(2015) 11 DEL CK 0275

In the Delhi High Court

Case No : Company Application (Main) No. 157/2015

Uttam Sucrotech International Private Limited — APPELLANT

Vs

Uttam Sucrotech International Holdings Private Limited — RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Citation : (2015) 11 DEL CK 0275

Hon'ble Judges : Sudershan Kumar Misra, J.

Bench : Single Bench

Advocate : Ashutosh Gupta, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.—This joint application has been filed under Sections 391, 392 & 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of the equity shareholders of the transferor company and equity shareholders, secured and unsecured creditors of the transferee company and for convening of separate meetings of the secured and unsecured creditors of the transferor company to consider and approve, with or without modification, the proposed Scheme of Arrangement between Uttam Sucrotech International Private Limited (hereinafter referred to as the transferor company) and Uttam Sucrotech International Holdings Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was incorporated under the Companies Act, 1956 on 21st April, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on

14th December, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs. 30,00,00,000/- divided into 3,00,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 25,00,00,000/- divided into 2,50,00,000 equity shares of Rs. 10/- each.

6. The present authorized share capital of the transferee company is Rs. 50,00,000/- divided into 5,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 3,30,000/- divided into 33,000 equity shares of Rs. 10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 30th June, 2014 and 31st March, 2014, along with the reports of the auditors, of the transferor company and the transferee company respectively have also been filed.

8. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is claimed by the applicants that the proposed amalgamation will result in reduction of various administrative overheads and increase the operating efficiencies of the companies. It is further claimed that the proposed amalgamation will lead to optimum and efficient utilization of capital, resources, assets and facilities; consolidation of businesses and enhancement of economic value addition and shareholder value; obtaining synergy benefits and better management and focus on growing the businesses.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot shares to the shareholders of the transferor company in the following ratio:

"01 compulsory convertible preference shares of Rs. 10/- each in the transferee company for every 01 equity share of Rs. 10/- each held by them in the transferor company."

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and corresponding provisions of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor company and the transferee company in their separate meetings held on 17th March, 2015 and 18th March, 2015 respectively have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The transferor company has 11 equity shareholders. All the equity shareholders have given their consents/no objections in writing to the proposed

Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with.

13. The transferee company has 02 equity shareholders and 01 unsecured creditor. Both the equity shareholders and the sole unsecured creditor have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditor of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with. There is no secured creditor of the transferee company, as on 28th February, 2015.

14. The transferor company has 14 secured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the transferor company shall be held on 26th December, 2015 at 11:00 a.m. at A-11, Meerut Road Industrial Area, Ghaziabad, Uttar Pradesh. Mr. Ankur Arora, Advocate, (Mobile No. 9811929774) is appointed as the Chairperson and Mr. Hari Om Gautam, Advocate, (Mobile No. 9810057143) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the transferor company shall be 03 in number and more than 25% in value of the total secured debt.

15. The transferor company has 92 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferor company shall be held on 26th December, 2015 at 12:30 p.m. at A-11, Meerut Road Industrial Area, Ghaziabad, Uttar Pradesh. Mr. Sunil Sharma, Advocate, (Mobile No. 9811383958) is appointed as the Chairperson and Ms. Shrishti Sharma, Advocate, (Mobile No. 9582249534) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferor company shall be 20 in number and more than 25% in value of the total unsecured debt.

16. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings is filed with the registered offices of the applicant companies at least 48 hours before the meeting. The Chairpersons and

Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

17. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the secured and unsecured creditors of the transferor company, along with copies of the Scheme of Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the secured and unsecured creditors of the transferor company by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meetings, in their presence or in the presence of their authorized representatives. Notice of the meetings shall also be published in the Delhi editions of the newspapers "Business Standard" (English) and (Hindi) Delhi editions in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

18. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the applicant companies so that the aforesaid meetings of the secured and unsecured creditors of the transferor company are conducted in a just, free and fair manner.

19. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs. 50,000/- each in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

20. The application stands allowed in the aforesaid terms.

