

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 240/2010

CITIFINANCIAL HOME FINANCE

INDIA LTD

..... Petitioner/Transferor Company

Through Mr.Abhishek Seth, Mr.Rajeev Kumar,
advocates.

WITH

CITIFINANCIAL CONSUMER

FINANCE I. LTD

....Petitioner/Transferee Company

Through

CORAM:**HON'BLE MR. JUSTICE SANJIV KHANNA****ORDER**

%

23.11.2010

1. This second motion under Sections 391 and 394 of the Companies Act, 1956 (hereinafter referred to as Act, for short) has been filed by Citifinancial Home Finance India Ltd (Transferor Company) with Citifinancial Consumer Finance India Ltd. (Transferee Company) for sanction/approval of the scheme of amalgamation which has been enclosed as Annexure A.

2. The Transferor Company and the Transferee Company had earlier filed Co.A.(M) No. 58/2010 which was disposed of on 19th April, 2010. Transferor Company is a wholly owned subsidiary of the Transferee Company. In view of the no objection certificates/consent letters, the Court dispensed with the need and requirement to convene and hold meetings of the shareholders of the Transferor Company and the Transferee Company. It may be noted that the Transferor Company does not have secured and unsecured creditors and therefore meeting of the secured and unsecured creditors of the Transferor

Company was not required to be held. However, meetings of the secured and unsecured creditors of the Transferee Company were directed to be held and the Court had appointed Chairperson/Alternate Chairperson for the said meetings.

3. Pursuant to Order dated 19th April, 2010, meetings of the secured and unsecured creditors of the Transferee Company were held and the Court appointed Chairperson/Alternate Chairperson have submitted their reports.

4. Mr.Sharan Dev Singh Thakur, advocate appointed as the Chairperson for the meeting of unsecured creditors in his report has stated that 17 unsecured creditors of the Transferee Company had attended the meeting either in person or through proxies. As the coram fixed by the Court in the Order dated 19th April, 2010 was not complete, the meeting was adjourned for 1/2 hour. Order dated 19th April, 2010 stipulates that persons present and voting after the meeting is reconvened shall be deemed to constitute the requisite coram. As per the report of the Chairperson, 17 unsecured creditors representing 99.5% of the total amount due and payable by the Transferee Company to unsecured creditors in value terms were present. 17 unsecured creditors have voted in favour of the Scheme.

5. Dr.S. Saif Mahmood, advocate appointed as the Chairperson for the meeting of the secured creditors has submitted his report. He has stated that the requisite coram fixed by the Court in the Order dated 19th April, 2010 for meeting of the secured creditors was not present and the meeting was adjourned for 1/2 hour. Order dated 19th April, 2010 stipulates that persons present and voting after meeting is reconvened would constitute the requisite coram. Six secured creditors to whom Rs.2,52,45,41,861/- was payable and

representing approximately 4% of the amount due and payable to the secured creditors in value terms value were present. The six secured creditors present have voted in favour of the proposed Scheme of Amalgamation. No negative vote was cast.

6. After filing of the present petition, notices were directed to be issued to the Regional Director (NR) and the Official Liquidator. Notices were also directed to be published in the newspaper 'Statesman' (English) and 'Jansatta' (Hindi). The petitioner companies have filed affidavit enclosing therewith newspaper clippings of the publications in the said two newspapers.

7. Regional Director (NR) in his reply/report has stated that the Transferee Company has 2096 secured creditors to whom an amount of Rs.16,13,73,38,774/- is payable. Objection is also taken with regard to the coram and it is stated that only six creditors attended the meeting of the secured creditors and the total amount due and payable to them is Rs.2,52,45,41,861/-. The objection with regard to the coram is incorrect and cannot be sustained as in the Order dated 19th April, 2010 while fixing the coram as 200 in number and more than 15% in value terms of the total secured debt, it was directed that in case coram fixed for the meeting was not present, then the meeting shall be adjourned for ½ hour and thereafter the persons present and voting shall be deemed to constitute the coram. It is pointed out that the Transferee Company has issued secured debentures and therefore there are 2096 secured creditors. It is submitted that notices were issued to the secured creditors of the Transferee Company but they did not participate in the meeting and this shows that the secured creditors of the

Transferee Company do not have any objection to the proposed Scheme of Amalgamation. There appears to be merit in the contention of the learned counsel for the petitioner. In this context, as noted above, the Transferor Company is a subsidiary of the Transferee Company. As per the balancesheet of the Transferor Company placed on record for the year ending 31st March, 2009, the said company had cash and bank balance of Rs.112,586,498/-. Its current liabilities as on 31st March, 2009 were only Rs.4,96,875/-. The Transferor Company had reserve and surplus of Rs.1,70,22,343/- as on 31st March, 2009. Keeping in view the aforesaid facts, I do not think that amalgamation of the Transferor Company with the Transferee Company is going to adversely affect the interest of the secured creditors of the Transferee Company. The charge in favour of the secured creditors of the Transferee Company will continue and remain unaffected.

8. Official Liquidator in his response/reply has stated that the Official Liquidator has not received any complaint against the proposed scheme of amalgamation by any person/party interested in the scheme. It is further stated that on the basis of the information submitted by the petitioner-Transferor company, the Official Liquidator is of the view that the affairs of the Transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or public interest. Official Liquidator has also stated that Notices were also published in the newspapers 'Statesman' (English) and 'Jansatta' (Hindi).

9. The present petition is allowed and the proposed scheme of amalgamation is approved/sanctioned. The Transferor company will stand dissolved from

the effective date. No shares will be issued to the shareholders of the Transferor Company in view of the amalgamation. It is clarified that this order will not be construed as an order granting exemption from payment of stamp duty, if payable.

The petition is disposed of.

DASTI.

SANJIV KHANNA, J.

NOVEMBER 23, 2010
P

