

(2017) 01 DEL CK 0097

In the Delhi High Court

Case No : Co. Appl. (M) 104 of 2016

Biobase Databases India Private Limited and CLC Bio India Private Limited With Qiagen India Private Limited

Date of Decision : 13-01-2017

Acts Referred:

Companies Act, 1956 — Section 391, Section 392, Section 393, Section 394

Citation : (2017) 2 CompLJ 205 : (2017) 237 DLT 700

Hon'ble Judges : Mr. Siddharth Mridul, J.

Bench : Single Bench

Advocate : Mr. Peeush Sharma, Mr. Shaurya M. Tomar and Mr. Kartikey Nayyar, Advocates, for the Applicants

Final Decision : Disposed off

Judgement

Siddharth Mridul, J.—The present application has been filed under Sections 391 to 394 of the Companies Act, 1956, (hereinafter referred to as "the Act") read with rules 6 & 9 of the Companies (Court) Rules, 1959, by Qiagen India Private Limited (hereinafter referred to as "Applicant Company/Transferee Company") in respect of the Scheme of Amalgamation (hereinafter referred to as "the Scheme") between Biobase Databases India Private Limited (herein after referred to as "Transferor Company") and CLC Bio India Private Limited (herein after referred to as "Transferor Company") with Qiagen India Private Limited and their respective shareholders and creditors.

2. The registered office of the Transferor Company No. 1 is situated in Bengaluru. It has been stated in the present application that an application seeking dispensation of requirement of convening and holding of meetings of the Equity shareholders, Secured and Unsecured Creditors of Transferor Company no. 1 had been instituted before the Hon'ble High Court of Karnataka, Bengaluru being Company Application no. 384/2016 which was allowed by way of order dated 15.07.2016.

3. The registered office of the Transferor Company No. 2 is situated in Hyderabad. It has been stated in the present application that an application

seeking dispensation of requirement of convening and holding of meetings of the Equity shareholders, Secured and Unsecured Creditors of Transferor Company no. 2 had been instituted before the Hon'ble High Court of Judicature at Hyderabad being Company Application no. 904/2016 which was allowed by way of order dated 12.07.2016.

4. The registered office of the Transferee Company is situated within the territory of NCT of Delhi and therefore, within the jurisdiction of this Court.

5. Transferor Company No. 1 was incorporated on 05.05.2006 with the Registrar of Companies, Bangalore, Karnataka under the provisions of the Act.

6. The Transferor Company No. 2 was incorporated on 06.09.2006 with the Registrar of Companies, Hyderabad, Andhra Pradesh, under the provisions of the Act.

7. The Transferee Company was incorporated on 11.12.2009 with the Registrar of Companies, Delhi under the provisions of the Act.

8. The Authorised Share Capital of the Transferor Company No. 1 as on 31.03.2016 is, Rs.10,00,000/-, divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed, paid up Share capital of Transferor Company No.1 as on 31.03.2016 is, Rs.10,00,000/-, divided into 1,00,000 equity shares of Rs.10/- each.

9. The Authorised Share Capital of the Transferor Company No. 2 as on 31.03.2016 is, Rs.5,00,000/-, divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed, paid up Share Capital of Transferor Company No. 2 as on 31.03.2016 is, Rs.5,00,000/-, divided into 50,000 equity shares of Rs.10/- each.

10. The Authorised Share Capital of the Transferee Company as on 31.03.2016 is, Rs.18,50,00,000/-, divided into 1,85,00,000 equity shares of Rs.10/- each. The issued, subscribed, paid up Share Capital of the Transferee Company as on 31.03.2016 is, Rs.11,91,00,000/-, divided into 1,19,10,000 equity shares of Rs.10/- each.

11. The copies of Memorandum of Association and Articles of Association of the Transferor Companies and the Transferee Company have been filed and the same are on record. The audited balance sheets and auditor's reports as on 31.03.2015 of the Transferor Companies and the Transferee Company have also been placed on record.

12. The Transferor Companies are wholly owned subsidiaries of Transferee Company and its nominees and therefore, upon amalgamation of Transferor Companies with Transferee Company upon the Scheme becoming effective, the entire paid-up equity share capital of the Transferor Companies held by the Transferee Company and its nominees, shall without any act or deed stand automatically cancelled and be extinguished and in lieu thereof, the Transferee Company shall not be required to issue and/or allot any shares to the members

of the Transferor Companies.

13. Upon the scheme becoming effective and upon the transfer and vesting of Transferor Company No. 1 and Transferor Company No. 2 into the Transferee Company, pursuant to the scheme, the entire share capital of Transferor Company No. 1 equal to Rs.10,00,000/- (divided into 1,00,000 equity shares of Rs.10/- each) and that of Transferor Company No. 2 equal to Rs.5,00,000/- (divided into 50,000 equity shares of Rs.10/- each) shall stand merged with the authorised share capital of Transferee Company. Thus, the authorised share capital of the Transferee Company shall stand increased by an amount of Rs.15,00,000/- i.e. the authorised share capital of the Transferee Company shall stand increased to Rs.18,65,00,000/- (divided into 1,86,50,000 equity shares of Rs.10/- each).

