IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 17.11.2016
Judgment Pronounced On:19.12.2016

CO.PET. 542/2015

IN THE MATTER OF:-

KALINDEE RAIL NIRMAN (ENGINEERS) LIMITED

…Petitioner/Amalgamating Company

AND

TEXMACO RAIL & ENGINEERING LIMITED

…Amalgamated Company

Through: Mr. Abhinav Vasisth, Sr. Advocate with Mr. Anirudh Das, Mr. Kamaljeet Singh and Mr. Vikram Shah, Advocates for the Petitioner
Mr. Arun Bhardwaj, Sr. Advocate with Ms. Arushi, Mr. P.V. Dinesh, Mr. Sindhu T.P., Ms. Arushi Singh and Mr. Dinesh Kumar for Impleader/Objector
Mr. Rajiv Bahl, Advocate for the Official Liquidator
Ms. Aparna Mudium, Assistant Registrar of Companies for the Regional Director

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

CO.APPL. 1392/2016

The present application has been filed by Mrs. Brij Lata Gemini, praying as follows:-

> "In the above facts and circumstance and in the interest of justice, it is most respectfully prayed that this Hon'ble Court may be:
> (a) Pleased to pass an order impleading the Applicant as Supplementary party Respondent/ Objector in the present Company Petition in the interest of justice;
> (b) Pleased to pass an order/direction to the Petitioner to provide a copy of the present petition to the impleadment Applicant/Objector in the interest of justice and;
> (c) Pleased to pass an order giving liberty to the impleadment Applicant/Objector to file detailed objections in the above mentioned Company Petition in the interest of justice.
> (d) Pleased to pass such other order or orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice and equity."

Mr. Arun Bhardwaj, learned Senior Counsel appearing on behalf of the applicant/objector, on instructions from Ms. Arushi, learned counsel, seeks leave to withdraw the present application with liberty to institute appropriate proceedings, in accordance with law, if so advised.

Leave and liberty granted.

The application is dismissed as withdrawn and disposed of accordingly.

CO.APPL. 3229/2016

In view of the circumstance that Co.Appl. 1392/2016, for impleadment, has been withdrawn, Mr. Arun Bhardwaj, learned Senior Counsel appearing on behalf of the applicant/objector seeks leave to withdraw this application.

Leave granted.

The application is dismissed as withdrawn and disposed of accordingly.

CO.APPL.3010/2016

In view of the circumstance that the above applications have been withdrawn, the present application has become infructuous.

The application is accordingly disposed of as having become infructuous.

CO.PET.542/2015

1. The present petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') by Kalindee Rail Nirman (Engineers) Limited (hereinafter referred to as the 'Petitioner/Amalgamating Company'), seeking sanction to the proposed scheme of Amalgamation (hereinafter referred to as the 'proposed scheme') of the Petitioner/Amalgamating Company with Texmaco Rail & Engineering Limited (hereinafter referred to as the 'Amalgamated Company').

2. The registered office of the Petitioner/Amalgamating Company is situated at NCT of Delhi, within the jurisdiction of this Court.

3. The Petitioner/Amalgamating Company was incorporated under the Act, on 15.02.1984, with the Registrar of Companies, Rajasthan at Jaipur. Subsequently, Petitioner/Amalgamating Company shifted its registered office from the State of Rajasthan to NCT of Delhi and obtained a certificate, dated 22.02.2002, in this regard from the Registrar of Companies, NCT of Delhi & Haryana.

4. The registered office of the Amalgamated Company is situated at Kolkata, outside the jurisdiction of this Court. In this behalf, learned senior counsel for the Petitioner/Amalgamating Company has submitted that a separate petition, being C.P. no.531 of 2015, was filed by the Amalgamated Company in the Calcutta High Court, being the competent Court, and the proposed scheme has been sanctioned by the said High Court vide its order dated 26.02.2016.

5. The details of the authorized, issued, subscribed and paid up share capital *qua* the Petitioner/Amalgamating Company and the Amalgamated Company, have been set out in paragraph 2 of the proposed scheme.

6. The authorized share capital of the Petitioner/Amalgamating Company as on 31.03.2016 is Rs.65,00,00,000/- divided into 6,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the

Petitioner/Amalgamating Company as on 31.03.2016 is Rs.16,50,75,970/- divided into 1,65,07,597 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the Petitioner/Amalgamating Company and the Amalgamated Company have been filed on record alongwith Company Application no.74 of 2015, earlier filed by the Petitioner/Amalgamating Company. The audited balance sheets of the Petitioner/Amalgamating Company, as on 31.03.2016, along with the independent auditors report, have also been filed. The same are on record.

8. A copy of the proposed scheme has been duly placed on record and the salient features of the same have been incorporated and detailed out in the present petition. It has been stated on behalf of the Petitioner/Amalgamating Company that, *inter alia,* the proposed scheme will result in optimal utilization of resources; better administration; and cost reduction including reduction in managerial, administrative and other common costs, due to the pooling of management, administrative and technical skills of various resources of the Petitioner/Amalgamating Company and the Amalgamated Company. It has been further stated that the proposed amalgamation will result in consolidation of business presently being carried out by the Petitioner/Amalgamating Company and the Amalgamated Company, which shall create greater synergies between the business operations.

