(2014) 08 DEL CK 0313

In the Delhi High Court

Case No : Co. Pet. 320/2014

In Re: Upright Enterprises Limited

Date of Decision : 22-08-2014

Acts Referred:
Companies Act, 1956 — Section 17, 235, 236, 237, 238

Citation : (2014) 08 DEL CK 0313

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Rakesh Kumar, Pramod Sachdeva, Shashank Agarwal, Advocates, Atma Sah, Assistant Registrar and S.B. Gautam, Official Liquidator, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.—This second motion joint petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of Upright Enterprises Limited (hereinafter referred to as Transferor Company No. 1), Upfront Trading Company Limited (hereinafter referred to as Transferor Company No. 2), Topline Traders Limited (hereinafter referred to as Transferor Company No. 3), Rudraksha Agencies Company Limited (hereinafter referred to as Transferor Company No. 4), Goldies Trading Company Limited (hereinafter referred to as Transferor Company No. 5), Goldfield Sales Agencies Limited (hereinafter referred to as Transferor Company No. 6), Futuristic Agencies Limited (hereinafter referred to as Transferor Company No. 7) and Frontier Commercial Company Limited (hereinafter referred to as Transferor Company No. 8) with Sucon India Limited Transferee Company) (collectively referred to as Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.

2. The Registered Office of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Hon''ble 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 latest Provisionally Audited Annual Accounts as on 28th February, 2014 along with the Audited Balance Sheet for the year ended 31st March, 2013 of the Petitioner Companies 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. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, in view of the negative Net Worth of the Petitioner Companies, no share exchange is feasible and only the balance sheets of the respective Applicant Transferor Companies are to be consolidated with the balance sheet of the Applicant Transferee Company. The shareholders of the Transferor Companies will hold the same number of shares in the Transferee Company as they hold in the respective Transferor Companies.

8. The Petitioner Companies had earlier filed C.A. (M) No. 69 of 2014 seeking directions of this Court for dispensation/convening of the meetings of its Equity Shareholders, Secured Creditors and the Unsecured Creditors. Vide Order dated 22nd April, 2014, this Court allowed the Application and dispensed with the requirement of convening meetings of its Equity Shareholders, Secured Creditors and Unsecured Creditors of Petitioner Companies. Since Transferor Company No. 1 did not have any Secured Creditors, therefore, the requirement of convening their meeting did not arise.

9. The Petitioner Companies had thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated 19th May 2014, notice in the Petition was directed to be issued to the Regional Director, Northern Region, Ministry Of Corporate Affairs, Registrar of Companies and to the Official Liquidator. Citations were also directed to be published in "The Financial Express" (English) and "Jansatta" (Hindi). Affidavit of Service and Publication has been filed by the Petitioners on 30th July 2014 showing compliance regarding service of the Petition on the Registrar of Companies, Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspaper on 12th July, 2014. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

10. In response to notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, learned Official Liquidator has filed his report dated 7th August, 2014, wherein he has stated

that he has not received any complaint against the proposed Scheme in any manner and that the affairs of the Transferor Companies, which is subject matter of dissolution, 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.

11. In response to the notice issued in the petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 6th August, 2014. The learned Regional Director in his Affidavit has raised concerns that since the Petitioner Companies are seeking to alter the Memorandum and Articles of Association, they should be directed to comply with the provisions of Section 17 of the Companies Act, 1956 in respect of the alteration.

12. The Petitioners has also filed Reply Affidavit dated 7th August, 2014, to the said observation made by the Regional Director. The details of the said observation of the Regional Director and the reply thereto of the Petitioners is as under:

"..........

(a) That in response to the Para 4.1 of the affidavit filed by the RD, the Applicant/ Transferee Company has undertaken that it shall comply with the provisions of Section 17 of the Companies Act, 1956 or the corresponding Sections of the Companies Act, 2013, in respect of alteration in the Memorandum and Articles of Association as proposed in terms of Para 16 of the Scheme. "

13. The Regional Director states that despite notice, the Income Tax Authorities have not raised any objection with regard to the scheme.

14. In view of the aforesaid clarification and undertaking given by the Petitioner, the concern of the Regional Director has been duly addressed.

15. Mr. Rakesh Kumar, learned Counsel for the Petitioner Companies submits that no objection has been received to the Scheme of Amalgamation from any other party. Affidavit has been filed confirming that neither the Petitioner Companies nor their Counsel have received any objection pursuant to Citations published in the newspapers.

16. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Dharam Pal, Director of the Transferee Company, has filed an Affidavit dated 7th August, 2014 as well as the Affidavit filed by the counsel for the Petitioner Companies on 4th August, 2014, confirming that the Petitioner Companies has not received any objection pursuant to citations published in the newspapers.

17. In view of the approval accorded by the Shareholders, Secured Creditors and the Unsecured Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached

with this Court, to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

18. Certified copy of the order be filed with the Registrar of Companies within thirty days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Companies Act, 1956, and in terms of the Scheme, the whole or part undertaking, the property, 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.

19. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty, taxes or any other charges, if payable in accordance with law; or permission/compliance with any other requirement which may be specifically required under any law.

20. Learned counsel for 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 said statement is accepted.

21. The Petition is allowed in the above terms.

Dasti Order