IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No. 89 of 2009 (O&M)
Date of Decision: 23.07.2019

Dwarikadhish Spinners Limited

...Petitioner

and

Asset Reconstruction India Ltd. and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Alok Kumar Jain, Advocate
for the petitioner.

Mr. Salil Sabhlok, Advocate
for respondent No.7.

RAJIV NARAIN RAINA, J. *(Oral)*

1) This is Second Motion Petition filed by the petitioner-company seeking sanction of the Scheme of Arrangement between the petitioner-company and its secured creditors. The petitioner-Company, namely Dwarikadhish Spinners Limited was incorporated under the Companies Act on 19.07.1984 under the name of Ghee Ehh Electronics Private and thereafter the name of the Company was changed to Dwarikadhish Spinners Limited under a fresh Certificate of Incorporation dated 28.03.1995. Presently the registered office of the Company is situated at 1, Kouli Majrra, Lalru, Patiala, Punjab. Its main objects as set out in its memorandum and Articles of Association are to carry out the manufacture, purchase, assemble, import, export, sell and generally deal in all sort of radios, transistors, televisions, tape recorders, record players, cameras, cassettes, sound reproduction equipments, large screen projectors, TV TVRO, Systems, Video and

Video Games, Calculators, Micro Motors of all kinds, dictating machines blowers, telecommunication equipments and other electronic products etc. Copy of its Memorandum and Articles of Association is placed on record as Annexure P-2. Its authorized capital is Rs. 40.00 Crore divided into 3,50,00,000 equity shares and 50,00,000 Preference Shares of Rs. 10/- each. The total issued, subscribed and paid up share capital of the Company is Rs. 32,11,00,000/- divided into 3,04,10,000 equity shares and 17,00,000 Preference Shares of Rs. 10/- each. It is stated that the Company had started incurring losses mainly on account of recession in the industry leading to lower realization, labour problem and various other related factors. The Company had defaulted in effecting payments to its lenders. It is stated that the Company had a principal outstanding of Rs. 63.19 Crore to its secured creditors, the details whereof are given in Schedule-I which is placed on record. It is also stated that the Company had arranged a strategic investor, Mr. Rajeev Raina of M/s SDR Capital Ltd. Who has agreed to induct funds in the Company in lieu whereof the existing promoters of the Company would transfer their 100% shareholding in the Company to strategic investor on agreed terms and conditions between investors and the existing promoters. The funds to be inducted by the strategic investor are proposed to be utilized to settle the dues of its secured creditors in a restructured manner and revive the Company. The summary of means of Finance and Cost of Scheme is placed on record as Schedule-2. It is stated that with a view to attain financial viability by settlement of the dues of its secured creditors, the Company had decided to settle the dues of its secured lenders in a restructured manner and accordingly the proposed Scheme of Arrangement for Settlement under Section 391-394 of the Companies Act, 1956 is framed. However Mr. Jain has pointed out that during the pendency of the instant petition, the Debt of Respondent No. 1, 3 & 6 has been taken over by Respondent No. 7 and the Debt of Respondent No. 5 has been liquidated.

2) The company vide its Board Resolution dated 24.04.2008 (P-5) resolved to make arrangement with the Secured Creditors. Accordingly the Company filed CP No. 51 of 2008 whereby vide order dated 08.05.2008, this Court directed convening of the meeting of the Secured Creditors.

3) The Chairman appointed for the meeting submitted his report (P-7) and submitted that the scheme of arrangement between the petitioner-companies and its secured creditors was put for voting before this meeting and was agreed and is passed successfully in numbers and value as per law required.

4) That the notice of the instant petition was issued to the Regional Director, Northern Region, Ministry of Corporate Affairs, who filed his affidavit on dated 29.10.2009. Mr. Jain contends that the affidavit of Regional Director, Northern Region, Ministry of Corporate Affairs has raised no objection to the sanctioning of the scheme, which was duly passed in the meeting of the Secured Creditors as reflected at page 99 of the paperbook, wherein the following resolution has been

passed: “Resolved that Scheme of Arrangement between the petitioner-company and its secured creditors was put for voting before this meeting and is hereby agreed and passed successfully in number and value as per law required.

5) Mr. Jain further submits that during the pendency of the instant petition, respondent No. 7 took over the debt of respondent Nos. 1, 3 & 6 and subsequently vide order dated 07.09.2012 respondent Nos. 1, 3 & 6 were discharged. Thereafter, vide order dated 02.05.2013, respondent No.7 was impleaded as party and later change its name to Pintail Realty Developers Pvt. Ltd. This Court vide order dated 30.11.2018 allowed CA No. 151 of 2018 and Amended Memo of Party was taken on record.

6) Counsel for the petitioner inter alia contends that vide order dated 13.07.2018, this Court had raised a query that since this matter pertains to arrangement therefore issue would be as to whether this case has to be transferred to the National Company Law Tribunal in view of the Rule 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016.

7) Mr. Jain has relied upon the ruling of the Division Bench of this Court in CAPP No. 2 of 2017 – Alpha Corp Development Private Limited And Euthoria Developers Private Limited decided on 31.03.2017 to contend that this Court has the jurisdiction to consider and decide the Second Motion Petition and the matter should not be remitted to the Bench of NCLT. Mr. Salil Sabhlok appearing for

Respondent No. 7 holding majority of the secured debt has also submitted that he has no objection in sanctioning of the scheme.

8) Keeping in view of the above, the instant petition is allowed and the Amended Scheme of Arrangement is sanctioned subject to due payment towards the secured creditors. All the misc. applications are disposed off accordingly.

9) Let formal order of sanction of Scheme of Arrangement be drawn and certified copy of the same be filed with the Registrar of Companies within 30 days from its receipt.

10) The scheme shall be binding on the petitioner-company and all its stake holders.

11) A notice of the order be published in 'Indian Express' (English) and 'Jagbani' (Punjabi) both Punjab Editions and in the Official Gazette of Government of Punjab.

12) Disposed of.

(RAJIV NARAIN RAINA)
JUDGE

23.07.2019
kv

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No