

(2010) 12 DEL CK 0393

In the Delhi High Court

Case No : Company Application (M) No. 227 of 2010

Panchvati Estates Private Limited

APPELLANT

Vs

Super Mart Two Property Management Services Private Limited

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

COMPANIES ACT, 1956 — Section 391, 392, 393, 394

Citation : (2010) 12 DEL CK 0393

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Sameer Chaudhary and Rajnish Saha, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—This joint application under Sections 391 - 394 of the Companies Act, 1956 (Act, for short) has been filed by Panchvati Estates Private Limited (hereinafter referred to as the transferor company) and Super Mart Two Property Management Services Private Limited (hereinafter referred to as the transferee company) in respect of scheme of amalgamation, which has been enclosed as Annexure-A-9 to this application.

2. The registered office of the transferor company and the transferee company are located within the National Capital Territory of Delhi.

3. Along with the application, the transferor company and the transferee company have filed copy of their Memorandum and Articles of Association, last audited balance sheets as well as Resolutions passed by the Board of Directors approving the proposed scheme of amalgamation.

4. The transferor company has 2 equity shareholders, 1 equity A shareholder without any voting right and 1 preference shareholder as per the list enclosed at page 231. The said equity shareholders, equity A shareholder and preference shareholder have given their consent/no objection certificates to the proposed

scheme of amalgamation, which have been enclosed at pages 232 to 236.

5. It is stated in the application that the transferor company does not have any secured and unsecured creditor and a certificate to this effect of M.M. Jindal and Company, Chartered Accountants has been enclosed at page 243. Attention of the learned Counsel for the transferor company was drawn to the balance sheet of the transferor company for the year ending 31st March, 2010 wherein an amount of Rs. 1,88,200/- has been shown under the head Current Liabilities and Provisions. Learned Counsel for the transferor company states that this amount has been paid and the certificate issued by the Chartered Accountant at page 243 is dated 15th November, 2010. The statement made by the counsel for the transferor company is taken on record. Learned Counsel for the transferor company further states that averments made in the later portion of paragraph 16 of the application that even if the transferor company and the transferee company have secured and unsecured creditors, meeting of the said creditors is not required to be held, may be treated as deleted. The said statement is also taken on record.

6. The transferee company has 4 shareholders as per the list given at page 237. The said shareholders have given their consent/no objection certificates to the proposed scheme of amalgamation, which have been enclosed at pages 238 to 242 of the application. The transferee company as per the application does not have any secured and unsecured creditor. Certificate issued by M.M. Jindal and Company, Chartered Accountants enclosed at page 244 states that the transferee company does not have any secured and unsecured creditor. Learned Counsel for the transferee company states that the current liabilities and provisions shown in the audited balance sheet as on 31st March, 2010 of Rs. 1,261,030/- have been paid off and, therefore, the Chartered Accountant has issued the certificate at page 244 dated 15th November, 2010. The statement made by the transferee company is taken on record.

7. In view of the consent/ no objection certificates given by the shareholders of the transferor company and the transferee company, need and requirement to convene and hold meeting of the shareholders of the transferor company and the transferee company to consider the proposed scheme of amalgamation is dispensed with. Meeting of creditors of the transferor company and the transferee company is not required to be held as it is stated that both the companies do not have any secured or unsecured creditor.

8. The question of swap ratio and share exchange ratio will be considered at the time of second motion. It is noticed that the report of Walker, Chandiook and Company is full of caveats and disclaimers. It is stated in the report that they have not conducted any due diligence. The report is marked strictly private and confidential. It is further noticed that net value of investments made in the transferor company is only Rs. 97,167.08. However, the fair value of the investments has been taken as Rs. 12,08,165.32. Further the transferee company has made substantially huge investment of Rs. 11,11,218.71 in the

transferor company. However, these are aspects, which the Regional Director (Northern Region) and the Official Liquidator will have to examine and as observed above, will be decided at the time of second motion.

The application is disposed of.