(2012) 09 DEL CK 0265

In the Delhi High Court

Case No : Company Petition No. 309 of 2012

U.P. Metblast and Energy Limited, Arrow Retail Private Limited and Shree Balaji Heavy Electricals Private Limited — APPELLANT

Vs

Hind Tradex Limited — RESPONDENT

Date of Decision : 28-09-2012

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

Citation : (2012) 194 DLT 646

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Mukesh Sukhija, Mr. K.S. Pradhan, Regional Director Northern Region and Mr. Rajiv Bahl for the Official Liquidator, for the Appellant;

Judgement

Indermeet Kaur, J.—This joint Petition has been filed under sections 391(2) & 394 of the Companies Act, 1956 by the Petitioner

Transferor Companies and Transferee Company seeking sanction of the Scheme of Amalgamation of M/s U. P. METBLAST & ENERGY

LIMITED (Transferor Company No. 1); ARROW RETAIL PRIVATE LIMITED (Transferor Company No. 2); SHREE BALAJI HEAVY

ELECTRICALS PRIVATE LIMITED (Transferor Company No. 3); with HIND TRADEX LIMITED (Transferee Company). The registered

offices of the Petitioner Transferor Companies and Transferee Company are situated at New Delhi, within the jurisdiction of this Court.

2. Details with regard to the date of incorporation of Transferor and Transferee Companies, their authorized, issued, subscribed and paid up

capital have been given in the Petition.

3. Copies of the Memorandum and Articles of Association as well as the latest

audited Accounts as at 30th September, 2011 of the Petitioner

Transferor and Transferee Companies have also been enclosed with the Petition.

4. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme of Amalgamation have also

been placed on record.

5. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

6. So far as Share Exchange ratio is concerned, the Scheme provides that upon amalgamation of the ''Transferor Companies No. 1 to 3'' into the

''Transferee Company'' pursuant to the Scheme of Amalgamation, the following would be the share Exchange Ratio:

(a) FOR EVERY 10 (TEN) EQUITY SHARE(S) OF RS. 10/- (RUPEES TEN) EACH FULLY PAID UP OF UP METBLAST & ENERGY

LIMITED (TRANSFEROR COMPANY NO. 1) 89 (EIGHTY NINE) EQUITY SHARE(S) OF RS. 10/- (RUPEES TEN) EACH FULLY

PAID UP OF HIND TRADEX LIMITED (TRANSFEREE COMPANY).

(b) FOR EVERY 10 (TEN) EQUITY SHARE(S) OF RS. 10/- (RUPEES TEN) EACH FULLY PAID UP OF ARROW RETAIL PRIVATE

LIMITED (TRANSFEROR COMPANY NO. 2) 91 (NINETY ONE) EQUITY SHARE(S) OF RS. 10/- (RUPEES TEN) EACH FULLY

PAID UP OF HIND TRADEX LIMITED (TRANSFEREE COMPANY).

(c) FOR EVERY 10 (TEN) EQUITY SHARE(S) OF RS. 10/- (RUPEES TEN) EACH FULLY PAID UP OF SHREE BALAJI HEAVY

ELECTRICALS PRIVATE LIMITED (TRANSFEROR COMPANY NO. 3) 13 (THIRTEEN) EQUITY SHARE(S) OF RS. 10/- (RUPEES

TEN) EACH FULLY PAID UP OF HIND TRADEX LIMITED (TRANSFEREE COMPANY).

7. The Petitioner Companies had earlier filed CA (M) No. 101 seeking directions of this Court for dispensation/convening of meetings. Vide order

dated May 29, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders and Un-

secured Creditors of the Transferor Companies and the Transferee Company and also the Secured Creditors of the Transferor Company No. 1

and Transferee Company, while the Transferor Company No. 2 and Transferor Company No. 3 had no Secured Creditor.

8. The Petitioner Transferor Companies and the Transferee Company have thereafter filed the present Petition seeking sanction of the Scheme of

Amalgamation. Vide order dated July 09, 2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region and the

official Liquidator. Citations were also directed to be published in the ''Statesman'' (English, Delhi Edition) and ''Vir Arjun'' (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 on August 25, 2012. Copies of

the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

9. Pursuant to the notices issued, the official Liquidator sought information from the Petitioner Companies. Based on the information received, the

official Liquidator has filed his report dated September 21, 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 No. 1 to 3 do

not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

10. In response to the notices issued in the Petition, Mr. Rakesh Chandra, Learned Regional Director, Northern Region, Ministry of Corporate

Affairs has filed his Affidavit dated September 13, 2012. Relying on Clause 7 of the Scheme of Amalgamation, he has stated that, upon sanction of

the Scheme of Amalgamation, all the employees of the Transferor Companies No. 1 to 3 shall become the employees of the Transferee Company

without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon''ble Court and on perusal of the

