

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 4th July, 2013

COMPANY PETITION NO. 26 of 2013

Tirupati BuildPlaza Private Limited

.....Petitioner

Through: Ms. Pooja M. Saigal, Advocate for the
Petitioner

Mr. K.S. Pradhan, Dy. Registrar of Companies for
the Regional Director.

Mr. Rajiv Bahl, Advocate for the Official
Liquidator.

CORAM: HON'BLE MR. JUSTICE R.V.EASWAR

R. V. EASWAR, J.: (ORAL)

1. This second motion petition has been filed under Sections 391 and 394 of the Companies Act, 1956 ('Act') by Tirupati BuildPlaza Private Limited (hereinafter referred to as 'Petitioner Transferor company') seeking sanction to the Scheme of Amalgamation ('Scheme') between the Petitioner Transferor company and Gupta Promoters Private Limited (hereinafter referred to as 'Transferee company').

The Petitioner Transferor company is a wholly owned subsidiary of the Transferee company and there being no rearrangement vis a vis the shareholders of the Transferee company, the Transferee company has not approached the Hon'ble Court.

2. The registered office of the Petitioner Transferor company is situated within the National Capital Territory of Delhi and is within the jurisdiction of this Court.

3. The details of the dates of incorporation of the Petitioner Transferor company, its authorized, issued, subscribed and paid up capital have been enclosed with the petition.
4. The copies of the Memorandum and Articles of Association as well as the latest audited annual accounts for the year ended 31st March 2012 of the Petitioner Transferor company have also been enclosed along with the petition.
5. The copies of the resolutions passed by the Boards of Directors ('BoDs') of the Petitioner companies and the Transferee company approving the Scheme have also been placed on record.
6. Learned counsel for the Petitioner company submits that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner Transferor company.
7. The Petitioner company had earlier filed CA (M) No. 197 of 2012 in this Court seeking directions for dispensation of the meetings of the shareholders, and the unsecured creditors stating that the company had no secured creditors. By order dated 20th December 2012, this Court allowed the application and dispensed with the requirements of convening their meetings.
8. The Petitioner company has thereafter filed the present petition seeking sanction of the proposed Scheme. By order dated 21st January 2013, notice in the petition was directed to be issued to the Regional Director('RD'), and the Official Liquidator ('OL'). Citations were also directed to be published in 'The Business Standard' (English) and 'Veer Arjun' (Hindi). An affidavit of publication has been filed by

the Petitioner showing compliance regarding publication of citations in the aforesaid newspapers on 8th February 2013, copies of the newspaper cuttings, in original, containing the publications have been filed with the affidavit of service.

9. The RD in his affidavit dated 5th April 2013 has not raised any objection to the Scheme and has stated that, upon sanction of the Scheme, all the staff / employees of the Transferor company shall become the employees of the Transferee company without any break or interruption in their services.
10. The counsel for the Petitioner Transferor company has filed an affidavit dated 30th May 2013 confirming that neither the Petitioner Transferor company nor their counsel has received any objection pursuant to the citations published in the newspapers.
11. Pursuant to the notices issued, the report of the OL dated 22nd June 2013 stated that his office has not received any complaint against the proposed Scheme from any person / party interested in the Scheme in any manner till the date of filing of this Report.
12. In view of the approval accorded by the shareholders and creditors of the Petitioner Transferor company, representations/reports filed by the RD and the OL to the proposed Scheme, there appears to be no impediment to the grant of sanction to the proposed Scheme. Consequently, sanction is hereby granted to the proposed Scheme under Sections 391 and 394 of the Act. The Petitioner Transferor company will comply with the statutory requirements in accordance with law.

13. A certified copy of the order be filed with the ROC within 30 days from receipt of the same. In terms of Sections 391 and 394 of the Act and in terms of the Scheme, the property, assets, rights and powers of the Petitioner Transferor company shall be transferred to and vest in the Transferee company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Petitioner Transferor company shall be transferred to the Transferee company without any further act or deed. Upon the scheme coming into effect, the Transferor company shall stand dissolved without winding up.
14. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any Law.
15. Learned counsel for the Petitioner states that the Petitioner Transferor company would voluntarily deposit a sum of Rs. 50,000 in the Common Pool Fund of the OL within three weeks from today. The statement is taken on record.
16. The petition is allowed in the above terms.
17. Order be given dasti.

R.V. EASWAR , J.

JULY 4, 2013

M