(2010) 11 DEL CK 0190

In the Delhi High Court

Case No : Co. Application (M) 39 of 2010

MAST Mobile Media Pvt. Ltd. APPELLANT

Vs

Mediasoft Solutions Ltd. RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:
Companies Act, 1956 — Section 235, 251, 391, 392, 393

Citation : (2011) 1 CompLJ 238

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Anil Kr. Mishra and Aditya Jain, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.

Co. Appl. N0. 2072/2010 and CO. APPL.(M) 39/2010

1. This first motion under Sections 391 -394 of the Companies Act, 1956 (''Act'' for short) has been filed by MAST Mobile Media Pvt. Ltd. (transferee company) and Mediasoft Solutions Ltd. (transferor company) in respect of Scheme of Amalgamation which has been enclosed as Annexure A1.

2. Pursuant to the last order the applicants have filed affidavits of Dr. S.P. Srivastava, who is a Director and authorized signatory of the transferor and transferee company, stating that the appointed date mentioned in the scheme may be changed and read as 1.4.2010. The said affidavit and the statement made to the above effect is taken on record and is treated as incorporated in the scheme.

3. Along with the application, Memorandum and Articles of transferor and transferee company have been filed. Copy of the audited accounts have been placed on record along with the application and also along with the affidavits filed on 16th November, 2010 by Dr. S.P. Srivastava on behalf of the transferor and

transferee company. The copy of the resolutions passed by the Board of Directors of transferor and transferee company approving the proposed scheme of amalgamation have been placed on record. It is stated in the application that no proceedings u/s 235 and 251 of the Act are pending against the transferor and transferee company.

4. The transferor company has three shareholders as per list enclosed at page 136 (vol.2) and two of the said shareholders have given their consent/no objection certificates. However, one of the shareholders has not given consent/no objection certificate. It is accordingly directed that meeting of the shareholders of the transferor should be held.

5. The transferor company does not have any secured creditor but has unsecured creditors. Along with the affidavit dated 16th November, 2010 certificate of M/s. R. Khattar and Associates, Chartered Accountant has been filed that the transferor company has taken unsecured loans of Rs. 44,63,200/- and has sundry creditors to whom Rs. 40,227/- is payable. The list of the persons who have given unsecured loans and who are sundry creditors is also enclosed with the affidavit filed on 16th November, 2010.

6. The transferee company has 5 shareholders and the said 5 shareholders have given their consent/no objection certificates to the proposed scheme of amalgamation. In these circumstances, the need and requirement call for and convene meeting of the shareholders of the transferee company is dispensed with. However, meeting of unsecured creditors of the transferee company is required to be held. As per certificate issued by M/s. R. Khattar and Associates, Chartered Accountant enclosed with the affidavit dated 16th November, 2010, the transferee company does not have secured creditor but the transferee company has procured unsecured loan to the tune of Rs. 73,64,951/ - and has sundry creditors to whom Rs. 16,40,199/ - is due and payable. The list of said creditors has been also enclosed with the certificate of M/s. R. Khattar and Associates, Chartered Accountants. Meeting of the unsecured creditors of the transferee company is required to be held.

7. Mr. Anjani Kumar Mishra, Advocate (Mobile No. 9213145580) and Mr. Rajesh Kumar, Advocate (Mobile No. 9717407930) who are present in person in court are appointed as Chairperson and Alternate Chairperson for the meetings of the shareholders and unsecured creditors of the transferor and unsecured creditors of the transferee company. The said meetings will be held on 8th January, 2011 at the registered office of the transferor/transferee company at A-1/308, Safdarjung Enclave, New Delhi as per the schedule given below:

a. Meeting of the shareholders of the transferor company at 11.30 a.m.

b. Meeting of the unsecured creditors of the transferor company at 12.30 p.m.

c. Meeting of the unsecured creditors of the transferee company at 2 p.m.

8. Minimum coram for the meeting of the shareholders of the transferor company

will be as per the Memorandum and Articles of Association of the transferor company. Coram for the meeting of the unsecured creditors of the transferor/ transferee company will be 30% in number and representing at least 50% of the total amount payable to the unsecured creditors in the case of the transferor and transferee company. In case the requisite coram is not present at the start of the meeting of the unsecured creditors, the meeting will be adjourned for half an hour and number of creditors then present when the meeting is reconvened will be treated as the requisite corum for meetings of the unsecured creditors of the transferor and transferee company.

9. The Chairperson/Alternate Chairperson will ensure that notices for the meetings are sent in their presence or in the presence of their authorized representative. Notice to the shareholders of the transferor company will be sent by registered post. Notices to creditors will be sent by UPC.

10. The Chairperson/Alternate Chairperson will submit their report within a period of 20 days after the meeting is held. Chairperson/Alternate Chairperson will be paid an amount of Rs. 35,000/- and Rs. 25,000/- respectively.

11. Notice that meetings of the shareholders and unsecured creditors of the transferor company and the unsecured creditors of the transferee company will be held to consider the scheme, will be published in the newspaper ''The Statesman'' (English) and ''Jansatta'' (Hindi) at least 3 weeks before the meetings are held.

The application is disposed of.