

(2010) 12 DEL CK 0408

Delhi High Court

Case No: Company Application (M) No. 215 of 2010

Mangrove (India) Household
Private Limited and Mangrove
International Private Limited

APPELLANT

Vs

Miracle Leasing and Finance
Limited

RESPONDENT

Date of Decision: Dec. 7, 2010

Acts Referred:

- Companies Act, 1956 - Section 235, 251, 391, 394

Citation: (2011) 2 CompLJ 127

Hon'ble Judges: Sanjiv Khanna, J

Bench: Single Bench

Advocate: Anil K. Aggarwal, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Sanjiv Khanna, J.

CA No. 2366/2010

Exemption application is allowed, subject to all just exceptions.

COMPANY APPLICATION (M) No. 215/2010

1. This joint application under Sections 391 - 394 of the Companies Act, 1956 (Act, for short) has been filed by Mangrove (India) Household Private Limited and Mangrove International Private Limited (hereinafter referred to as the Transferor Company Nos. 1 and 2 respectively) and Miracle Leasing and Finance Limited (hereinafter referred to as the Transferee Company) in respect of scheme of amalgamation, which has been enclosed as Annexure-P-29 to the application.

2. Along with the application, the two transferor companies and the transferee company have enclosed copy of their Memorandum and Articles of Association and their audited balance sheets as on 31st March, 2009 and 31st March, 2010. They have also enclosed copy of the Resolutions passed by the Board of Directors of the two transferor companies and the transferee company approving the proposed scheme of amalgamation. In the application, details with regard to date of incorporation, authorized, subscribed and paid up share capital of the two transferor companies and the transferee company have been stated. It is stated in the application that no proceedings under Sections 235 - 251 of the Act are pending against the two transferor companies and the transferee company.

3. The transferor company No. 1 is a wholly owned subsidiary of the transferee company. However, one share of the transferor company No. 1 is held by Mr. Birendra Kumar, who is nominee of the transferee company. Along with the application, consent/no objection certificates issued by the shareholders of the transferor company No. 1 have been enclosed with affidavit of a Director of the transferor company No. 1. In view of the no objection certificates/consent given by the shareholders of the transferor company No. 1 to the proposed scheme of amalgamation, need and requirement to convene and hold meeting of the shareholders of the transferor company No. 1 is dispensed with. The transferor company No. 1 does not have any secured creditor as per certificate of the auditor enclosed as Annexure P-11. Therefore, there is no need to convene and hold meeting of the secured creditors of the transferor company No. 1.

4. The transferor company No. 1 has 33 unsecured creditors to whom amount of Rs. 14,08,83,912.14 was due and payable as on 25th September, 2010 as per list placed on record as Annexure P-10. The said list is certified by authorized signatory of the transferor company No. 1. Meeting of unsecured creditors of the transferor company No. 1 will be held on 19th February, 2011 in the Auditorium of Gandhi Peace Foundation, 221/223, Deen Dayal Upadhyaya Marg, New Delhi-110002 at 11 a.m. The coram for the said meeting will be at least five unsecured creditors in number representing at least 75% in value terms of the total debt due and payable by the transferor company No. 1 to the unsecured credit Ors.

5. The transferor company No. 2 is a wholly owned subsidiary of the transferee company. However, one share of the transferor company No. 2 is held by Mr. Ramesh Chand, who is nominee of the transferee company. Along with the application, consent/no objection certificates issued by the shareholders of the transferor company No. 2 have been enclosed with affidavit of a Director of the transferor company No. 2. In view of the no objection certificates/consent given by the shareholders of the transferor company No. 2 to the proposed scheme of amalgamation, need and requirement to convene and hold meeting of the equity shareholders of the transferor company No. 2 is dispensed with. The transferor company No. 2 does not have any secured creditor as per certificate of the auditor

placed on record. Therefore, there is no need to convene and hold meeting of the secured creditors of the transferor company No. 2.

6. The transferor company No. 2 has 27 unsecured creditors to whom amount of Rs. 11,31,01,331.42 was due and payable as on 25th September, 2010 as per list placed on record as Annexure P-18. The said list is certified by authorized signatory of the transferor company No. 2. Meeting of unsecured creditors of the transferor company No. 2 will be held on 19th February, 2011 in the Auditorium of Gandhi Peace Foundation, 221/223, Deen Dayal Upadhyaya Marg, New Delhi-110002 at 12 noon. The coram for the said meeting will be at least five unsecured creditors in number representing at least 75% in value terms of the total debt due and payable by the transferor company No. 2 to the unsecured credit Ors.

7. The transferee company has one preference shareholder, who has given his consent/no objection certificate to the proposed scheme of amalgamation, which has been enclosed as Annexure P-24 along with affidavit of a Director of the transferee company. In these circumstances, meeting of the preference shareholders of the transferee company is dispensed with. It is stated that the transferee company does not have any secured or unsecured creditor as per the certificate placed on record as Annexures P-26 and P-27. In these circumstances, it is not necessary to convene and hold meeting of the secured and unsecured creditors of the transferee company.

8. The transferee company has 194 equity shareholders as per paragraph 4.8 of the application. Meeting of the equity shareholders of the transferee company is required to be held. Meeting of the equity shareholders of the transferee company will be held on 19th February, 2011 in the Auditorium of Gandhi Peace Foundation, 221/223, Deen Dayal Upadhyaya Marg, New Delhi-110002 at 12.30 p.m. The coram for the meeting of the equity shareholders of the transferee company will be as per Articles of Association of the said company.

9. Mr. Ashok Sethi, Advocate (W-147, Greater Kailash-I, New Delhi, Mobile No. 9810192365) and Mr. R.K. Pillai, Advocate (Mobile No. 9971021922), who are present in the Court are appointed as Chairperson and Alternate Chairperson respectively for the said three meetings of the equity shareholders of the transferee company and unsecured creditors of the transferor company Nos. 1 and 2.

10. Notices to the shareholders of the transferee company and unsecured creditors of the transferor company Nos. 1 and 2 will be sent under certificate of posting. The Chairperson/Alternate Chairperson or their authorized representatives will be present in the post office when notices are posted. The Chairperson/Alternate Chairperson will file an affidavit in this Court regarding posting of said notices. Voting by proxy will be permitted in the aforesaid three meetings. However, in case of a company or firm, authority letter will be produced by the person voting.

11. Notices for holding of the meetings of the unsecured creditors of the transferor company Nos. 1 and 2 and equity shareholders of the transferee company will be published in the newspapers "The Statesman" (English) and "Jansatta" (Hindi) in accordance with Company (Court) Rules, 1959.

12. The Chairperson/Alternate Chairperson will submit their report in the Court within 21 days of holding of the meetings. The Chairperson/Alternate Chairperson will be paid Rs. 50,000/- and Rs. 40,000/- respectively. The question of appointed date will be examined at the time of second motion.

The application is disposed of.