

(2016) 02 DEL CK 0047
In the Delhi High Court
Case No : Co.Pet. 685 of 2015
Convergys Stream Private Limited.

Date of Decision : 24-02-2016

Acts Referred:

Companies Act, 1956 — Section 391, 394

Citation : (2016) 228 DLT 412

Hon'ble Judges : Rajiv Shakdher, J.

Bench : Single Bench

Advocate : Sameer Chaudhary and G. Singh, Advocates., Aparna Mudiam, Asstt. ROC. Rajiv Behl, Advocate.

Final Decision : Allowed

Judgement

Rajiv Shakdher, J. - This is a second motion petition filed jointly by Convergys Stream Private Limited (i.e. petitioner no.1/transferor company no.1) and Convergys Infowavz Private Limited (i.e. petitioner no. 2/transferor company no. 2) with Convergys India Services Private Limited (i.e. petitioner no. 3/transferee company) under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of amalgamation (hereafter referred to as the scheme).

1.1 The transferor's and transferee companies, as referred to above, will hereafter be collectively referred to as the petitioners. Furthermore, transferor company nos. 1 and 2 will hereafter be conjointly referred to as transferor companies.

1.2 The registered office of the petitioners are located within the territorial jurisdiction of this court.

1.3 The details with respect to incorporation and the petitioners' authorised issued, subscribed and paid up capital have been set out in section I and paragraph 3 of part C of the scheme.

1.4 The transferor company no. 1 was incorporated on 26.05.2000 in the State of Maharashtra, under the name and style: Stream Tracmail Private Limited, in

consonance with the provisions of the Act. Thereafter, the name of the transferor company no.1 was changed twice, once to, Stream International Services Private Limited in 2004, and then, with effect from 08.10.2014 to its present name viz., Convergys Stream Private Limited. The registered office of the transferor company no.1 was subsequently changed from Maharashtra to Delhi. Consequent to the relocation of the registered office, a fresh Certificate of Incorporation (COI) dated 01.04.2015 was issued by the Registrar of Companies, NCT of Delhi and Haryana (in short the ROC).

1.5 The transferor company no.2, on the other hand, was incorporated on 16.02.2000 in the State of Maharashtra, under the name and style: Infowavz International Private Limited. Thereupon, with effect from 11.12.2014, the name of the transferor company no.2 was changed to its present name i.e. Convergys Infowavz Private Limited. The registered office of the transferor company no. 2 was thereafter shifted from Maharashtra to Delhi. Consequent to such relocation, a fresh COI dated 07.04.2015 was issued by the ROC.

2. The copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2014 have been filed by the petitioners.

3. Copies of Board of Directors" (BOD) resolution of even date i.e 24.07.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

4. The petitioners have averred that the amalgamation of the transferor companies with the transferee company will provide opportunities for operational synergies, cost and capital productivity synergies which will lead to economies of scale and better utilisation of overlapping facilities and infrastructure. It has been further claimed that the amalgamation would result in simplified corporate structure leading to a more efficient utilisation of capital and create a consolidated base for future growth of the transferee company.

4.1 Furthermore, the petitioners have claimed that there are no proceedings pending against them, under Sections 235 to 251 of the Act.

5. To recapitulate, the petitioners had, in the earlier round filed a petition (i.e. the first motion), being: CA(M) No.137/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of only the shareholders and unsecured creditors of the transferor companies, as they did not have any secured creditors. This court vide order dated 28.08.2015, having regard to the fact that all the shareholders and all the unsecured creditors of the transferor companies had given their consent to the scheme, dispensed with the requirement of convening meetings, as prayed.

5.1 Furthermore, the court, having regard to the fact, that the transferor company no. 1 is a wholly owned subsidiary of the transferee company and the transferor company no.2 is a wholly owned subsidiary of the transferor company

no. 1, that is, the transferee company being the holding company of the transferor companies, the requirement of the transferee company having to approach this court under section 391(2) of the Act was dispensed with.

6. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 16.09.2015. Notices were accepted on behalf of both the Regional Director (RD) and the Official Liquidator (OL). Furthermore, citations were ordered to be published.

7.1 Accordingly, citations were published in the Delhi Editions of Business Standard (English) and Business (Hindi), on 06.11.2015.

7.2 An affidavit dated 08.01.2016 demonstrating service of the petition on the OL and the RD and establishing publication of citation along with the newspaper extracts, was filed by the petitioners.