14. It has been submitted on behalf of the Applicant Companies that no proceedings under Sections 235 to 251 of the Act or under corresponding provisions of the Companies Act, 2013 are pending against the Applicant Companies as on the date of filing of the present application.

15. The proposed Scheme has been approved by the Board of Directors (hereinafter referred to as "BOD") of the Applicant Company in its meeting held on 29.04.2016. Copy of the Resolution passed at the meeting of the Board of Directors of the Applicant Company has been placed on record.

16. A prayer has been made for dispensing with the requirement of convening the meetings of the Shareholders and Unsecured Creditors of the Applicant Company.

17. The Applicant/Transferee Company does not have any secured creditors. Therefore the requirement of convening the meeting of secured creditors does not arise.

18. The Applicant/Transferee Company has two (2) equity shareholders. Both the equity shareholders have given their written consents/NOCs to the proposed Scheme. Their written consents/NOCs have been placed on record. They have been examined and found in order.

19. In view thereof, the requirement of convening the meeting of the equity shareholders of Transferee Company to consider and, if thought fit, approve, with or without modification, the proposed Scheme is dispensed with.

20. The Transferee Company has twelve (12) unsecured creditors. Out of the twelve unsecured creditors, eleven (11) unsecured creditors have given written consents/NOCs to the proposed Scheme (being 99.9% in value). The said written consents/NOCs have been placed on record along with an Application being Company Application No. 3952 of 2016. The same have been examined and found in order.

21. In this regard it has been submitted by the Learned counsel for the Applicant/

Transferee Company that the transferor companies are the wholly owned subsidiaries of the Applicant/Transferee Company and since it is an amalgamation of the wholly owned subsidiary company with its holding company, therefore, rights of secured and unsecured creditors of the transferee company will not be affected adversely. It has been further submitted that no new shares will be issued on amalgamation and both the transferor companies as well as the transferee company are not proposing any arrangement with their shareholders and creditors, hence, written consents/NOCs of all the unsecured creditors of the applicant/transferee company are not required to be obtained for the purpose of the amalgamation.

22. In support of his submission, learned counsel for the applicant has placed reliance on the decision of this Court in the matter of M/s. Imperia Homes Pvt. Ltd. in Company Application (Main) No.78/2014 wherein in similar circumstances, this court, has dispensed with the requirement of convening and holding the meetings of the secured and unsecured creditors of the transferee company without obtaining their consents/no objection to the proposed Scheme of Amalgamation. Further, reliance has been placed on a decision of this Court on 10.02.2016 in the matter of Tata Internet Services Limited in Company Application (Main) No.48/2015 and on the decision of this Court on 06.02.2015 in the matter of M/s. Ganges Concast Industries Limited & Salasar Stainless Limited in Company Application (Main) No.15/2015.

23. In view of the foregoing and for the reasons stated in the application, the requirement of convening and holding the meetings of the unsecured creditors of the applicant/transferee company, to consider and if though fit, approve, with or without modification, the proposed Scheme of Amalgamation, is dispensed with.

24. Further, a prayer has also been made for seeking dispensation with the requirement of the Applicant/Transferee Company, to approach this Hon'ble Court, from filing second motion petition seeking sanction of the Scheme of Amalgamation.

25. In support of this prayer, it has been urged that the Transferor Companies are the wholly owned subsidiaries of the Applicant/Transferee Company and upon scheme becoming effective, no new shares in the Applicant/Transferee Company will be allotted in lieu of the shares held by it and its nominee in the Transferor Companies. The entire share capital of the Transferor Companies shall stand cancelled and be extinguished without any further act or deed. It has also been stated that the interest of the creditors of the Applicant/Transferee Company shall remain unaltered. Therefore, there is no arrangement, which is proposed with the Shareholders or the Creditors of the Applicant/Transferee Company.

26. Reliance in this regard has been placed on the decisions of this Court in Company Application 378/1974 titled as Sharat Hardware Industries P. Ltd reported as (1978) 48 Comp Cas 23 Delhi; Mahaamba Investment Limited v. IDI Limited reported as (2001) 105 CompCas 16 (Bom); decision of this Court on

05.12.2012 in Company Application (Main) No. 179/2012 titled as eMeter India Pvt. Ltd. v. Siemens Technology And Services Pvt. Ltd.; decision of this Court on 22.02.2016 in Company Application Main No.30/2016 titled as Foundation e-Learning Private Limited v. Cambridge University Press India Private Limited.

27. In view of the foregoing and in view of the settled position of law, the requirement of the Applicant/Transferee Company to file a petition seeking sanction of the scheme, is dispensed with.

28. The application stands allowed in the aforesaid terms and the same is disposed of accordingly.