(2009) 03 DEL CK 0128

In the Delhi High Court

Case No : C.P. No''s. 237 and 238 of 2008

Pylon Engineers (India) Private Limited APPELLANT

Vs

R.S. Infraprojects Private Limited RESPONDENT

Date of Decision : 02-03-2009

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

Citation : (2009) 93 SCL 229

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Aditya Grover and Manisha Tyagi, for the Appellant; Raisuddin, Asstt. Registrar and N.S. Arora, for P.S. Bindra, for the Respondent

Judgement

Vipin Sanghi, J.—In these petitions arguments were initially heard and judgment reserved on 06.02.2009. However, during the course of preparation of judgment it was noticed that the report of Shri Anil Sapra, Advocate, the Chairperson appointed by the Court to conduct the meetings of the secured and unsecured creditors of the transferor company was not accompanied by his affidavit, and there were certain discrepancies in the figures noted in the report filed by Mr. P.S. Bindra, Advocate who acted as the Chairperson of the meetings of secured and unsecured creditors of the transferee company. Therefore, the matter was listed for directions and notices were issued to the two Chairpersons, who have filed their respective affidavits. After further hearing the parties the judgment was again reserved.

2. These are petitions under Sections 391 and 394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of Pylon Engineers (India) Private Limited (Transferor Company) with R.S. Infraprojects Private Limited (Transferee company).

3. The Transferor Company was incorporated on 19.05.1997. The registered office of the Transferor Company is situated at B-48, East of Kailash, New Delhi-110065, i.e. within the jurisdiction of this Court.

4. The authorized share capital of the Transferor Company as on 1st April, 2008 was Rs. 25,00,000/- divided into 2,50,000 equity shares of Rs. 10/- each. The issued, subscribed and paid up equity share capital of the Transferor Company as on 1st April, 2008 was Rs. 22,22,000/- divided into 2,22,200 equity shares of Rs. 10/- each.

5. The Transferee Company was incorporated on 12.09.2005. The registered office of the Transferor Company is situated at B-48, East of Kailash, New Delhi-110065, i.e., within the jurisdiction of this Court.

6. The authorized share capital of the Transferee Company as on 1st April, 2008 was Rs. 10,00,00,000/- divided into 1,00,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up equity share capital of the Transferee Company as on 1st April 2008 was Rs. 5,00,00,000/- divided into 50,00,000/- equity shares of Rs. 10/- each.

7. The petitioner companies had filed Company Application (M) No. 91-92/2008 under Sections 391 and 394 of the Companies Act, 1956, to secure orders for convening meetings of the secured and unsecured creditors of the two companies, to consider and if thought fit, to approve the proposed Scheme of amalgamation between the Transferor and Transferee Companies. The petitioner companies sought dispensation of the convening of the meetings of the shareholders of the said two companies as requisite consents of shareholders of the two companies were filed. These applications were allowed by order dated 26th May, 2008. The requirement of conducting statutory meetings of equity shareholders of both the companies was dispensed with. However, the Transferor Company was directed to convene separate meetings of its secured and unsecured creditors. Individual notices to the unsecured creditors (of the value of Rs. 10,000/- or less) of the Transferor Company for the meeting were dispensed with. The Transferee Company was directed to convene separate meetings of its secured creditors and unsecured creditors.

8. Mr. Anil Sapra, Advocate and Mr. Ashwani, were appointed as the Chairperson and the Alternate Chairman respectively of the two separate meetings of secured and unsecured creditors of the Transferor Company. The required quorum for the meeting of secured creditors was fixed at 1 in number . The required quorum for the meeting of unsecured creditor was fixed at 25 unsecured creditors representing 15% of the total unsecured debts of the Transferor Company.

9. Chairperson of the said meetings, Mr. Anil Sapra, Advocate in his composite report dated 25th July, 2008 has reported that the meetings as aforesaid have been duly held as per the directions of the Court after issuance of requisite notice. It is reported that the meeting of the secured creditors of the Transferor Company was attended by 1 creditor representing 99.04% (Rs. 2,06,22,593/- of total secured debts) and the said Scheme was approved unanimously when put to vote. The Chairperson has reported that the meeting of unsecured creditors of the Transferor Company was attended by 34 unsecured creditors representing

more than 15 % of the total value of unsecured debt of the Transferor Company. Consequently, the required quorum was present. Furthermore, the Chairperson has reported that the said Scheme was approved unanimously when put to vote. The Chairperson''s report has been filed for record. The affidavit in support of the reports has also been filed.

