

Dilip Buildcon Ltd. Vs. Dnn Media Communication Pvt. Ltd.

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Court : Madhya Pradesh

Decided On : Sep-20-2013

Appellant : Dilip Buildcon Ltd.

Respondent : Dnn Media Communication Pvt. Ltd.

Judgement :

Comp.

Petition No.8/2013 20/9/2013: Shri Mukesh Agrawal, learned counsel for the Transferor Company and Transferee Company.

Shri H.N.Upadhyay, learned counsel for the official liquidator.

In pursuance to the order passed on the last date, report and affidavit of the Regional Director, North West Region, Ministry of Corporate Affairs, Ahmedabad, in the matter has been received.

I have heard learned counsel for the parties and perused the record.

All the requisite formalities required to be undertaken have been complied with.

This application has been filed under Section 391 read with Section 394 of the Companies Act in the matter of approval of the scheme of arrangement with regard to demerger of the companies in question, namely Dilip BuildCo.Ltd., the Transferor Company and DNN Media Communication PVT.LTD.the Transferee

Company.

A copy of the proposed scheme for arrangement for demerger is filed along with the petition.

The registered office of both the Companies are situated within the jurisdiction of this Court, particulars of the incorporation of the Companies through authorized issue subscribed in paid-up capital are indicated in the application.

Copies of the memorandum of articles of association as well as annual audited accounts of the financial year of both the Transferor and Transferee Companies are filed along with the petition.

Learned counsel for the parties made submissions and pointed out that no proceedings under Section 235 and 251 of the Companies Act are pending against any of the Companies as on date.

It is also seen from the record that a proposed scheme has been approved by the Board of Directors of both the Companies.

Resolutions of the Board of Directors in this regard are available on record.

In pursuance to the order earlier passed on 5.4.2013, the meeting of the unsecured and secured share holders of the Company were ordered which was held on 19th May, 2013 and resolution authorizing the same has been brought on record.

The Regional Director, North West Region, Ministry of Corporate Affairs has also filed its affidavit and in the affidavit filed the Regional Director has raised certain objections which are highly technical in nature and do not go to the merit of the scheme of the arrangement.

A perusal of the affidavit filed by the Regional Director goes to show that the fiRs objection raised vide para 2(a) is to the effect that permission of this Court for filing a joint petition is not produced.

This is replied to by the respondents and in the light of the law laid down in the case of Mohan Exports Ltd.v.Tarun Overseas (P) LTD.- (1994).Company Law Journal 193 and various other cases as is referred to in the counter affidavit filed by the Companies, the objection has no substance.

The second objection is with regard to rational of the scheme.

This is a vague objection and the rational of the scheme is already available on record.

Certain other objections raised are particularly with regard to typing error and non submissions of balance sheet which is complied with by the Companies as is evident from their counter affidavit filed on today.

That apart, the objections with regard to non indication of exchange ratio is also not tenable as issue of shares to the holding Company is on consideration of the business value and the entire share would be issued to M/s Dilip BuildCo.LTD.and no share would be issued to share holder of M/s Dilip BuildCo.Ltd.That being so, the question of exchange ratio is not applicable.

As far as details of assets and liabilities are concerned, the explanation given in para 6 of the counter affidavit and the document filed as Document No.A, explains the position.

The meeting of the secured and unsecured creditor have also been held and a copy of the publication and documents are available as Document No.B.That apart, all other objections raised pertains to certain procedural aspects which have already been complied with in the matter.

That being so, the objection raised by the Regional Director are highly technical in nature and do not go to the merit of the matter warranting any further consideration.

Accordingly, on considering the totality of the circumstances and the facts and circumstances of the case, a detailed order as required under Form No.42 of Rule 8 in accordance to the powers vested on this Court under Section 394 is being

passed separately and this petition stands disposed of in accordance to the order passed in the statutory Form No.42.

(Rajendra Menon) Judge mrs.mishra

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