

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment: 12.10.2012

CO.A(M) No. 159 of 2012

SARGAM LABORATORY PVT. LTD.

..... TRANSFEROR COMPANY

AND

BUREAU VERITAS CONSUMER PRODUCTS SERVICES (INDIA) PVT.
LTD.

..... APPLICANT / TRANSFEREE COMPANY

Through: Mr. Amar Gupta, Mr. Ananya Kumar, Mr.
Chetan Chopra and Ms. Saba Grover,
Advocates for the Applicant Company

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This is a first motion application under Section 391 and 394 of the Companies Act, 1956, (for short 'the Act') in connection with the Scheme of Arrangement (for short 'Scheme') between Sargam Laboratory Pvt. Ltd. (hereinafter referred to as 'Transferor Company') and Bureau Veritas Consumer Products Services (India) Pvt. Ltd. (hereinafter referred to as 'Transferee Company'). The certified true copy of the proposed scheme is filed along with application as Exhibit - B.

2 The registered office of the Transferor Company is located at Chennai and as such the Transferor Company will be under the jurisdiction of the High Court of Judicature at Madras. The registered office of the Transferee Company is located within the National Capital Territory of Delhi and is within the jurisdiction of this Hon'ble Court. As such, the Transferee Company has filed the present application for seeking appropriate directions from this Hon'ble Court.

3 The details with regard to the incorporation of the Transferee Company its authorized, issued, subscribed and paid-up capital have been provided in the application.

4 Copy of the Memorandum and Articles of Association as well as the latest audited annual accounts for the year ending on March 31, 2011 and the unaudited accounts for the year ending on November 30, 2011 of the Applicant Company has also been enclosed with the application.

5 Mr. Gupta, Ld. Counsel for the Applicant Company submits that no proceedings under Section 235 to 251 of the Act are pending against the Applicant Company as on the date of filing of the present application.

6 The proposed scheme has been approved by both the Transferor and the Transferee Company. A copy of the Board Resolution of the Applicant Company has also been placed on the record along with this application.

7 As stated above since the Registered Office of the Transferor Company is situated at Chennai, it has been stated that the High Court of Judicature at Madras vide its order dated August 29, 2012, dispensed with the requirement of holding the requisite meetings (including the meeting of the shareholders). Copy of the order dated August 29, 2012 has been placed on record as Exhibit-Q.

8 The status of the shareholders, secured and unsecured creditors of the Applicant/Transferee Company and the consents obtained by them for the proposed scheme is clearly apparent from the chart given below: -

Company	No. of Shareholders	Consents Given	No. of Secured Creditors	Consents Given	No. of Unsecured creditors	Consents Given
Bureau Veritas Consumer Products Services (India) Private Limited (<i>Transferee Company</i>)	2 [@ Exhibit – G page 85]	All [@ Exhibit – M (colly) page 137 - 148]	Nil [CA Certificate @ Exhibit – N page 147]	N.A.	192* [@ Exhibit – O page 148 - 152]	105 [@ Exhibit – P page 153- 316]
Sargam Laboratory Private Limited (Transferor Company) being situated in Chennai, has moved a separate Company Application in the High Court of Judicature of Madras bearing C.A. No. 621 of 2012 wherein the said Hon'ble High Court has ordered for dispensation of the meetings, including the meetings of the shareholders, vide order dated August 29, 2012 (Page 317).						

* Consents received 55% in number and 83.15% in value.

9 A prayer has been made for the dispensation of the requirement of convening the separate meeting of (a) equity shareholders; (b) secured creditors; and (c) unsecured creditors of the Transferee Company.

10 In view of the written consents/NOCs given by all the shareholders, the requirement of convening the meeting of the shareholders is dispensed with. There are nil secured creditors of the Transferee Company, therefore, the requirement of convening the meeting of secured creditors does not arise.

11 There are 195 unsecured creditors as on November 30, 2011, representing the total unsecured debt of Rs. 2,25,77,260/-. Out of the said unsecured creditors, the Petitioner has received the written consents/NOCs from 105 unsecured creditors. These consents letters constitute 55% in number and 83.15% in value. In support of the aforesaid consents letters, only six unsecured creditors representing 26.33% of the aforementioned unsecured debt have given the Board Resolutions along with the said consents. Consequently, I direct that the meeting of the unsecured creditors of the Applicant / Transferee Company be held on December 07, 2012 at 10:30 AM at India Habitat Centre, Lodhi Road, New Delhi.

12 Mr. Manish Bishnoi, Advocate, Cell No.9811548007 is appointed as the Chairperson and Mr. Rajat Mathur, Advocate, Cell No.9811556470 is appointed as the Alternate Chairperson for the meeting of the unsecured creditors of the Applicant/Transferee Company. They would be paid a fee of

Rs.50,000/ each. Mr.Sigasan, Official of this Court, Cell No.9910799609 and Mr.Hakim Singh Bundela, Cell No.8447502188 shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs.10,000/- each for this purpose.

13 The quorum of the meetings of the unsecured creditors of the Applicant / Transferee Company shall be 20%.

14 It is also directed that if the quorum is not present in the meetings, the meetings would be adjourned for 30 minutes and thereafter, the persons present in the meetings would be treated as proper quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the aforesaid meetings or by his authorised representative, is filed with the Registered office of the Company at least 48 hours before the said meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy register is properly maintained.

15 The Transferor and the Transferee Companies are also directed to publish advance notice of the aforesaid proposed meetings in “Business Standard” (English Delhi Edition) and “Dainik Bhaskar” (Hindi Delhi Edition). The advertisement shall be published minimum 21 days in advance before the Scheduled date of meeting.

16 Individual notice of the proposed meetings would be sent by ordinary post minimum 21 days in advance before the scheduled date of meeting. The Chairperson will ensure that dispatch is made under his/her supervision or their authorised representatives. The Chairpersons and Alternate Chairpersons appointed for the meetings will be at liberty to issue suitable directions to the management are conducted in a just, free and fair manner.

17 The Chairpersons/Alternate Chairpersons shall file their reports within two weeks of the conclusion of the respective meetings.

18 The application stands allowed in the aforesaid terms.
Order Dasti.

INDERMEET KAUR, J.

OCTOBER 12, 2012
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