(2014) 11 DEL CK 0131

In the Delhi High Court

Case No : Co.Pet. 549/2014

In Re: Stork Phobos Electricals Private Limited

Date of Decision : 25-11-2014

Acts Referred:
Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2014) 11 DEL CK 0131

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Kanishka Tyagi, Advocate, Atma Sah, Assistant Registrar of Companies and Rajpal Singh, Deputy Official Liquidator, Advocate for the Appellant

Judgement

Sanjeev Sachdeva, J.

CA No. 2711/2014 (application seeking condonation of delay on behalf of the Official Liquidator)

This is an application by the Official Liquidator seeking condonation of delay in filing the report.

Learned Counsel for the Petitioners submits that she has no objection to the delay being condoned.

The application is allowed and the delay in filing the report is condoned.

The report is directed to be taken on record.

CO.PET. 549/2014

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 Stork Phobos Electricals Private Limited (hereinafter referred to as Transferor Company) with Stork Rubber Products Private Limited (hereinafter referred to as Transferee Company) (hereinafter both 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 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 of 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 Companies.

7. The Petitioner Companies had earlier filed an Application C.A (M) No. 82 of 2014 seeking directions of this Court for dispensation of requirement of convening meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and the Equity Shareholders, Secured and Unsecured Creditors of the Transferee Company. Vide order dated 08.07.2014, this Court allowed the above said application and dispensed with the requirement of convening meetings of Equity Shareholders, Secured and Unsecured Creditors of the Transferor Company and the meeting of the Equity Shareholders, Secured and Unsecured Creditors of the Transferee Company.

8. The Petitioner Company has thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 04.09.2014, notice of the Petition was directed to be issued to the Official Liquidator and the Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs. Citations were also directed to be published in "Business Standard" (English) and "Business Standard" (Hindi). Affidavit of Service and Publication has been filed by the Petitioner Company 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 notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report dated 19.11.2014 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 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 his Affidavit dated 20.11.2014. Relying on Clause 7.0 of Part-II of the Scheme of Amalgamation he has stated in Para No. 4(i) that all the staff/employees of the Transferor Company shall become the employees of the Amalgamated Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon''ble Court. Further, learned Regional Director submits that despite notice, Income Tax Authorities has not raised any observation with respect to the Scheme.

11. Further, learned Regional Director in his Affidavit has observed that the Transferor and Transferee Companies have not filed their due Balance Sheet for the financial year ended 31.03.2014, hence Petitioner Companies may be directed to file their due Balance Sheets.

12. In reply to aforesaid observation, the Petitioner Companies have filed an Affidavit dated 22.11.2014, Petitioners wherein it has been submitted that they have filed the Balance Sheet for the financial year ended 31.03.2014 and have also attached the challans for filling the balance sheet with the said Affidavit.

13. In view of the aforesaid clarifications and undertaking given by the Petitioners, the concerns of the Regional Director have been duly addressed.

14. No objection has been received to the Scheme from any other party. Learned Counsel for the Petitioner Companies submits that neither she nor her clients have received any objection pursuant to the citations published in the newspapers.

15. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies, representation/affidavit/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.

16. 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 Company 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 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 following the process of 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 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.

18. Learned Counsel for the Petitioner states that the Petitioner Companies (collectively) 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.

