(2012) 08 DEL CK 0203

In the Delhi High Court

Case No : Company Petition No. 230 of 2012

In Re: Span Leisure Projects Private Limited, Magnum Associates Private Limited and EMC Alloys Private Limited

Date of Decision : 22-08-2012

Acts Referred:

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

Citation : (2012) 08 DEL CK 0203

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : P.K. Mittal, Mr. Rajiv Bahl, for Official Liquidator. Mr. K.S. Pradhan, Deputy Registrar of Companies for Regional Director, Northern Region, for the Appellant;

Judgement

Indermeet Kaur, J.—This second motion joint Petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 (for short Act) seeking sanction of the Scheme of Amalgamation (for short Scheme) of Span Leisure Projects Private Limited and Magnum Associates Private Limited (hereinafter referred to as Transferor Companies) with EMC Alloys Private Limited (hereinafter referred to as Transferee Company). The registered offices of the Transferor and Transferee Companies are situated at New Delhi, within the jurisdiction of this Court.

2. Details with regard to the date of incorporation of Transferor and Transferee Companies, their authorized, issued, subscribed and paid-up capital have been given in the Petition.

3. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2011 of Transferor and Transferee Companies have also been enclosed with the Petition.

4. Copies of the Resolutions passed by the Board of Directors of the Transferor and Transferee Companies approving the Scheme have also been placed on record.

5. It has been submitted that no proceeding under Sections 235 to 251 of the Act is pending against the Petitioner Companies.

6. All the Transferor and Transferee Companies are closely held companies and their shares are not listed on any Stock Exchange.

7. A copy of the Scheme has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavits. It is claimed by the Petitioner Companies that the Scheme will result in pooling of their financial, commercial and other resources, economies of scale and reduction of overheads. It is further claimed that with enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility and strength to meet requirements for further growth of business activities.

8. It is stated that the Transferee Company will issue (1) 1 (One) Equity Shares of the Transferee Company of the face value of Rs. 10/- each credited as fully paid-up in the capital of the Transferee Company to the Shareholders of Transferor No. 1 Company whose names are recorded in its Register of Members on a date (Record Date) to be fixed by the Board of Directors of the Transferee Company for every 34 (Thirty Four) Equity share of Rs. 10/- each held by the said Shareholders in the Transferor No. 1 Company and (2) 9 (Nine) Equity Shares of the Transferee Company of the face value of Rs. 10/- each credited as fully paid-up in the capital of the Transferee Company to the Shareholders of Transferor No. 2 Company whose names are recorded in its Register of Members on a date (Record Date) to be fixed by the Board of Directors of the Transferee Company for every 1 (One) Equity share of Rs. 10/- each held by the said Shareholders in the Transferor No. 2 Company.

9. The Petitioner Companies had earlier filed CA (M) No. 78 of 2012 seeking directions of this Court to dispense with the requirement of convening meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner Companies. Vide order dated 30th April, 2012, this Court allowed the application and dispensed with the requirement of convening meetings of Shareholders and of the Unsecured Creditors of the Petitioner Companies.

10. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 15th May, 2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in Statesman (English Edition) and Veer Arjun (Hindi 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 newspapers. Copies of the newspapers cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

11. Pursuant 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 17.8.2012 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 do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or to public interest subject to submission of para 1.2 of the report wherein Official Liquidator submitted that while valuing the net assets value per share of the Transferee Company, the Valuer M/s LB Jha & Co., Chartered Accountants has taken the value of land on the basis of valuation made by a valuer Ex. B.P. Singh and the said Valuation Report was not filed with the report submitted by the Chartered Accountant. In response to the above, the Petitioners Companies filed the rejoinder affidavit along with the copy of Valuation Report prepared by the valuer Ex. B.P. Singh clearly showing the value of land as Rs. 5,29,20,000/-. In view of the aforesaid, submission raised by the Official Liquidator no longer survive.

12. In response to the notice issued in the Petition, Mr. Rakesh Chandra, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 08.08.2012. Relying on Clause 8.1 of Part- II of the Scheme, he has stated that all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court.

13. In para No. 5.1 of the affidavit dated 8th August, 2012, Mr. Rakesh chandra has observed that " name of Company can be changed/altered only after following the procedure under the prescribed under the relevant provisions of the Companies Act, 1956. Further, in para No. 6.1 of the affidavit dated 8th August, 2012, he has observed that the Memorandum of Association of the Company can be can be changed/altered only after following the procedure under the prescribed under the relevant provisions of the Companies Act, 1956.

14. In reply to aforesaid submission, a rejoinder affidavit dated 21.08.2012 has been filed on behalf of the Petitioner Companies by Mr. Narender Pal, Authorised Signatory of the Petitioner Companies. It is submitted that the approval of Scheme in terms of Section 391-394 of the Act is a "Single Window Clearance" and no further act on the part of Company is required to be done after the approval of the Scheme, for giving effect of change in the name of the Transferee Company and alteration in the Memorandum of Association of the Company. Further the proposed Scheme has been approved by all the Shareholders of the Petitioner No. 3 Company/Transferee Company. The Transferee Company has no Secured Creditor whereas there are only 2 Unsecured Creditors who have given their No Objection Certificate. Further the Petitioner No. 3/Transferee Company has already made the provisions in the Scheme of Amalgamation in Clause No. 14.1 and 15 in respect of change in the name of the Transferee Company and alteration in the Memorandum of Association of the Company. Consequently 100% Shareholders have given their consent for approval. However, the

Petitioner No. 3/Transferee Company undertakes to file all the e-forms in respect of change in the name of the Transferee Company and alteration in the Memorandum of Association of the Company with the Registrar of Companies as required under the relevant provisions of the Act.

15. In view of the aforesaid, submissions raised by the Regional Director no longer survive.

16. No objection has been received to the Scheme from any other party. Mr. Narender Pal, Authorised Signatory of the Petitioner Companies has filed an affidavit dated 17.08.2012 confirming that the Petitioner Companies have not received any objection pursuant to citations published in the newspapers.

17. Even today, during the course of hearing, Mr. Rajiv Bahl, learned counsel for Official Liquidator and Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director, Northern Region state that they have no objection to the present Scheme being sanctioned except as stated in the Reports submitted by the Official Liquidator and the Regional Director.

18. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; affidavit/report filed by the Regional Director, Northern Region and the 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 Act. The Petitioner Companies will comply with the statutory requirements in accordance with law. 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 Act, all 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, 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 winding up. 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. Mr. P.K. Mittal, learned counsel states that the Petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- with the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted. The Petition is allowed in the above terms.

Order dasti.