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M/s. ICL SALES & SERVICES PVT LTD.

.....Transferor Company No.1.

M/s.UPKAAR CREDIT & PORTFOLIO

.....Transferor Company No.2.

PVT LTD

.....Transferor Company No.3.

M/s.DEEPAK PVT LTD...

Through Mr. Suman Doval, Mr. Sumi Babbar, advocates.

WITH

RAMA PACKAGING & WIRES INDUSTRIES

PRIVATE LTD

..... Transferee Company

Through Mr. Atma Sah, Assistant ROC.

Mr. Rajiv Bahl, Advocate for Official Liquidator.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

1. These petitions for second motion under Sections 391 and 394 of the Companies Act, 1956 (Act for short) have been filed for sanction/approval of the proposed scheme of amalgamation which envisages amalgamation of transferor companies M/s. ICL Sales and Services Private Limited, transferor company No.1, M/s. Upkar Credit & Portfolio Private Limited, transferor company No.2, M/s. Deepak Oils Private Limited, transferor company No.3, M/s Satroj Enterprises Private Limited (non-applicant) transferor company no.4 with Rama Packaging and Wire Industries Private Limited (transferee company).

2. The registered offices of transferee company and transferor company no.4 are located in Punjab and Haryana, respectively. The transferor company nos. 1-3 have their registered office in National Capital Territory of Delhi.

3. The petitioners have placed on record copy of the Order dated 16th July, 2010 passed by the Punjab and Haryana High Court in the case of the transferor company No. 4 and the transferee company in Company Petition No. 51/2009 allowing/approving the scheme of amalgamation in respect of the said two companies.

4. The transferor companies Nos. 1-2 had earlier filed Company Application (M) No.87/2009, which was disposed of vide order dated May 04, 2009. By the said order, the Court had dispensed with the need and requirement to hold meetings of the shareholders and unsecured creditors as their no objection/consent letters were placed on record. The said order records that there were no secured creditor of the transferor company no.2.

5. Transferor company no.3 had filed CA(M) No. 40/2009 which was allowed vide Order dated 17th March, 2009 dispensing with the requirement to convene and hold meeting of its shareholders and creditors.

6. After filing of the present petition, advertisements were issued in terms of Rule 80 of Companies (Court) Rules, 1959 in Delhi edition of 'Statesman' (English) and 'Jansatta' (Hindi). Notices have been published as per the affidavit of service placed on record along with newspaper clippings. It is stated that no objection to the proposed scheme of amalgamation has been received.

7. Regional Director in his report/reply had stated that neither the scheme nor in the petition it is mentioned that the petitioner-companies have complied with the Accounting Standard 14 as prescribed by the Companies (Accounting Standard) Rules, 2006. Accordingly, the petitioner-companies should be asked to furnish an undertaking that they shall be complying with the Accounting Standards as prescribed under Accounting Standard 14 relating to accounting for amalgamation. The three transferors have filed affidavit that they shall comply with the requirement of Accounting Standard 14 issued by the Institute of Chartered Accountants of India. In view of the said affidavit/undertaking, the first objection raised by the Regional Director has been duly complied with.

8. The second objection raised by the Regional Director is that the scheme in para 19 of Part V stipulates that if the scheme cannot be made effective on or before 31st March,2009 the scheme would be null and void and of no avail. In view of the said objection, the respondent-company had filed resolution of the Board of Directors extending the validity date to 31st October, 2010. As the said date had also expired, the petitioner-companies have now filed another Board resolution extending the validity date to 31st March, 2011. In view of the said

extension, the second objection raised by the Regional Director also stands complied with.

9. Official Liquidator in their response/reply has stated the history of the three transferor companies, their respective authorized, subscribed and paid up share capital and their financial performance. It is stated that the share capital of the transferee company is not sufficient to accommodate the share capital which is to be issued to the shareholders of the transferor companies even after cancellation of the cross holdings. This objection should have been raised by the official liquidator when the scheme of amalgamation was being considered in the case of transferee company before the Punjab & Haryana High Court. However, learned counsel for the petitioners has stated that the transferee company will pay necessary charges for enhancement of the authorized and paid up share capital of the transferee company in accordance with law.

10. The official liquidator has stated that they have not received any complaint against the proposed scheme of amalgamation from persons/parties interested in the scheme. It is further stated that on the basis of the information furnished by the three transferor companies, the Official Liquidator is of the view that affairs of the three transferor companies do not appear have been conducted in a manner prejudicial to the interest of the members or public interest.

11. In the case of the transferor company no.3, the Official Liquidator has stated that the shareholders of the said company as per the scheme of amalgamation are to be allotted 470 equity shares of Rs.100/- each fully paid up for every 100 equity shares of Rs.10/- each fully paid up in the transferor company no.3. It is stated that the aforesaid exchange ratio has been certified/computed by SMS Associates, Chartered Accountants on the basis of Net Assets Value Method which appears to be correct but the exchange ratio provided in para 15 of the scheme is not in consonance and in accord with the valuation report of SMS Associates, Chartered Accountants. It is noticed that face value of each paid up share of transferor company no.3 is Re.1/- each and

not Rs.10/-. Transferor company no.3 has also filed affidavit stating that there is a typographical error in the scheme and allotment of shares will be made in accordance with the valuation report. The said statement on behalf of the petitioners is taken on record and the petitioners will be bound by the statement. The scheme will be accordingly, treated as modified.

Petitions are accordingly disposed of. Scheme of amalgamation as modified and subject to conditions mentioned above is approved/sanctioned. All pending applications are disposed of.

DASTI.

SANJIV KHANNA, J.

NOVEMBER 15, 2010
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