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Court : Delhi

Decided On : Dec-21-2010

Judge : Sanjiv Khanna, J.

Acts : [Companies Act, 1956](#) - Sections 391, 392, 394

Appeal No. : COMPANY APPLICATION(M) NOS. 225/2010 & 226/2010

Appellant : Jindal Earthmovers Private Limited .

Respondent : Jindal Infrastructure Private Limited

Advocate for Def. : Mr. P. Nagesh; Mr. Anand M. Mishra, Advs.

Judgement :

1. These two applications under Sections 391, 392 and 394 of the [Companies Act, 1956](#) (Act, for short) have been filed by Jindal Earthmovers Private Limited (hereinafter referred to as the transferor company) and Jindal Infrastructure Private Limited (hereinafter referred to as the transferee company) in respect of scheme of amalgamation, which has been enclosed with the applications.
2. The registered office of the transferor company and the transferee company are located within the National Capital Territory of Delhi.
3. Along with the applications, the transferor company and the transferee company have filed copy of their Memorandum and Articles of Association, their audited balance sheets as well as Resolutions passed by the Board of Directors approving

the proposed scheme of amalgamation.

4. The transferor company has 11 shareholders as per the list given at page 249, who have given their consent/no objection certificates, which have been enclosed at pages 252 to 261 of C.A. (M) No. 225/2010. The transferor company has 5 secured creditors and 3 unsecured creditors, who have given their consent/no objection certificates, which have been enclosed at pages 239 to 243 and 246 to 248 respectively to C.A. (M) No. 225/2010. The list of secured and unsecured creditors has been duly certified by Jain Sushil K. and Associates, Chartered Accountants. The authorized representative/Director of the transferor company has also certified the said list.

5. The transferee company has 8 shareholders and the said shareholders have given their consent/no objection certificates to the proposed scheme of amalgamation, which have been enclosed at pages 269 to 278 of C.A. (M) No. 226/2010. The transferee company has 10 secured creditors and 10 unsecured creditors as per the lists, which have been duly certified by the authorized representative of the transferee company/Director and Jain Sushil K. and Associates, Chartered Accountants as per the certificate enclosed at page 235 to C.A. (M) No. 226/2010. The said secured and unsecured creditors have given their consent/no objection certificates to the proposed scheme of amalgamation, which have been enclosed at pages 238 to 249 and 251 to 267 respectively to C.A. (M) No. 226/2010.

6. Keeping in view the consent/ no objection certificates given by the shareholders and secured and unsecured creditors of the transferor company and the transferee company, the present applications are allowed and need and requirement to convene and hold meeting of the shareholders and creditors of the transferor company and the transferee company is dispensed with.

7. The question of share exchange ratio will be examined at the time of second motion. It is noticed that the turnover of the transferor company has shown a downward trend, though profits have increased. The valuation report of Jain Sushil K. and Associates, Chartered Accountants in turn relies upon valuation reports given by P and A Valuetech Private Limited and Perfect Valuations and

Consultants. It is on the basis of the valuation reports of P and A Valuetech Private Limited and Perfect Valuations and Consultants that the book value of the assets has been increased in respect of the immovable properties of both the transferor company and the transferee company. However, the report of P and A Valuetech Private Limited and Perfect Valuations and Consultants do not refer to any specific sale instance/transaction. However, these are aspects, which the Regional Director (Northern Region) and the Official Liquidator will have to examine and as observed above, will be decided at the time of second motion. The applications are disposed of.

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