(2014) 07 MAD CK 0247

In the Madras High Court

Case No : C.P. Nos. 73 and 74 of 2014

Disha Products Private Limited APPELLANT

Vs

Marvel Machines Private Limited RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

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

Citation : (2014) 07 MAD CK 0247

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Judgement

M. Duraiswamy, J.—These Company Petitions are filed under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the Scheme of Amalgamation of the Transferor Company with the Transferee Company with effect from 01.04.2014. The Scheme of Amalgamation is annexed in Annexure-B in the typed set of papers.

2. Heard Mr.S.R.Raghunathan, learned counsel for the petitioner-Companies, Mr.Arvind Shukla, learned Official Liquidator and Mr.N.Ramesh, learned Central Government Standing Counsel for the Regional Director (Southern Region), Ministry of Corporate Affairs, Chennai.

3. The petitioner in C.P.No.73 of 2014 is the Transferor Company and the petitioner in C.P.No.74 of 2014 is the Transferee Company.

4. Both the petitions are filed praying sanction of the Court for the Scheme of Amalgamation of the petitioner, Disha Products Private Limited, which is a Private Limited Company, hereinafter referred to as Transferor Company to be amalgamated with the petitioner, Marvel Machines Private Limited, hereinafter referred to as Transferee Company, thereby the entire undertaking of the Transferor Company should be transferred and be vested with the Transferee Company under the Scheme of Amalgamation. The petitioner-Transferor Company was incorporated on 29.05.1998 in the name of Disha Products Private

Limited. The main object of the Transferor Company was to deal in industrial brushes, adhesives and filter pads. The Transferee Company was incorporated on 10.02.1997 in the name of Marvel Machines Private Limited. The main object of the Transferee Company is to carry on in India or anywhere in the world, anyone or more or one of the businesses namely, the business of manufacture and marketing of high tech, automatic or custom made packaging machinery with high quality, user friendly and efficiency features and have allied objects. The copy of the audited Balance Sheet of the Transferee Company as on 31.03.2013 is filed as Annexure-D. The partners of the petitioner-Transferor Company and the Board of Directors of the Transferee Company, in their respective meetings held on 09.01.2014, approved the Scheme of Amalgamation, whereby all the assets and liabilities of the petitioner-Transferor Company stand transferred to and vested in the Transferee Company. The copy of the resolution of the partners of the petitioner-Transferor Company, approving the Scheme of Amalgamation, is enclosed in Annexure-E.

5. According to the resolution, the proposed Scheme of Amalgamation will be beneficial to all concerned including the partners of the Transferor Company and the members of the Transferee Company. The primary reason being that the business of the Transferee Company is synergous with the activities of the Transferor Company and therefore, it will be more efficient and economical for amalgamation of the Company. The details of the benefits have been set out in the Scheme, which is enclosed in Annexure-B. Under Clause-15 of the Scheme of Amalgamation, Disha Products Private Limited shall be dissolved without winding up, on orders made by this Court under Section 394 of the Companies Act, 1956. As per Clause-16, the Transferor and Transferee Companies shall make applications under Sections 391 to 394 of the Companies Act and other applicable provisions of the Act before this Court for sanctioning the Scheme of Amalgamation and for dissolution of the Transferor Company without winding up.

6. The Transferor Company filed Comp.A.Nos.128 & 129 of 2014 and the Transferee Company filed Comp.A.Nos.130 & 131 of 2014 seeking to dispense with the convening and holding of the meeting of the equity shareholders and the trade creditors. The Transferor Company had three shareholders and the Transferee Company had four shareholders and all of them had given consent. By the time the applications came up for hearing, the trade creditors have also been settled. Since there was no secured or unsecured creditors, this Court closed the applications in Comp.A.Nos.129 & 131 of 2014 and allowed the applications in Comp.A.Nos.128 & 130 of 2014. It is stated that the proposed amalgamation in terms of Sections 391 to 394 of the Companies Act, which is to take effect from 01.04.2014, will have the following terms:

(i) Once the Companies are amalgamated, there will be a better synergy due to locational advantage, better capacity and strength to take up, launch project for expansion. The Scheme of Amalgamation also aims at achieving easier financial closure and at competent rates and terms for Amalgamated Company. If the

Companies are amalgamated into one single unit, would add better strength to the Amalgamated Company.

(ii) As a result of the Amalgamation, a significant synergy will emerge in the marketing, technical support, sourcing and other systems coupled with certain financial and cost benefits which will enhance the financial and administrative abilities of the Amalgamated company.

(iii) It is envisaged that with the amalgamation, there would be cost economies for enhanced scale of operations, elimination of duplication of administrative functions, better utilisation of assets, availability of a single window for customers, greater flexibility in meeting changing customer needs and flexibility in resource mobilization and movement.

(iv) The amalgamation will result in making available to the parties the benefit of financial resources, managerial, marketing, expertise of each other.

(v) It would be advantageous to combine the activities of both the Companies in a single Company. The amalgamation of the Transferor Company with the Applicant Company would provide synergy besides economies in costs by combining total business functions and the related activities and thus would contribute to the profitability of the amalgamated Company.

7. On notice, the Regional Director (Southern Region), Ministry of Corporate Affairs, Chennai has filed an affidavit and the Regional Director has not raised any objection for the amalgamation.

8. The Official Liquidator, based on the report of the Chartered Accountants, has recorded that they have no objection to the Scheme of Amalgamation.

9. Consequently, there shall be an order approving the Scheme of Amalgamation of the Transferor Company Disha Products Private Limited, the petitioner in C.P.No.73 of 2014 with the Transferee Company Marvel Machines Private Limited, the petitioner in C.P.No.74 of 2014, as provided in Annexure-B in these Company Petitions with effect from 01.04.2014, as the procedure laid down under Sections 391 and 394 of the Companies Act are duly complied with.

10. Taking note of the report furnished by the Chartered Accountants, as enclosed by the Official Liquidator, in terms of the order passed by this Court, the Transferor Company shall stand dissolved without winding up.

11. The learned Central Government Standing Counsel is entitled to a fee of Rs. 5,000/- (Rupees five thousand only) from the petitioner Companies. The Official Liquidator is entitled to a fee of Rs. 30,000/- (Rupees thirty thousand only) from the petitioner Companies and the said sum shall be utilized for procuring office equipments in the office of the Official Liquidator.

12. Both the Company Petitions are allowed as prayed for.