(2008) 02 DEL CK 0238

In the Delhi High Court

Case No : CP No. 214 of 2007

Ishaan Cryogenics Private Limited and Mahika Bottlers Private Limited — APPELLANT

Vs

Aditya Air Products Private Limited — RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:
Companies Act, 1956 — Section 391, 391(1), 394

Citation : (2008) 02 DEL CK 0238

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Ashish Middha, for the Appellant; R.D. Kashyap, Dy. ROC and Manisha Tyagi, for the Respondent

Final Decision : Disposed Off

Judgement

Vipin Sanghi, J.—This is a petition under Sections 391-394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of Ishaan Cryogenics Private Limited Applicant/ Transferor Company No. 1 and Mahika Bottlers Private Limited Applicant/Transferor Company No2 with Aditya Air Products Private Limited Applicant/Transferee Company.

2. The registered office of all the applicant companies are situated at 101, Sita Ram Mansion, 718/21, Joshi Road, Karol Bagh, New Delhi - 110005, thus, within the jurisdiction of this Court.

3. The Transferor company No. 1 was incorporated on 24.09.1999. The authorized share capital of the transferor company no1 is Rs. 50,00,000/-divided into 5,00,000 equity shares of Rs. 10/-each. The issued, subscribed and paid up equity share capital of the Transferor company no1 is Rs. 50,00,000/-divided into 5,00,000 equity shares of Rs. 10/- each.

4. The Transferor company No. 2 was incorporated on 24.4.2003. The authorized share capital of the transferor company no2 is Rs. 70,00,000/-divided into

7,00,000 equity shares of Rs. 10/-each. The issued, subscribed and paid up equity share capital of the Transferor company no2 is Rs. 70,00,000/-divided into 7,00,000 equity shares of Rs. 10/- each.

5. The Transferee company was incorporated on 17.03.1992. The authorized share capital of the transferee company is Rs. 3,00,00,000/-divided into 30,00,000 equity shares of Rs. 10/-each. The issued, subscribed and paid up equity share capital of the Transferee company is Rs. 1,55,80,000/-divided into 15,58,000 equity shares of Rs. 10/- each.

6. The Petitioner companies had filed Company Application (M) No. 130/2007 which was allowed by orders dated 1st August 2007 & 24th august 2007. By the aforesaid order, the requirement of conducting statutory meetings of equity shareholders, secured and unsecured creditors of all the applicant Companies was dispensed with.

7. Vide order dated 31st August 2007, citations were directed to be published in "The Statesman" (English edition) and "Jansatta" (Hindi edition), in terms of Companies (Court) Rules, 1959. An affidavit dated 1st october, 2007 has been filed by Mr. Ashish Middha, Advocate, the authorized signatory of the Petitioner companies have informed about the publication of the citations in "The Statesman" (English) and "Jansatta" (Hindi) on 18th September ,2007. The said publication containing the said citations were also produced along with the affidavit.

8. Notices were issued to the OL and the Regional Director (Northern Region) vide order dated 31st august 2007. Pursuant to the notice issued to the OL, a report dated 23rd November 2007 has been filed by the Official Liquidator. The Official Liquidator sought information from the Petitioner company vide its letter No. OL/TECH/AMAL/75/1056 dated 15th October 2007, upon which the requisite information was furnished by the Petitioner Companies.

9. The OL has considered the accounts of Petitioner Companies as on 31st March 2007. The OL in its report has stated that he has not received any complaint against the scheme of amalgamation from any person/parties interested in the scheme in any manner and on the basis of information submitted by the Petitioner companies. Thus it was inferred that the affairs of the Transferor company do not appear to have been conducted in a manner prejudicial to the interest of the members, creditors, or public interest in accordance with the provisions of Section 394(1) of the Companies Act, 1956.

10. The report has also been filed by Shri Rakesh Chandra, Regional Director (Northern Region) by an affidavit, dated 22nd november 2007. Relying on Clause 6(a) of Part III & Part IV of the Scheme of Amalgamation, it was contended that all the employees of both the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon the sanctioning of the said Scheme of Amalgamation.

11. In view of the aforesaid undertakings given by the Petitioners, the Regional Director has no objections against the sanction.

12. There is no other legal impediment to sanction of the Scheme of Amalgamation which is annexed to the petition. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956. the Transferee company will comply with the statutory requirements in accordance with law. Certified copies of this order be filed with the Registrar of Companies within five weeks. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty that is payable in accordance to law. Upon sanction becoming effective from the appointed date of amalgamation, that is 1st April 2007, both the Transferor companies stands dissolved without being wound up. Costs of Rs. 10,000/- in the aggregate be paid by the applicants in the Common Pool Fund within 5 weeks.

13. The petition is disposed of in terms of the above order.

