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(2015) 09 DEL CK 0462

In the Delhi High Court

Case No : Company Application (Main) No. 145/2015

In Re: Springer Editorial Services Private Limited

Date of Decision : 28-09-2015

Acts Referred:

Citation : (2015) 09 DEL CK 0462

Hon'ble Judges : Sudershan Kumar Misra, J.

Bench : Single Bench

Advocate : Mahesh Agarwal and Rajeev Kumar, Advocates, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.—This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of transferor company and equity shareholders and secured creditors of the transferee company and for convening a meeting of the unsecured creditors of the transferee company to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Springer Editorial Services Private Limited (hereinafter referred to as the transferor company) with Springer (India) Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was originally incorporated under the Companies Act, 1956 on 19th April, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Pegasus Publishing Services Private Limited. The company changed its name to Springer Editorial Services Private Limited and obtained the fresh certificate of incorporation on 27th June, 2008.

4. The transferee company was incorporated under the Companies Act, 1956 on

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21st October, 2002 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs. 50,00,000/- divided into 5,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 25,00,000/- divided into 2,50,000 equity shares of Rs. 10/- each.

6. The present authorized share capital of the transferee company is Rs. 1,20,00,000/- divided into 1,20,000 equity shares of Rs. 100/- each. The issued, subscribed and paid-up share capital of the company is Rs. 1,20,00,000/- divided into 1,20,000 equity shares of Rs. 100/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, along with the reports of the auditors, and the unaudited provisional accounts, as on 31st March, 2015, of the transferor and transferee companies, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is claimed by the applicants that the proposed amalgamation will bring about operational rationalization and organizational efficiency and will result in various operational synergies, by pooling and optimal utilization of various resources and thereby reducing overhead, administrative, managerial and other expenditures. It is further claimed that the proposed amalgamation will strengthen significantly the position of the transferee company in the industry in terms of asset base, revenue, business volume and market share.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

"01 equity share of Rs. 100/- each fully paid up of the transferee company for every 24 equity shares of Rs. 10/- each fully paid up held by the shareholders in the transferor company."

10. It has been submitted by the applicants that no proceedings under Sections 237, 243, 247(1A), 250A and 251 or any other applicable provisions of the Companies Act, 1956 or under Sections 210, 212(1) to (7) & (11) to (17), 214, 215, 216(1) & (3), 217, 219, 220, 223, 224(1), (3) and (4) and 225 or any other applicable provisions of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 18th May, 2015 and on 6th August, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the

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Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The transferor company has 02 equity shareholders and 01 unsecured creditor. Both the equity shareholders and the sole unsecured creditor have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditor of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company, as on 6th August, 2015.

13. The transferee company has 02 equity shareholders. Both the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferee company, as on 6th August, 2015.

14. The transferee company has 59 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferee company shall be held on 31st October, 2015 at 11:00 a.m. at Springer (India) Private Limited, 7th Floor, Vijaya Building, Barakhamba Road, New Delhi - 110001. Mr. Vaibhav Agnihotri, Advocate, (Mobile No. 9811113432) is appointed as the Chairperson and Mr. Arun K. Sharma, Advocate, (Mobile No. 9891685368) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferee company shall be 12 in number and more than 25% in value of the total unsecured debt.

15. In case the quorum as noted above for the above meeting is not present at the meeting, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the registered office of the transferee company at least 48 hours before the meeting. The Chairperson and Alternate Chairperson shall ensure that the proxy register is properly maintained.

16. The Chairperson and Alternate Chairperson shall ensure that notices for convening the aforesaid meeting of the unsecured creditors of the transferee company, along with copies of the Scheme of Amalgamation and the statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured

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creditors of the transferee company by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meeting, in their presence or in the presence of their authorized representatives. Notice of the meeting shall also be published in the Delhi editions of the newspapers "Business Standard" (English) and "Jansatta" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meeting.

17. The Chairperson and Alternate Chairperson will be at liberty to issue suitable directions to the management of the applicant companies so that the aforesaid meeting of the unsecured creditors of the transferee company is conducted in a just, free and fair manner.

18. The fee of the Chairperson and the Alternate Chairperson for the aforesaid meeting shall be Rs. 50,000/- each in addition to meeting their incidental expenses. The Chairperson will file his report within two weeks from the date of holding of the aforesaid meeting.

19. The application stands allowed in the aforesaid terms.

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