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Court : Delhi

Decided On : Nov-09-2010

Judge : Mr. Sanjiv Khanna, J.

Acts : [Companies Act, 1956](#) - Sections 391 , 394

Appeal No. : COMPANY PETITION 284/2010

Appellant : Goodhope Vyapaar Pvt Ltd .

Respondent : Param Mitter Coal Movers Pvt Ltd .

Advocate for Def. : Mr. Atma Sah ; Mr. Rajiv Bahl, Adv.

Advocate for Pet/Ap. : Mr. Rakesh Kumar ; Ms. Shweta Yadav, Adv.

Judgement :

ORDER

Delay in filing of report by the Regional Director is condoned and the report is taken on record.

The application is disposed of.

This second motion under Sections 391 and 394 of the [Companies Act, 1956](#) (Act for short) has been filed by Param Mitter Coal Movers Private Limited (transferee company for short) for sanction/approval of the proposed scheme of amalgamation enclosed as annexure P-1. The said scheme envisages amalgamation of

Goodhope Vyapaar Private Limited, transferor No.1 company, Jagannath Commodities Private Limited, transferor No.2 company, Komal Tie-Up Private Limited, transferor No.3 company and Omkara Agencies Private Limited, transferor No.4 company with the transferee company as per the scheme. The four transferor companies have their registered office in the State of West Bengal. In the affidavit filed on 8th November, 2010, it is that the transferor company Nos. 1 to 4 had filed a petition before the High Court of Calcutta and vide order dated 27th July, 2010 directions were issued for convening and holding of meetings of the members of the four transferor companies. Pursuant to the said order, meetings were held and members of the four transferor companies have unanimously approved the scheme of amalgamation. Thereafter, second motion has been filed before the High Court of Calcutta and vide order dated 2nd September, 2010, notices have been issued to the Central Government.

2. The transferee company had earlier filed Company Application (M) No.100/2010, which was disposed of vide order dated 26th April, 2010. By the said order, the Court had dispensed with the need and requirement to call for a meeting of the equity shareholders as the two equity shareholders had given their no objection/consents. The said order records that there were no secured or unsecured creditors of the transferee company.

3. After filing of the present petition, notices were issued to the Regional Director (Northern Region) and the Official Liquidator. The Official Liquidator has filed his report stating that the transferee company is not to be dissolved and, therefore, no comments are required from their side.

4. Regional Director in his reply has stated that paragraph 12(k) of the scheme of amalgamation requires change of name of the transferee company and this can be permitted only after following the procedure prescribed under the relevant provisions of the Act. The transferee company should be asked to follow the said procedure.

5. The transferee company in their affidavit filed on 8th November, 2010 has stated that the transferee company has not been able to secure approval of the new name from the Registrar of Companies, therefore, paragraph 12(k) may be

treated as deleted. In view of the said affidavit, paragraph 12(k) of the scheme of amalgamation is treated as deleted. This takes care of the objection raised by the Regional Director.

6. The transferee company has filed on record affidavit of compliance enclosing therewith copy of the notices published in the newspapers 'Statesman' (English) and 'Jansatta' (Hindi). It is stated by the counsel for the transferee company at bar that no objections have been received from anyone against the proposed scheme of amalgamation. The statement made at bar by the counsel for the transferee company is taken on record.

7. In view of the aforesaid, the present petition is allowed and the scheme of amalgamation is approved. It is clarified that this order will not be construed as an order granting exemption from payment of stamp duty, if payable. Dasti.

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