copy of the order will 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 Act, and in terms of the Scheme the whole of the undertaking, the properties, 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. Upon the Scheme coming into effect, the Transferor Companies shall stand dissolved without following the process of winding up.

22. 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.

23. 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.

24. The Petition is allowed in the above terms.

Order Dasti.