

(2012) 07 DEL CK 0173

In the Delhi High Court

Case No : Company Petition No. 108 of 2012

M/s Spectral Services Consultants Pvt. Ltd.

APPELLANT

Vs

M/s. Aecom India Private Limited

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Companies Act, 1956 — Section 235, 251, 303(1), 391, 391(2)

Citation : (2012) 07 DEL CK 0173

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Mandira Mitra and Mr. Sanchit Dhawan, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This second motion Petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 ("the Act") by M/s. Spectral Services Consultants Pvt. Ltd. (hereinafter referred to as the "Transferor Company") seeking sanction of the Scheme of Amalgamation (for short "Scheme") of the Transferor Company with M/s. AECOM India Private Limited (hereinafter referred to as the "Transferee Company"). The registered office of the Transferor Company is situated at New Delhi, within the jurisdiction of this Court.

2. The registered office of the Transferee Company is situated at Gurgaon, Haryana outside the jurisdiction of this Court.

3. Details with regard to the date of incorporation of Transferor and Transferee 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 Annual Accounts for the year ended 31st March, 2011 and unaudited financial statements for the period ended 30th December, 2011 of Transferor Company and the Transferee Company have also been enclosed with the Petition.

5. Copies of the Resolutions passed by the Board of Directors of the Transferor and Transferee Companies, approving the Scheme, have also been placed on record.

6. It has been submitted that no proceeding under Sections 235 to 251 of the Act is pending against the Transferor Company.

7. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Transferee Company shall issue shares in the following manner:-

AECOM Singapore Pte. Limited holding one (1) share of Rs. 100/- in the Transferor Company would be allotted 48 (Forty Eight) shares of Rs. 10/- each in the Share Capital of the Transferee Company and the shares held by the Transferee Company in the share capital of the Transferor Company shall stand cancelled and extinguished on account of cross holding.

8. The Transferor Company had earlier filed CA (M) No. 27 of 2012 seeking directions of this Court for dispensation of meetings. Vide Order dated 21st February, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders, Secured and Un-secured Creditors of the Transferor Company.

9. The Transferor Company has, thereafter, filed the present Petition seeking sanction of the Scheme. Vide order dated 6.3.2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in The Financial Express (English Edition) and Jansatta (Hindi Edition). Affidavit of Service and Publication has been filed by the Transferor Company showing compliance regarding service of the Petition on the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspaper on 14.05.2012. Copies of the newspapers, in original, containing the publications have been filed along with the Affidavit of Service.

10. In response to the notices issued in the Petition, Mr. B.K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 09.04.2012. It has been pointed out that Memorandum of Articles of Association of the Transferee Company will have to be altered in terms of the averments in para 6.1 of Part (B) of the Scheme; so also in terms of para 8 of Part (B) of the Scheme. The procedure as contained u/s 303(1) of the Companies Act will have to be followed by the Transferee Company; submission being that the Transferee Company will have to follow the procedure contained under the Companies Act.

11. No objection has been received to the Scheme from any other party. Mr. Sanchit Dhawan, Advocate of the Transferor Company, has filed an affidavit on 29th June, 2012, confirming that he has not received any objection pursuant to citations published in the newspapers. The Counsel for the Transferor Company has also filed a photocopy of the order passed by the Punjab and Haryana, High

Court in Company Petition No. 24/2012 dated 18.04.2012 wherein, the Counsel appearing for the Transferee Company has undertaken that the Transferee Company shall follow the procedure prescribed under the Companies Act, 1956. Accordingly the Scheme stood sanctioned by the aforementioned order.

12. The Counsel for the Transferor Company states that since the undertaking has been given by the Transferee Company before the High Court of Punjab and Haryana, for compliance of the procedure prescribed under Companies Act, 1956, the Scheme of amalgamation be allowed.

13. Mr. Rajiv Behl, Counsel for the Official Liquidator and Mr. K. S. Pradhan, Deputy Registrar of Companies, appearing for Regional Director (Northern Region) state that they have no objection to the present Scheme being sanctioned.

14. In view of the approval accorded by the Shareholders of the Transferor Company, affidavit filed by the Regional Director, Northern Region, 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 Act. The Transferor Company will comply with the statutory requirements in accordance with law. Certified copy of the order 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 or part of the undertaking, the property, 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. 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 requirement which may be specifically required under any law.

15. Learned Counsel for the Transferor Company states that the Transferor Company would voluntarily deposit a sum of Rs. 1,00,000/-with the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted. The Petition is allowed in the above terms.

Order Dasti.