(2012) 08 DEL CK 0103

In the Delhi High Court

Case No : Company Petition No. 256 of 2012

Satkar Fin Cap Ltd., SM Entrepreneur India Pvt. Ltd. and Smart Tradeline Pvt. Ltd. — APPELLANT

Vs

Pride Residency Pvt. Ltd. — RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:
Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2012) 111 CLA 221

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Rajeev K. Goel, for the Appellant; K.S. Pradhan, Deputy Registrar of Companies on behalf of the Regional Director (NR) and Mr. Rajiv Bahl, Advocate for the Official Liquidator, for the Respondent

Judgement

Indermeet Kaur, J.—This joint Petition has been filed under sections 391 & 394 of the Companies Act, 1956 by the Petitioner Companies seeking sanction to the Scheme of Amalgamation of Satkar Fin Cap Ltd., SM Entrepreneur India Pvt. Ltd. and Smart Tradeline Pvt. Ltd. with Pride Residency Pvt. Ltd. The registered offices of All the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court. It has been submitted that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

2. The Petitioner Companies had earlier filed CA (M) 82 of 2012 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 7th May, 2012, this Court allowed the Application and dispensed with the requirement of convening all the meetings of Shareholders and Creditors of the Applicant Transferor Companies and Transferee Company.

3. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide order dated 23rd May, 2012, notice of the Petition was directed to be issued to the Regional Director, Northern

Region and the Official Liquidator attached with this Court. Citations were also directed to be published in ''Financial Express'' (English, Delhi Edition) and ''Navbharat Times'' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspaper. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

4. Pursuant to the notice issued, the Learned Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Learned Official Liquidator has filed his report dated 13th August, 2012, wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Companies, which is a subject matter of dissolution, do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

5. In response to the notice issued in the Petition, Mr. Rakesh Chandra, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 14th August, 2012. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Hon''ble Court.

6. Learned Regional Director drew the attention of this Court with regard to the Appointed Date of the Scheme of Amalgamation which is prior to the date of incorporation of the Transferee Company.

7. In response to the aforesaid observation of the Learned RD, the Petitioners have filed a Reply/Affidavit dated 16th August, 2012 of Mr. Arun Arora, Director of the Petitioner Transferee Company. The Petitioners submitted that the every Scheme of Amalgamation, if approved by the Hon''ble High Court, becomes effective only when the copy of High Court order is filed with the concerned Registrar of Companies and the Appointed Date can be fixed retrospectively or prospectively. It is further submitted that the Appointed Date is used to reflect the date on which the assets and liabilities of the existing company are to be identified for the purposes of transfer to the Transferee Company and the fact that the appointed date is falling prior to the incorporation of the Transferee Company is not material because the transfer has to take place only on the Effective Date of the Scheme and the Transferee Company must be in existence on the Effective Date.

8. In support of his submission, Learned Counsel for the Petitioners has placed reliance on the judgment of this Court in re: HCL Ltd., Re (1994) 80 Com Cases 228 (Del) wherein, while considering a similar objection, the court has held as

under:-

.......Where in a scheme of arrangement the expression "appointed date" was used to reflect the date on which the assets and liabilities of the existing company were to be identified for the purposes of transfer to the newly created company, the fact that the "appointed date" was falling prior to the incorporation of the transferee company was not material because the transfer was to take place on the effective date of the scheme.

9. The aforesaid views were taken by this Court in other similar matters. Learned Counsel for the Petitioners has drawn my attention to the orders passed by this Court in CP 310 of 2009 and CP 141 of 2009 where the similar objections raised by the learned RD were rejected by this Court.

10. Having regard to the submissions made at the Bar and settled law on the subject, it is clear that the date of incorporation of the Transferee Company should correspond with effective date of the scheme, i.e., the date on which the actual transfer takes place and not with the appointed date. In view thereof, the objection raised by the Regional Director is overruled.

11. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Arun Arora, Director of the Transferee Company has filed an affidavit confirming that neither the Petitioner Companies nor their Counsel has received any objection pursuant to citations published in the newspapers.

12. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law. Certified copy of the formal 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 Companies Act, 1956, all 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, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty 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.

13. The Petitioner Companies would voluntarily deposit a sum of Rs.1,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The Petition is allowed in the above terms.

Order Dasti.

