(2015) 11 KAR CK 0263

In the Karnataka High Court

Case No : C.A. Nos. 1075, 1076, 1077 and 1078/2015

In Re: Southern Hightech Capital Private Limited and Ors.

Date of Decision : 13-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0263

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Saji P. John, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Aravind Kumar, J.—Heard Sri. Saji P. John, learned counsel appearing for applicants. Perused the applications and enclosures thereto.

2. Applicant in C.A. 1075/2015 is the transferor company and applicants in C.A. 1076/2015, C.A. 1077/2015 and C.A. 1078/2015 are transferee company No. 1, 2 and 3 who have sought for dispensing of meetings of shareholders and creditors for approving the scheme of arrangement which is produced at Annexure-H to the respective applications. Board of Directors of respective companies have approved and adopted the scheme of Arrangement in their respective board meetings held on 10.08.2015 and Board Resolutions have been appended to the respective applications at Annexure-G to evidence said fact.

3. Transferor company applicant in C.A. 1075/2015 came to be incorporated on 17.06.1993 and is engaged in the business of investment and real-estate as indicated in Memorandum and Articles of Association, Annexure-A and is having its registered office at the address shown in the cause title of the application. Authorised signatory of transferor company in the affidavit filed in support of prayer made in the application at paragraph 4 has stated the authorised, issued and subscribed share capital of applicant company is as indicated therein. At paragraph 22 of said affidavit it is stated that there are 120 equity shareholders and all of them have given consent and certificate dated 14.10.2015 issued by Chartered Accountant would also clearly indicate that there are only 120 equity

shareholders and all of them have given consent for the Scheme of Arrangement which is appended to the application as per Annexure-J series. As per Chartered Accountant letter dated 14.10.2015 there are no secured or unsecured creditors of applicant company as indicated in the said certificate which is at Annexure-K.

4. Transferee company No. 1 (CA 1076/2015) came to be incorporated on 11.08.2012 with Registrar of Companies in Karnataka and is engaged in various business such as dealing in metals and metallurgical products and it is also carrying on investment business as indicated in the Memorandum and Articles of Association, Annexure-A. It is having its registered office at the address indicated in the cause title of the application and authorised signatory of transferee company in the affidavit supporting the application filed has indicated the authorised, issued, subscribed and paid up share capital of the said company and at paragraph 22 it is indicated that there are only two equity shareholders and both of them have consented in writing to the scheme. Certificate issued by Chartered Accountant as well as consent letter of equity shareholders are appended to the application as per Annexure-J series. It is also certified by Chartered Accountant that there are no secured or unsecured creditors of the applicant company as per Annexure-K.

5. Transferee company No. 2 (C.A. No. 1077/2015) has been incorporated on 01.07.2015 with Registrar of Companies, Karnataka and is yet to commence its business. Memorandum and Articles of Association of transferee company No. 2 is at Annexure-A and is having its registered office at the address indicated in the cause title of the application and authorised signatory of transferee company No. 2 at paragraph 4 of the affidavit supporting the application has indicated the extent of authorised, issued, subscribed and paid up share capital of the said company and at paragraph 22 it is indicated that there are only two equity shareholders and both of them have consented in writing to the scheme and it is appended to the application as per Annexure-J series. It is also accompanied by certificate issued by Chartered Accountant at Annexure-K and it indicates that transferee company has no secured or unsecured creditors.

6. Transferee company No. 3 (C.A. 1078/2015) has been incorporated on 10.07.2015 with Registrar of Companies in Karnataka and is yet to commence its business. Memorandum and Articles of Association of transferee company No. 3 is at Annexure-A and it is having its registered office at the address indicated in the cause title. Authorised, issued, subscribed and paid up share capital of the said company is indicated in paragraph-4 of the affidavit sworn to by authorised signatory and it is also indicated in paragraph 22 by the said signatory that there are only two equity shareholders of transferee company No. 3. Certificate dated 14.10.2015 issued by Chartered Accountant would also evidence this fact. Two equity shareholders have given their consent in writing to the scheme of arrangement. As per Certificate dated 14.10.2015 Annexure-K issued by Chartered Accountant transferee company No. 3 has no secured or unsecured creditors.

Thus the applicants in respective applications have placed before this court all relevant materials in respect of relief sought for namely to dispense with the meetings of equity shareholders and secured and unsecured creditors. Having regard to the material on record I proceed to pass the following:

1. C.A. 1075/2015, C.A. 1076/2015, C.A. 1077/2015 and C.A. 1078/2015 are hereby allowed.

2. Convening of meeting of shareholders and creditors of the applicant companies is dispensed with.

3. Respective applicants are permitted to file company petition under section 391 within three weeks from the date of receipt of certified copy of this order.