(2015) 05 DEL CK 0018

In the Delhi High Court

Case No : Company Petition No. 608 of 2014

GL Software Limited and Others — APPELLANT

Vs

Global Logic India Limited — RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:
Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2015) 05 DEL CK 0018

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Shankh Sengupta and Srishti Jain, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.

1. This joint petition has been filed under Sections 391(1), 393 and 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of GL Software Limited (hereinafter referred to as the transferor company No. 1) and IP Unity Communications Limited (hereinafter referred to as the transferor company No. 2) with Global Logic India Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this court.

3. The transferor company No. 1 was originally incorporated under the Companies Act, 1956 on 3rd September, 2003 with the Registrar of Companies, Karnataka at Bangalore under the name and style of Sylantro Software India Private Limited. The company changed its name to GL Software Private Limited and obtained the fresh certificate of incorporation on 21st January, 2010. Thereafter, the company shifted its registered office from the State of Karnataka to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi and Haryana at New Delhi on 9th September, 2013. The

company again changed its name to GL Software Limited and obtained the fresh certificate of incorporation on 22nd November, 2013.

4. The transferor company No. 2 was originally incorporated under the Companies Act, 1956 on 12th July, 2004 with the Registrar of Companies, Karnataka at Bangalore under the name and style of IP Unity Communications Private Limited. Thereafter, the company shifted its registered office from the State of Karnataka to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi and Haryana at New Delhi on 4th September, 2013. The company again changed its name to IP Unity Communications Limited and obtained the fresh certificate of incorporation on 22nd November, 2013.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 27th December, 2000 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name and style of EB Provider India Private Limited. The company changed its name to Indus Logic India Private Limited and obtained the fresh certificate of incorporation on 7th May, 2003. The company again changed its name to Global Logic India Private Limited and obtained the fresh certificate of incorporation on 3rd October, 2006. The company finally changed its name to Global Logic India Limited and obtained the fresh certificate of incorporation on 22nd November, 2013.

6. The present authorized share capital of the transferor company No. 1 is Rs. 50,00,000/- divided into 5,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 23,58,550/- divided into 2,35,855 equity shares of Rs. 10/- each.

7. The present authorized share capital of the transferor company No. 2 is Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each.

8. The present authorized share capital of the transferee company is Rs. 1,50,00,000/- divided into 15,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 17,46,170/- divided into 1,74,617 equity shares of Rs. 10/- each.

9. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 130/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2013, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

10. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is claimed that by the proposed amalgamation benefit of consolidation of financial resources, managerial,

technical and marketing expertise of the transferor companies and the transferee company shall be available to the amalgamated entity. It is further claimed that the proposed amalgamation would result in enhanced potential for increase in revenues and profits for the amalgamated entity and its shareholders.

11. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor companies in the following ratio:

"01 equity share of Rs. 10/- each of the transferee company fully paid up for every 93 equity shares of Rs. 10/- each held in the transferor company No. 1."

"01 equity share of Rs. 10/- each of the transferee company fully paid up for every 03 equity shares of Rs. 10/- each held in the transferor company No. 2."

12. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the transferor and transferee companies.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 1st August, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

14. The petitioner companies had earlier filed CA (M) No. 130/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 17th September, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor and transferee companies, there being no secured or unsecured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

15. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 1st October, 2014, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in ''Business Standard'' (English) and (Hindi) editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 30th October, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

16. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official

Liquidator has filed a report dated 8th December, 2014 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

17. In response to the notices issued in the petition, Mr. A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 5th December, 2014. Relying on Clause 5 of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor companies shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 9 of Part-III of the Scheme, it has been stated that the transferee company shall account for the amalgamation in its books as per ''pooling of interest method'' prescribed under the provisions of Accounting Standard-14, issued by Institute of Chartered Accountants of India. He further submitted that in Clause 11 of Part-III of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company Nos. 1 and 2 shall stand dissolved without the process of winding up.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 22nd April, 2015 of Mr. Ranji Srivastava, authorized signatory of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 30th October, 2014.

19. Considering the approval accorded by the equity shareholders of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st April, 2014, the transferor companies No. 1 and 2 shall stand dissolved without undergoing the process of winding up.

20. Learned counsel for the Official Liquidator prays that costs of at least Rs. 3.0 lakhs should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings.

Learned counsel for the petitioner companies states that the same is acceptable to him. Looking to the circumstances, the petitioner shall deposit a sum of Rs. 3.0 lakhs by way of costs with the Common Pool Fund of the Official Liquidator within two weeks.

21. The petition is allowed in the above terms.