(2017) 01 DEL CK 0426

In the Delhi High Court

Case No : 167 of 2016

SHOBHA PRINTERS PRIVATE LIMITED, & Antr — APPELLANT

Vs

NIL — RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

Companies Act, 1956, Section 251, Section 235, Section 391(1) - Saving for legal advisers and bankers. - Investigation - Power to compromise or make arrangements with cred

Citation : (2017) 01 DEL CK 0426

Hon'ble Judges : Siddharth Mridul

Bench : SINGLE BENCH

Advocate : Rajiv K. Goel

Judgement

1. The present application has been filed jointly, under Sections 391(1) of the Companies Act, 1956 (hereinafter referred to as ''the Act'') by Shobha Printers Private Limited (hereinafter referred to as ''the Demerged Company'') and Lahar Enterprises Private Limited (hereinafter referred to as ''the Resultant Company'') in connection with the Scheme of Arrangement (hereinafter referred to as ''the Scheme'') for the demerger of the real-estate business of the Demerged Company into the Resultant Company.

2. The registered offices of the Applicant Companies are situated within the National Capital Territory of Delhi, within the jurisdiction of this Court.

3. The Demerged Company was incorporated under the Act, on 02.09.1986 vide certificate of Incorporation issued by the Registrar of Companies, NCT of Delhi and Haryana, at New Delhi.

4. The Resultant Company was incorporated under the provisions of the Act vide certificate of incorporation dated 03.01.1991 issued by the Registrar of Companies, NCT of Delhi and Haryana.

5. The authorized share capital of the Demerged Company as on 31.03.2016, is Rs.5,00,000/-, divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Demerged Company as on 31.03.2016, is Rs.3,05,100/-, divided into 30,510 equity shares of Rs.10/- each fully paid up.

6. The authorized share capital of the Resultant Company as on 31.03.2016, is Rs.10,00,000/-, divided into 10,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the Resultant Company as on 31.03.2016, is Rs.9,75,000/-, divided into 9,750 equity shares of Rs.100/- each fully paid up.

7. Copies of the Memorandum of Association and Articles of Association of each of the Applicant Companies have been filed on record. The audited balance sheets, as on 31.03.2016, pertaining to each of the Applicant Companies, along with the reports of the auditors, have also been filed and the same are on record.

8. A copy of the Scheme has been enclosed along with the application and the same is on record. It has been stated on behalf of the Applicant Companies that demerger of the real-estate business of the Demerged Company into the Resultant Company would inter alia have the following benefits: a) The Demerged Company and the Resultant Company jointly own a real estate which is sought to re-developed. The proposed scheme would lead to streamlining the ownership of the real estate, better control and administrative convenience.

b) Focussed leadership and management attention; independent expansion of various businesses; and the proposed Scheme would lead to strengthening, consolidating and stabilising the businesses of these companies and will further facilitate the growth and expansion of their businesses.

9. So far as the Share Exchange Ratio is concerned, the Resultant Company will issue 01 equity share of Rs.100/- each, credited as fully paid up, to the shareholders of the Demerged Company for every 03 equity shares of Rs.10/- each, held in the Demerged Company.

10. It has been stated that no proceedings under sections 235 to 251 of the Act (or corresponding provisions of the Companies Act, 2013) are pending against the Applicant Companies as on the date of institution of the present application.

11. Further, it has been stated that the Scheme has been approved by the respective Board of Directors (BOD) of the Applicant Companies. Copies of the resolutions dated 12.11.2016 passed by the Board of Directors of each of the Applicant Companies, whereby the scheme has been approved have been filed with the application and the same are on record.

12. The status of the Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and the consents obtained from them for the proposed Scheme has been set out in a table as hereinunder:-

Company

No. of equity Shareholders Consent given

No. of Secured Creditors Consent given

No. of Unsecured Creditors Consents given

Demerged Company 3 ALL NIL N.A. 2 ALL

Resultant Company 3 ALL NIL N.A. NIL N.A.

13. A prayer has been sought for dispensing with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of both the Applicant Companies to consider and if thought fit, approve, with or without modifications, the proposed Scheme.

14. The Demerged Company has 03 equity shareholders. All the shareholders have given their written consents/NOCs, to the Scheme. The said written consents/NOCs have been placed on record. The same have been examined and found in order.

15. In view of the foregoing, the requirement of convening a meeting of the equity shareholders of the Demerged Company, to consider and if thought fit, approve, with or without modifications, the proposed Scheme, is dispensed with.

16. The Demerged Company does not have any Secured Creditors therefore, the question of requirement of convening the meeting of the Secured Creditors of the Demerged Company, to consider and if thought fit, approve, with or without modifications, the proposed Scheme, does not arise.

17. The Demerged Company has 02 unsecured creditors. Both the unsecured creditors have given their written consents/NOCs, to the Scheme. The said written consents/NOCs have been placed on record. The same have been examined and found in order.

18. In view of the foregoing, the requirement of convening a meeting of the unsecured creditors of the Demerged Company, to consider and if thought fit, approve, with or without modifications, the proposed Scheme, is dispensed with.

19. The Resultant Company has 03 equity shareholders. All the shareholders have given their written consents/NOCs, to the Scheme. The said written consents/NOCs have been placed on record. The same have been examined and found in order.

20. In view of the foregoing, the requirement of convening a meeting of the equity shareholders of the Resultant Company, to consider and if thought fit, approve, with or without modifications, the proposed Scheme, is dispensed with.

21. The Resultant Company does not have any Secured Creditors and Unsecured Creditors, therefore, the question of requirement of convening the meetings of

the Secured Creditors and Unsecured Creditors of the Resultant Company, to consider and if thought fit, approve, with or without modifications, the proposed Scheme, does not arise.

22. The application stands allowed in the aforesaid terms and is disposed of accordingly.

