

Efacec Switchgear India Pvt. Ltd Vs.

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Court : Delhi

Decided On : Sep-10-2014

Judge : Sanjeev Sachdeva

Appellant : Efacec Switchgear India Pvt. Ltd

Respondent :

Advocate for Pet/Ap. : Mr. Sandeep Bhuraria, Mr. P.K. Mallik, Mr. P.D Tewari

Judgement :

\$~29 *IN THE HIGH COURT OF DELHI AT NEW DELHI + CO.PET. 384/2014 IN THE MATTER OF EFACEC SWITCHGEAR INDIA PVT. LTD.Petitioners Through: Mr. Sandeep Bhuraria Advocate for the Petitioner. Mr. P.K. Mallik, Assistant Registrar of Companies for the Regional Director Mr. P.D Tewari, Assistant the Official Liquidator. CORAM: HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% 10.09.2014 SANJEEV SACHDEVA, J (ORAL) CA No.2044/2014 This is an application by the Official Liquidator seeking condonation of delay in filing the report. Learned counsel for the Petitioner has no objection to the delay being condoned. 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. 384/2014 1 CO.PET. 384/2014 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 Efacec Switchgear India (P) Ltd (hereinafter referred to as Transferor Company) with Efacec India (P) Ltd (hereinafter referred to as Transferee Company) (hereinafter all Companies collectively referred to as Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.

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.

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384/2014 2 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 C.A (M) 73 of 2014 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 20th May, 2014 this Court allowed the Application and requirement of convening all the meetings of Shareholders, Secured and Unsecured Creditors of the Transferor Company and the Transferee Company.

8. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide Order dated 30 th May 2014,

notice of the Petition was directed to be issued to the Registrar of Companies, Regional Director, Northern Region, Ministry of Corporate Affairs and the Official Liquidator attached with this Court. Citations were also

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384/2014 3 directed to be published in Indian Express (English, Delhi Edition) and Jansatta (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. 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 Liquidator has filed his Report dated 25.08.2014 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.

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384/2014 4 10. In response to the notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 25th August, 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all Companies the shall employees become the of the Transferor employees of the Transferee Company without any break or interruption in their services.

11. Further learned Regional Director in his affidavit has observed that that in Para-10.1 of Part-II of the Scheme, immediately upon the Scheme becoming effective the main objects of the Transferee Company shall stand amended and altered to include the following Clause 4 after Clause 1, 2 and 3:

To carry on the business of assembling, manufacturing and selling high, medium or low voltage components, parts, apparatus and accessories used in switchgears, transformers and other electrical and electronic goods, instruments, equipments and appliances including electronic motors, generators, meters, fans, lamps, electronic radar equipment, electronic communication equipment, electronic control instrument in India or abroad.

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384/2014 5 12. Further learned Regional Director in his Affidavit has stated the Transferee Company may be asked to comply with the provisions of Section 17 of the Companies Act, 1956 or corresponding section of Companies Act, 2013 in respect of alteration in the Memorandum and Articles of Association.

13. In response to the aforesaid observation, the Petitioner Transferee Company has undertaken by way of an affidavit that it shall comply with and follow the provisions of Section 13 of the Companies Act, 2013 which is corresponding to Section 17 of the Companies Act 1956 and all the applicable procedure as prescribed in the Companies Act, 2013 so as to effectuate the change in the main objects and alteration in the memorandum and Articles of Association immediately upon the Scheme becoming effective.

14. Further learned Regional Director in his affidavit has observed that the shares in both the Transferor and Transferee Companies are held by foreign companies and therefore, both the Transferor and Transferee Companies may be asked to give an undertaking for all the compliances from Reserve Bank of India as required under FEMA.

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384/2014 6 15. In response to the aforesaid observation, the Petitioner Transferee Company has undertaken to comply with and follow all applicable provisions/procedure of the Reserve Bank of India Act and the FEMA so as to effectuate the issue and allotment of shares to the shareholders of the Transferor Company immediately upon the Scheme becoming effective.

16. Further, the learned Regional Director submits that despite notice, the Income Tax Authorities have not raised any objection with regard to the Scheme.

17. Further Learned Counsel for the Petitioners submits that income tax has, subsequent to filling of the affidavit, issued NOC dated 25.08.2014 stating no observation with respect to the said scheme.

18. In view of the aforesaid clarifications and undertaking given by the Petitioners, the concerns of the Regional Director have been duly addressed.

19. No objection has been received to the Scheme from any other party. Mr Guilherme Pedro Goncalves Assis, Director of the Transferee Company has filed an Affidavit Companies confirming nor their that neither Counsel has the Petitioner received any =====
CO.PET. 384/2014 7 objection pursuant to citations published in the newspapers.

20. 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.

21. 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 Company 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 ===== CO.PET.
384/2014 8 Scheme coming into effect, the Transferor Company shall stand dissolved without following the process of winding up.

22. 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.

23. 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.

24. The Petition is allowed in the above terms. Order Dasti. SANJEEV SACHDEVA, J SEPTEMBER 10 2014

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