Balance Sheet as at 31.03.2011 of the Transferor Company No. 1 viz. M/s U.P. Metblast & Energy Limited., it has been observed that the

company has granted a loan amounting to Rs. 15,80,000/- to Ms. Manju Goel, relative of director which fall within the purview of the Provisions

of Section 295 of the Act. Thus, the Company has violated the Provisions of Section 295. Further, by contravening the Provisions of Section 295

of the Act by the Director of the Company, the concerned Directors vacate his office by operation of law pursuant to the Provisions of Section

283(1)(h) of the Companies Act, 1956, which is a material in the affairs of the Company. The Transferee Company vide its letter-dated

06.09.2012 has given undertaking that they will move Compounding Application u/s 621A of the Companies Act, 1956 for the default committed

u/s 295 of the Companies Act, 1956 with the Registrar of Companies, New Delhi.

Mr. Anuj Goyal, Director of Transferor Company No. 1 filed an affidavit dated 05.07.2012 in response to the affidavit filed by Regional Director

stating that-

1. That the Transferor Company No. 1 had given loan of Rs. 15,80,000/- to Ms. Manju Goel in non-compliance of the provisions of section 295

of the Companies Act, 1956.

2. That the above non-compliance has occurred inadvertently and due to oversight; without any mala-fide intention on the part of the Board of

Directors of the Transferor Company No. 1.

3. That the whole amount of Rs. 15,80,000/- has been repaid on 09.11.2011 by Ms. Manju Goel to the Transferor Company No. 1.

4. That the Transferor Company No. 1 has filed a compounding application u/s 621A read with Section 295 of the Companies Act, 1956 in the

prescribed from 61 vide SRN B57956252 dated 20.09.2012 in respect of the loan of Rs. 15,80,000/- given by the Transferor Company No. 1

to Ms. Manju Goel. A copy form 61 along with its challan was attached with this affidavit.

5. That as per clause 4 of the Scheme of Amalgamation filed before the Hon''ble Court, none of the proceedings filed by or against the Transferor

Company No. 1 would be abated or discontinued by the reason of amalgamation of the Transferor Company No. 1 with the Transferee

Company. Clause 4 of the scheme of Amalgamation is reproduced herein below for ready reference-

4. Legal Proceedings

All legal proceedings of whatever nature by or against the Transferor Companies pending on the Effective Date, shall not be abated, be

discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the Transferor Companies or of anything

contained in this Scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies as if

the Scheme had not been made.

6. The observations raised by the Ld. RD on this point no longer survives.

11. Moreover the counsel for the Petitioner Companies placed reliance on the judgment of this Hon''ble Court in the matter of Salil Industries

Limited Vs. Nabhganja Buildwell Pvt. Ltd. in CP No. 149/2010, delivered on 06.9.2010; para no. 17:

In support of the above submission, Learned Counsel relied on the judgment of Single Judge of the Gujarat High Court in the matter of Core

Healthcare Limited Vs. Nirma Limited [(2007) 138 CC 204 (Gujarat)] wherein the court has held that ""the Scheme can always be sanctioned

subject to and without prejudice to the liability, if any, in the Civil and Criminal proceedings in respect of past transactions and the liability, if any, of

the Board, Directors, Management etc., in civil and criminal proceedings would continue.

In view of the submissions made at the bar and the settled law on the subject, the objection raised by the Regional Director is rejected and the

Scheme is sanctioned subject to and without prejudice to the liability, if any, in the civil and criminal proceedings in respect of past transactions. It

is further clarified that the proceedings pending before the ACMM, Tis Hazari, Delhi against the transferor company and/or its Board, Directors

and management etc. shall continue and the liability, if any, of the Board, Directors, Management etc., in the said proceedings would continue as if

the Scheme has not been made.

12. No objection has been received to the Scheme of Amalgamation from any other party by either of the Petitioner Company or the counsel. Mr.

Anuj Goyal & Mr. Ramesh Kumar Goyal, the Directors of the respective companies given their affidavits both dated 05.07.2012 confirming that

neither the Petitioner Companies nor the counsel has received any objection pursuant to citations published in the newspapers.

13. 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 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, and in terms of the Scheme, the whole or part of the undertaking, the property,

rights and powers of the Transferor Company No. 1 to 3 be transferred to and vest in the Transferee Company without any further act or deed.

Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Companies No. 1 to 3 be transferred to the Transferee Company

without any further act or deed. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp

duty or taxes 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.

14. Learned Counsel for the Petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs. One lac in the Common Pool

fund of the official Liquidator within three weeks from today. The statement is accepted. The Petition is allowed in the above terms.

Order Dasti