

Trinity Comforts Private Limited. Vs.

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Court : Karnataka

Decided On : Mar-07-2012

Judge : A.S. Bopanna, J.

Appeal No. : COMPANY APPLICATION NO. 122 Of 2012

Appellant : Trinity Comforts Private Limited.

Advocate for Pet/Ap. : Sri Abhijit Atur, Adv. tor SriAMurali, Adv

Judgement :

1. The applicant transferor Company in respect of scheme of amalgamation as at Annexure-F to the application, is before this Court praying that the convening of the meeting of the equity shareholders, secured and unsecured creditors be dispensed.
2. Heard Sri. Abhijith Atur, learned counsel appearing for the applicant and perused the application papers.
3. The averments made in the application as pointed out by the learned counsel would indicate that the applicant-Company which was incorporated on 16.08.2004 has been carrying on its business. The Board of the applicant-Company by its resolution dated 27.11.2011 (Annexure-C) has resolved that the scheme of amalgamation be accepted and the applicant-Company be transferred as per the scheme of amalgamation. In respect of the same, the further process is being taken up by the applicant-Company.

3. The Chartered Accountant as per his certificate as at Annexure-G has certified that the applicant-Company has 13 shareholders. The said 13 shareholders, after having understood the nature of the scheme have issued their consent letters, which are produced at Annexure-H series. Similarly, the chartered accountant by his certificate has also certified that the applicant Company has one secured creditor, the certificate is at Annexure-J.

The said secured creditor has issued the consent letter as per Annexure-K.

4. In so far as the unsecured creditors, the certificate of the Concurred Accountant at Annexure-L would indicate that, there are 54 unsecured creditors. In respect of the said unsecured creditors, 42 of them have issued the consent letters in respect of the scheme of amalgamation. As pointed out by the learned counsel for the applicant, the same constitutes 97.65% of the total number of unsecured creditors. Therefore, the same meets the requirements of law. The consent letters given by the said unsecured creditors is at Annexure-V series.

5. It is also pointed out by the learned counsel that, even in respect of the other unsecured creditors, who have not issued individual consent letters, they are trade creditors and therefore, in any event there would be change in the circumstance, either if the said creditors are settled in the meanwhile or in any event the transferee Company would have to settle the dues to the said trade creditors even after the scheme comes into effect.

6. Having noticed the said submissions of the learned counsel, it is also to be noted that even if the said creditors or any other persons have any objections to the scheme, it would still be open to such of those persons to respond to this Court when ultimately a petition is filed before this Court and the scheme is notified for information of all concerned. In that view of the matter, having accepted the contention put forth by the learned counsel and having perused the application papers. I am of the opinion that the prayer sought for is required to be granted.

7. In that view, the meeting of the equity shareholders, secured creditors and the unsecured creditors shall stand dispensed. The applicant shall file the petition within two weeks from the date of receipt of a copy of this order.

Accordingly, the application is allowed.

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