

Host Buildwell Private Limited and ors. Vs.

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Court : Delhi

Decided On : Sep-04-2014

Judge : Sanjeev Sachdeva

Appellant : Host Buildwell Private Limited and ors.

Respondent :

Judgement :

\$~1 *IN THE HIGH COURT OF DELHI AT NEW DELHI + CO.PET. 360/2014 IN THE MATTER OF HOST BUILDWELL PRIVATE LIMITED AND ORS.
Petitioners Through: Mr. Rajeev Kumar, Advocate for the Petitioner. Mr. Atma Sah, Assistant Registrar of Companies for the Regional Director. Mr. Rajiv Behl, Advocate for the Official Liquidator. CORA M: HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% 04.09.2014 SANJEEV SACHDEVA, J (ORAL) CA No.1977/2014 This is an application by the Regional Director seeking condonation of delay in filing the report. For the reasons stated in the application, the application is allowed and the delay in filing the report is condoned. The report is directed to be taken on record. CA No.1980/2014 This is an application by the Official Liquidator seeking
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condonation of delay in filing the report. For the reasons stated in the application, the application is allowed and the delay in filing the report is condoned. The report

is directed to be taken on record. CO.PET. 360/2014 1. This second motion joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (Act) seeking sanction of the Scheme of Amalgamation (Scheme) of Host Buildwell Private Limited (hereinafter referred to as Transferor Company No.1) and Landmark Buildmart Private Limited (hereinafter referred to as Transferor Company No.2) and Starvision Services Private Limited (hereinafter referred to as Spectacle (hereinafter as Transferor Advisory referred Company Solutions to as No.3) Private Transferee with Limited Company) (hereinafter all Companies collectively referred to as Petitioner Companies) and their respective Shareholders. A copy of the Scheme has been enclosed with the Petition.

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2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The details of the respective dates of incorporation of the Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4. The copies of the Memorandum and Articles of Association as well as the Annual Accounts of the Petitioner Companies for the year ended 31 st March 2013 have also been enclosed with the Petition.

5. The copies of Resolutions passed by the Board of Director of the Petitioner Companies approving the Scheme of Amalgamation have also been filed along with the Petition.

6. Learned Counsel for the Petitioner Companies submits that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed CA (M) No.84 of 2014 seeking directions of this Court for

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dispensation of meetings. Vide order dated 12 th May 2014, this Court allowed the Application and dispensed with the requirement of convening meetings of Equity

Shareholders and Unsecured Creditors of Petitioner Companies. Petitioner Companies had no Secured Creditors.

8. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 27.05.2014, notice of the Petition was directed to be issued to the Official Liquidator, Registrar of Companies and the Central Government through Regional Director. Citations were also directed to be published in Business Standard (English) and Jansatta (Hindi). Affidavit of Service and Publication has been filed by the Petitioner Companies showing compliance regarding service of the Petition and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

9. In response to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official
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Liquidator has filed his report dated 01.09.2014 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 do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per the 2nd proviso of section 394(1) of the Act.

10. In response to the notices issued, the Regional Director has filed its Affidavit dated 01.09.2014. Relying on Clause 5.1 of Part B of the Scheme amalgamation he has stated in Para No.3 that all the staff/employees of all the Transferor Companies shall be come 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. Further, the learned Regional Director submits that despite notice, the Income Tax Authorities have not raised any objection with regard to the Scheme.

11. No objection has been received to the Scheme from any other party. Mr. Khim Singh, Authorized Signatory of the Petitioner Companies, has filed an Affidavit dated ===== CO.PET.

360/2014 5 01.09.2014, confirming that nei ther the Petitioner Companies nor its Counsel has received any objection pursuant to citations published in the newspapers.

12. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies, representation/report filed by the Regional Director, Northern Region and Official Liquidator attached with this Court to the proposed scheme, there appears to be no impediment to the grant of Sanction to the Scheme. Consequently, Sanction is hereby granted to the Scheme under Sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

13. Certified copy of the order will 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 Act, and in terms of the Scheme the whole of the undertaking, the properties, rights and powers of the Transferor Companies 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 be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Companies shall stand dissolved without following the process of winding up.

14. 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 department which may be specifically required under any law.

15. Learned Counsel for the Petitioner states that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 50,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

16. The Petition is allowed in the above terms. Order Dasti. SANJEEV
SACHDEVA, J SEPTEMBER04 2014
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