

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Apr-24-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.711 of 2013 With CA No.407 of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction SHAKTI DEVELOPMENT PVT.LTD.AND S.K.SAMANTA & Co.PVT.LTD.BEFORE: The Hon'ble JUSTICE PATHERYA Date : 24th April, 2014.

Ms.Manju Bhuteria for the petitionerRs.Mr.Swagata Datta for the Central Government.

The Court : Four objections have been raised by the Central Government.

The fiRs.objection is with regard to treatment of excess of net assets of the transferor company while the Central Government seeks that the said excess amount be credited to the capital reserve and not to the general reserve.

The Standard-14.

applicants The Central are ready Government and willing also seeks to comply application Standard-14 and not any treatment contrary thereto.

Accordingly, with Accounting of Accounting the applicants are directed to apply Accounting Standard-14 in treatment of its accounts and the surplus suMs.if any, be credited as per the said standard of accounting.

The second objection raised is with regard to amendment of the object clause of the transferee company.

In view of single window clearance procedure being applicable to Scheme of Amalgamation as decided in 80 Company Cases 289 the said objection cannot be sustained and is accordingly rejected.

The third objection raised is in respect of the share exchange ratio which has not considered the allotment of fractional shares which may arise by virtue of the merger.

The applicants are ready and willing to make payment of sums equivalent to the value of the fractional shares of shareholders of the transferor company by demand draft to the extent of their fractional entitlement and in view thereof Clause 5.1 of Part III of the Scheme be modified as follows : 5.1.

No fractional share shall be issued by the transferee company in support of fractional entitlements, if any, to any shareholder of the transferor company.

The Board of Directors of the transferee company shall instead pay such shareholders of the transferor company by demand draft drawn on any nationalized bank to the extent of their fractional entitlements. In view of the aforesaid the third objection raised by the Central Government stands rejected.

The fourth objection raised is with regard to non-convening of meeting of credit ORS.The persons solely interested in a Scheme of Amalgamation are the shareholders of the transferor and transferee companies.

At a meeting convened of the shareholders the said Scheme of Amalgamation has been approved by the majority.

No shareholder has opposed the scheme and being a scheme of the shareholders the creditors can have no objection.

In fact, all rights and liabilities of the creditors of the transferor company stands transferred to the transferee company.

State Bank of India is a secured creditor of both the transferor and the transferee company and in respect of both has issued a no objection certificate so also has issued a certificate of satisfaction of charge in respect of the transferor company.

The Union Bank of India, a secured creditor of the transferee company has expressed its inability to immediately issue a no objection certificate as it needs approval from its sanctioning authority.

The documents of the secured creditors though referred to are not of any relevance in a Scheme of Amalgamation.

raised by rejected.

the Central Government cannot Therefore the fourth objection be sustained and is accordingly In view of the aforesaid there will be an order in terms of prayers (a) to (i) of the petition.

In the event the petitioners supply a legible computerized print out of the scheme and the schedule of assets in acceptable form to the department, the department will append such computerized print out, upon verification, to the certified copy of the order without insisting on a handwritten copy thereof.

In view of the aforesaid C.P.711 of 2013 stands disposed of.

Let cost of 200 GMs be paid by the applicants to the Central Government.

Letter of State Bank of India and Union Bank of India be kept on record.

Urgent certified photocopy of this order be supplied to the parties, if applied for, upon compliance of all requisite formalities.

(PATHERYA, J.) pa