9. It has been averred on behalf of the Petitioner/Amalgamating Company that there are no proceedings pending against them, under Sections 235 to 250A of the Act (including their corresponding Sections of the Companies Act, 2013), as on the date of filing of the present petition.

10. It has been further submitted on behalf of the Petitioner/Amalgamating Company that the proposed scheme has been approved by the respective Board of Directors of the Petitioner/Amalgamating Company and the Amalgamated Company by way of resolutions dated 21.05.2014 and 30.12.2014. Copies of the said resolutions are on record.

11. So far as the share exchange ratio is concerned, the proposed scheme provides that, upon coming into effect of the proposed scheme, the Amalgamated Company shall issue and allot equity shares to the shareholders of the Petitioner/Amalgamating Company in the following ratio:

> "106 fully paid up equity shares of Re.1/- each of the Amalgamated Company for every 100 fully paid-up equity shares of Rs.10/- each held by the shareholders in the Amalgamating Company."

12. To recapitulate, the Petitioner/Amalgamating Company had in the earlier round filed an application, being Company Application (M) no.74 of 2015, whereby a prayer was sought to convene the meetings of the equity shareholders, secured and unsecured creditors of the Petitioner/Amalgamating Company, seeking their approval to the proposed scheme. This Court vide order dated 25.05.2015, allowed the application and directed convening of meetings of the equity shareholders, secured and unsecured creditors of the Petitioner/Amalgamating Company, to consider and, if thought fit, approve, with or without modification, the proposed scheme.

13. The Chairpersons of the meetings so convened, of the equity shareholders, secured and unsecured creditors of the Petitioner/Amalgamating Company, have filed their reports stating that the meetings were duly held on 11.07.2015, as directed, and that the proposed scheme has been approved by the requisite majority of the equity shareholders, secured and unsecured creditors of the Petitioner/Amalgamating Company, present and voting at the said meetings. The said reports are on record.

14. The Petitioner/Amalgamating Company has thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 07.08.2015, notice in the present petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Citations were also directed to be published in two newspapers, namely, 'Indian Express' (English) and 'Jansatta' (Hindi). Affidavit of service and publication, dated 06.01.2016, has been filed by the Petitioner/Amalgamating Company, showing compliance regarding service on the Regional Director and publication of the citations in the aforesaid newspapers. Copies of the newspaper clippings, regarding publication carried out on 12.12.2015 have also been filed alongwith the said affidavit.

15. Pursuant to the issuance of notices in the present petition, the Official Liquidator sought information from the Petitioner/Amalgamating Company. Based on the information received, the Official Liquidator has filed a report, dated 07.01.2016, wherein, it has been stated that he has not received any complaint against the proposed scheme from any interested person/party and that the affairs of the Petitioner/Amalgamating Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest, as per second proviso of Section 394(1) of the Act.

16. Further, in response to the notices issued in the present petition, Mr. A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, has filed his affidavit, dated 08.01.2016, wherein it has been stated he does not have any objection to sanction of the proposed scheme.

17. It has been noted that no objections have been received to the proposed scheme from any other party. The Petitioner/Amalgamating Company, vide affidavit dated 06.01.2016, has submitted that neither the Petitioner/Amalgamating Company nor their counsel have received any objection to the proposed scheme, pursuant to the citations published in the newspapers on 12.12.2015.

18. Considering the approval accorded by the equity shareholders, secured and unsecured creditors of the Petitioner/Amalgamating Company to the proposed scheme; affidavit filed by the Regional Director, Northern Region and the report filed by the Official Liquidator, having not raised any objection 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. The Petitioner/Amalgamating Company will comply with the statutory requirements in accordance with law. Upon sanction becoming effective from the appointed date of the proposed scheme, i.e. 1st April, 2014 the Petitioner/Amalgamating Company shall stand dissolved without undergoing the process of winding up.

19. A certified copy of this order, sanctioning the proposed scheme, be filed with the ROC within thirty (30) days of its receipt.

20. Notwithstanding the above, if there is any deficiency found or, violation committed *qua* any enactment, statutory rule or regulation, the sanction granted by this Court to the proposed scheme will not come in the way of action being taken, *albeit*, in accordance with law, against the concerned persons, directors and officials of the Petitioner/Amalgamating Company.

21. It is made clear, that this order shall not be construed as an order granting exemption, *inter alia*, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

22. Learned counsel for the Official Liquidator prays that costs of at least Rs.50,000/- should be paid by the Petitioner/Amalgamating Company keeping in view the fact that the matter has involved examination of extensive records. Learned counsel for the Petitioner/Amalgamating Company states that the same is acceptable to him. The Petitioner/Amalgamating Company shall deposit a sum of Rs.50,000/- by way of costs, in the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund.

23. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.

SIDDHARTH MRIDUL, J.

DECEMBER 19, 2016
dn/ap