10. Shri Pawanjit Singh Bindra, Advocate and Shri K.K. Sharma were appointed as the Chairperson and the Alternate Chairperson respectively of the meeting of secured and unsecured creditors of the Transferee Company. The required quorum for the meeting of secured creditors of the Transferor Company was fixed at 2 secured creditors representing 15% of the total secured debts of the Transferee Company. Whereas, the required quorum for the meeting of unsecured creditors was fixed at 25 unsecured creditors representing 15% of the total unsecured debts of the Transferee Company.

11. The Chairperson of the said meeting, in his report dated 24th July 2008, has reported that the meeting of the secured creditors of the Transferor Company has been duly held as per the directions of the Court after issuance of the requisite notice. The same was attended by 3 secured creditors entitled together to an aggregate amount of Rs. 12,55,35,978/- of the total value of secured debts of the Transferee Company, i.e. the required quorum was present. Furthermore, the Chairperson has reported that the said Scheme was approved by voting in favour of the scheme by two out of three secured creditors, while the third did not vote in favour of or against the proposed scheme. As per the affidavit of Shri P.S. Bindra, Advocate, the chairperson, the two secured creditors who voted in favour of the Scheme represented 98.80% of the outstanding secured debt of the Transferee Company. The Chairperson in his separate report dated 24th July, 2008 in relation to the meeting of the unsecured creditors, as corrected by his subsequent affidavit filed on 25.02.2009 has reported that the meeting as aforesaid has been duly held as per the directions of the Court after issuance of requisite notice. The same was attended by 36 unsecured creditors, by proxy or through authorized representatives, entitled together to an aggregate amount of Rs. 10,96,58,287/- of the total value of unsecured debts of the Transferee Company, which represents 80.55% of the total unsecured debt of the Transferee Company. Consequently, the required quorum was present. Furthermore, the Chairperson has reported that the said Scheme was approved unanimously.

12. Vide order dated 26th May 2008, citations were directed to be published in "The Statesman" (English edition) and "Veer Arjun" (Hindi edition), in terms of Companies (Court) Rules, 1959. Affidavit dated 30th January, 2009 has been filed by one Mr. Sanjeev Goel on behalf of Transferor Company and one by Mr. Manoj Goel on behalf of Transferee Company, the authorized signatories of the petitioner companies about the publication of the citations in "The Statesman" (English) and "Veer Arjun" (Hindi) on 17th October, 2008 in respect of both the companies. The said publication containing the said citations have also been produced along with the affidavit. No objection has been received on

record from any member of the public in response to the said publication.

13. Notices were issued to the OL and the Regional Director (Northern Region) vide order dated 26th May 2008. Pursuant to the notice issued to the OL, a report dated 26th November 2008 has been filed by the Official Liquidator.

14. The Official Liquidator 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 whatsoever, and on the basis of information submitted by the petitioner companies. Thus it was inferred that the affairs of the petitioner companies do not appear to have been conducted in a manner prejudicial to the interest of the members, creditors, or public and in accordance with the provisions of Section 394(1) of the Companies Act, 1956.

15. The Regional Director (NR) has not filed any response but has submitted at the hearing that the petitioners should undertake to comply with Accounting Standard-14. The petitioners have undertaken to comply with the said accounting standards.

16. There is no other legal impediment to the 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 and 394 of the Companies Act, 1956. The Transferee Company will comply with the statutory requirements in accordance with law including compliance of Accounting Standard-14 (Accounting for Amalgamation) issued by the Institute of Chartered Accountants of India. 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 or any other taxes or levies that is payable in accordance to law. Upon sanction becoming effective from the appointed date of amalgamation, that is 1st April 2007, the Transferor company stands dissolved without being wound up. The O.L. shall be paid expenses amounting to Rs. 20,000/- within two weeks, to be deposited in the Common Pool Fund.

17. The petition is disposed of in terms of the above order. Dasti.

