Company Appln.Nos.514 to 516 of 2016

Reserved On : 16.06.2016
Delivered on: 01.07.2016

RAJIV SHAKDHER,J.

1. The applicants herein pray for dispensing with the convening, holding and conducting of the meeting of the equity shareholders of the applicants company.

2. On 08.06.2016, when the matter was taken up for hearing, it is seen that transferor company No.1, viz., applicant in C.A.No.514 of 2016, had the lease hold rights in the immovable property situate at Plot No.OZ-14, SIPCOT Hi-Tech SEZ, Oragadam, measuring 2.00 acres.

2.1. To a query raised whether the SIPCOT would grant in-principle approval for transfer of the lease hold rights in favour of the transferee company, (applicant in C.A.No.516 of 2016), learned counsel for transferor company No.1 placed before the Court a copy of the letter dated 15.03.2016, wherein, it is stated that the SIPCOT had given an in-principle approval for such transfer in favour of transferee company, viz., M/s.Stanley Engineered Fastening India Private Limited.

2.2. To a further query raised: whether the interest of the unsecured creditors of transferor company No.1 (applicant in C.A.No.514 of 2016), which were valued at Rs.4,34,35,936/- were protected, as no application has been filed to dispense with the meeting of the unsecured creditors, learned counsel for the transferor company No.1 submitted that there is a cash balance as on date to the extent of Rs.1.74 crores available with the said company. Learned counsel had further informed that the transferee company, as well, had a cash balance of Rs.8.31 crores available with it, and hence, there were sufficient liquid funds available to take care of the interest of the unsecured creditors.

3. The above two aspects have been discussed in the order dated 08.06.2016. For the sake of convenience, the order dated 08.06.2016 is extracted hereunder:

"1. A perusal of the applications would show that the applicant/transferor company No.1 is the owner of immovable property, which is situate at Plot No.OZ-14, measuring 2.00 acres, at SIPCOT Hi-Tech SEZ, Oragadam.

2. Learned counsel for the applicant/transferor company No.1 says that, this is the only immovable property, which is owned by the applicant/transferor company No.1.

2.1. Learned counsel for the applicant has brought to Court a copy of the letter dated 15.03.2016, which shows that in-principle approval has been given by SIPCOT for transfer of lease hold rights in the aforementioned property in favour of M/S.Stanley Engineered Fastening India Private Limited, which has also filed an application before this Court, in respect of the proposed scheme of amalgamation.

2.2 The scheme of amalgamation envisages amalgamation between *the applicant/transferor company No.1, Infastech Fastening Technologies India Private Limited, applicant in C.A.No.514 of 2016, applicant/transferor company No.2, Avfast (India) Private Limited, applicant in C.A.No.515 of 2016 with applicant/transferee, M/S.Stanley Engineered Fastening India Private Limited, the applicant in C.A.No.516 of 2016.*

3.The applicant/transferor company No.1, which has only two share holders, have given their consents, which is set out in Exhibit F. It is averred that applicant/transferor company No.1 has no secured creditors.

3.1 I am told that as on 18.04.2016, the applicant/transferor company No.1, has unsecured creditors valued at Rs.4,34,35,936/-. In the present application, prayer made is for dispensing with the convening of meeting of the share holders of the said applicant/transferor company No.1.

4. Learned counsel for the applicants says that there is a cash balance, as on date, available with the applicant/transferor company No.1 to the extent of Rs.1.74 Crores.

4.1 Learned counsel for the applicants further says that insofar as the applicant in C.A.No.516 of 2016 is concerned, i.e. the transferee company, cash balance equivalent to Rs.8.31 Crores is available, as on date.

4.2 Therefore, according to him, sufficient cash balance is available to take care of the interest of the unsecured creditors of applicant/transferor company No.1. I am informed that, insofar as the applicant/transferor company No.2, applicant in C.A.No.515 of 2016 is concerned, there are no unsecured creditors, though insofar as applicant/transferee company is concerned, which is an applicant in C.A.No.516 of 2016, there are unsecured creditors to the extent of Rs.17.79 Crores.

5. Learned counsel for the applicant says that the net worth of the amalgamated company, in case, the scheme is sanctioned, would ramp up to Rs.190.91 Lakhs.

6. Let an affidavit be filed setting out clearly, what is stated herein *above. The needful be done within one week.*

7. In view of what is observed herein above, learned counsel for the applicant will formally place on record the in-principle letter dated 15.03.2016, issued by SIPCOT to the applicant/transferor company No.1.

8. Re-notify on 16.06.2016. "

4. Pursuant to the above-said order, three separate affidavits were filed.

4.1. Consequently, the learned counsel for the applicants made the following submissions, which stood recorded in the order dated 16.6.2016.

"1. Pursuant to the order passed by this Court on 08.06.2016, three separate affidavits have been filed in the captioned applications.

2. Learned counsel for the applicants says that, the cash position, which was indicated to the Court on 08.06.2016, vis-a-vis, applicant/transferor company No.1, and with respect to transferee company, as reflected in para-4 and 4(1) of the said order, obtained as on 18.04.2016 and not as on the date of the order i.e., 08.06.2016.

2.1 Learned counsel for the applicants says that, this is an error, which this Court may be pleased to take note of.

2.2 Learned counsel for the applicants, however, goes on to submit that the affidavit as filed would show the position of cash balance as far as the applicants are concerned, as on 08.06.2016 is, in fact, much better.

3. Typed set of documents have also been filed by the counsel for the applicants in that behalf.

4. Having regard to the aforesaid, information supplied is taken on record.

5. Heard. Orders reserved. "

5. Having considered the affidavits, I am persuaded to agree with the counsel for the applicants that the interest of the unsecured creditors are protected, in the sense, that there is sufficient cash balance in the transferee company, i.e., applicant in C.A.No.516 of 2016. This apart the shareholders of all the three applicants have given their consent to the Scheme as proposed. The fact that there are no secured creditors in the transferor companies or in the transferee company is exemplified by the Certificates issued by the Chartered Accountant to that effect.

5.1. Accordingly, in my view, the proposed scheme can be taken forward.

6. Resultantly, taking note of the aforesaid, this Court dispenses with the convening and holding of the meeting of the equity shareholders of both the transferor company, viz., applicant in C.A.Nos.514 and 515 of 2016 and the transferee company, viz., applicant in C.A.No.516 of 2016.

7. The company petitions shall be presented on or before 01.08.2016.

sl 01.07.2016

RAJIV SHAKDHER,J.

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Pre-Delivery Order in

Company Appln.Nos.514 to 516 of 2016

Dated: 01.07.2016