(2010) 10 DEL CK 0255

In the Delhi High Court

Case No : Company Application (M) No. 190 of 2010

The Indo-British Engineering Co. Pvt. Ltd and Others APPELLANT

Vs

Globe Panel Industries India Private Limited RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:
Companies Act, 1956 — Section 391, 394

Citation : (2010) 10 DEL CK 0255

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Ashish Middha, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—The present application under Sections 391 and 394 of the Companies Act, 1956 has been filed on behalf of the Indo British Engineering Company Private Limited, S.N. Sales and Plywood Private Limited, Rina Agro and Timber Products Private Limited, Globe Engineering and Manufacturing Company Private Limited, Rajan Steel Ply Company Private Limited and Agro Steel & Castings Private (hereinafter referred to as transferor company No. 1, transferor company No. 2, transferor company No. 3, transferor company No. 4, transferor company No. 5 and transferor company No. 6 respectively) seeking merger and amalgamation with Globe Panel Industries India Private Limited (hereinafter referred to as the transferee company).

2. Along with the application, copy of the scheme has been enclosed. It is stated in the application that the scheme has been approved by the Board of Directors of the respective transferor companies and the transferee company. The application is also supported by affidavits of the Principal Officer of the transferor companies and the transferee company.

3. As per the application, the appointed date of the scheme is 1st July, 2010.

4. The transferor company No. 1 has eight shareholders and they have given

consents approving/accepting the scheme. The consents given by the said shareholders have been enclosed. The transferor company No. 1 has one secured creditor and no unsecured creditor as per the certificate given by Mr. Manoj Kumar Gupta on behalf of Manoj Ambuj and Associates, Chartered Accountants as on the cut off date, i.e., 31st July, 2010. The applicant has enclosed certificate given by the secured creditor, the HDFC Bank Limited. The certificate states that the foreclosure amount has been deposited and the loan has been foreclosed.

5. The transferor company No. 2 has three shareholders, who have given their consents/no objection certificates to the proposed scheme. The applicant has enclosed certificate given by Mr. Manoj Kumar Gupta proprietor Manoj Ambuj and Associates, Chartered Accounts stating that he has carried out limited audit of transferor company No. 2 and as on 31st July, 2010 the transferor company No. 2 had one secured creditor and four unsecured creditors. The secured creditor, viz., Tata Motors Finance Limited has given a certificate stating that the loan amount has been foreclosed and entire payment has been received. The four unsecured creditors have given no objection certificates/consents to the proposed scheme.

6. As per the application, the transferor company No. 3 has three shareholders, who have given their consents/no objection certificates to the proposed scheme. Along with the application, the applicant has enclosed certificate of Mr. Manoj Kumar Gupta proprietor of Manoj Ambuj and Associates, Chartered Accountants, who has stated that he has carried out limited audit of the transferor company No. 3 for the purpose of ascertaining the secured and unsecured creditors of transferor company No. 3 as on 31st July, 2010. As per his certificate, the transferor company No. 3 did not have any secured creditor on the said date and had two unsecured creditors. The two unsecured creditors have given their no objection/consents to the proposed scheme.

7. The transferor company No. 4 has four shareholders and the said shareholders have given their no objection/consents to the proposed scheme of amalgamation/ transfer. The applicant has enclosed certificate of Mr. Manoj Kumar Gupta proprietor of Manoj Ambuj and Associates, Chartered Accountants. It is stated in the certificate that the said Chartered Accountant has carried out limited audit of the transferor company No. 4 and as on 31st July, 2010 transferor company No. 4 had two secured creditors and seven unsecured creditors. It is stated that the State Bank of India had two accounts and, therefore, in the certificate Mr. Manoj Kumar Gupta has stated that there were two secured creditors. It is stated that the State Bank of India is the only secured creditor. No objection certificates/ consents given by the State Bank of India have been enclosed. The seven unsecured creditors have given their no objection certificates to the proposed scheme of amalgamation/transfer.

8. The transferor company No. 5 has four shareholders, who have given their consent to the proposed scheme of amalgamation/transfer. As per the certificate issued by Mr. Manoj Kumar Gupta proprietor of Manoj Ambuj and Associates,

Chartered Accountants, there were three secured creditors and fifteen unsecured creditors of the transferor company No. 5 as on 31st July, 2010. The applicant has enclosed two no objection certificates issued by the State Bank of India in respect of two separate loan accounts. It is stated that the State Bank of India has two separate loan accounts and Mr. Manoj Kumar Gupta proprietor of Manoj Ambuj and Associates, Chartered Accountants in his certificate has treated the two loan accounts as two separate secured creditors. The third secured creditor HDFC Bank has issued a certificate stating that the loan amount has been paid and no further amount is due. The fifteen unsecured creditors have given their no objection certificates/consents to the proposed scheme of amalgamation/ transfer.

9. The transferor company No. 6 has five shareholders, who have given their no objection certificates/consent forms. As per the certificate issued by Mr. Manoj Kumar Gupta proprietor of Manoj Ambuj and Associates, Chartered Accountants, the transferor company No. 6 had one secured creditor and fifteen unsecured creditors as on 31st July, 2010. The secured creditor State Bank of India has given their no objection certificate to the proposed scheme of amalgamation/ transfer. The applicant has also enclosed no objection certificates of fifteen unsecured creditors.

10. The transferee company has ten shareholders, who have given their no objection certificates/consents to the proposed scheme of amalgamation. The applicant has enclosed certificate of Mr. Manoj Kumar Gupta proprietor of Manoj Ambuj and Associates, Chartered Accountants, who has, inter alia, confirmed that the transferee company has no secured creditor and has one unsecured creditor as on 31st July, 2010. The applicant has enclosed no objection certificate of the one unsecured creditor with the application.

11. In view of the no objection certificates furnished by all the shareholders of the transferor company Nos. 1 to 6 and the transferee company and the secured and unsecured creditors, as the case may be, of the transferor companies and the transferee company, I dispense with the requirement to hold meeting of the shareholders, secured and unsecured creditors. The application is accordingly allowed. It is, however, clarified that this Court has not examined the question of valuation of shares and share exchange ratio. This aspect will be examined at the time of second motion.

The application is disposed of.