7.3 Further, the petitioners filed an affidavit dated 22.01.2016, wherein it is averred that subsequent to the publication of notice in the petition, the petitioners have not received any objections/complaints from any third party qua the scheme.

8. Pursuant thereto, the RD filed its affidavit/report under Section 394 A of the Act. In the affidavit/report, the RD relied upon the general circular bearing no. 53/2011, dated 26.07.2011 and the circular bearing no. 1/2014, dated 15.01.2014. Based on the directions contained in the said circulars, the RD, sent communications to the ROC and the Income Tax Department (I.T. Department) seeking their response to the scheme. However, no comment/response of the I.T. Department has, apparently, been received in the matter.

8.1 The affidavit/report of the RD adverts to the fact that the transferee company is a wholly owned subsidiary of Convergys Customer Management Group Inc., a Body Corporate incorporated in United States of America. The RD has thus, made an observation that there is substantial foreign interest in the transferee company.

8.2 The RD, evidently, has also received information from the ROC vide communication dated 18.01.2016 which, inter alia, alludes to the fact that the petitioners' filing vis-a-vis annual return and balance sheet is up-to-date.

8.3 Therefore, in so far as the RD is concerned, there are no objections taken by him to the scheme.

8.4 In response to the affidavit/report of the RD, the petitioners filed an affidavit dated 22.01.2016, wherein, vis-a-vis the observation made by the RD as referred to in paragraph 8.1 above, it was stated, that they shall comply with the Foreign Exchange Management Act, 1999 (in short the FEMA) and all other associated laws.

8.5 In so far as the OL is concerned, he has inter alia, stated in his report, that no complaint qua the scheme has been received by him from any interested

person or party. The OL has also averred in his report that on the basis of information supplied by the petitioners, it appears, the affairs of the transferor companies have been conducted in a manner which could not be construed as being prejudicial to either the interest of their members or the public at large. In other words, affairs of the transferor companies, according to the OL, do not fall foul of the provisions of the second proviso to Section 394(1) of the Act.

8.6 Thus, the OL, in effect, has conveyed that he has no objections to the scheme being sanctioned.

9. To be noted, the scheme in clause 7.1 provides that all employees of the transferor companies in service on the effective date, shall become the employees of the transferee company on such date without any break or interruption in service and on the basis of continuity of service, and on terms and conditions as to employment, not less favourable than those subsisting in the transferor companies, as on the said date.

10. As per clause 11.1 of the scheme, since transferee company is the holding company of the transferor companies, as indicated above in paragraph 5.1 above, upon coming into effect of this scheme, no shares will be issued or any other consideration shall be paid to the shareholders of the transferor companies by the transferee company.

11. Furthermore, as per clause 19 of the scheme, the transferor companies shall stand dissolved without being wound up.

12. In terms of clause 12.1 of the scheme, the transferee company shall follow pooling of interest method as prescribed under Accounting Standard 14 as notified under Companies (Accounting Standards) Rules 2006.

13. Accordingly, in view of the approval accorded to the scheme by the shareholders and creditors (i.e. unsecured) of the petitioners and, given the fact, that the RD and the OL, have not articulated any objections to the scheme, as indicated above, in my opinion, there appears to be no impediment in the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioners will, however, comply with all statutory requirements, as mandated in law.

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

14. It is further directed that the petitioners will comply with all the provisions of the scheme and, in particular, those which are referred to herein-above.

15. In any event, notwithstanding what is stated by the petitioners, the transferee company will file an undertaking with this court, within two weeks from today, stating therein, that it will take over and defray all liabilities of the transferor companies. It is also made clear, that the concerned Statutory Authority will be entitled to proceed against the transferee company qua any

liability which it would have fastened on to the transferor companies for the relevant period, and that, which may arise on account of the scheme being sanctioned.

15.1 Notwithstanding the above, if there is any deficiency found or, any violation committed of any provisions of the FEMA or any other enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of any action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

16. In terms of the provisions of Section 391 and 394 of the Act, and in consonance with clause 4 of the scheme, the entire undertaking, properties, rights and powers of the transferor companies will stand transferred to and/or vest in the transferee company without any further act or deed. Similarly, in terms of clause 4 of the scheme, all debts, liabilities, duties and obligations of the transferor companies shall stand transferred to the transferee company without any further act or deed.

16.1 More particularly, upon the scheme coming into effect, the transferor companies shall stand dissolved without having to follow the process of winding up.

16.2 It is made clear, that this order will not be construed as an order granting exemption from: payment of stamp duty or, taxes or, other penalties/charges, if any, payable, as per the relevant provisions of law.

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