

(2017) 01 DEL CK 0192
In the Delhi High Court
Case No : CO.PET. 1016 of 2016

Idea Mobile Commerce Services Limited	APPELLANT
Vs	
Aditya Birla Idea Payments Bank Limited	RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Companies Act, 1956 — Section 391, Section 394

Citation : (2017) 162 DRJ 231

Hon'ble Judges : Siddharth Mridul, J.

Bench : Single Bench

Advocate : Mr. Rajiv Nayar, Sr.Advocate with Mr. Sandeep Singhi, Mr. Rishi Agrawala and Mr.Rajeev Kumar, Advocates, for the Petitioner/Transferor Company; Ms. Aparna Mudiam, Assistant Registrar of Companies, for the Regional Director; Mr. Rajiv Bahl, Advocate, for the Official Liquidator

Final Decision : Disposed Off

Judgement

Siddharth Mridul, J.—The present petition under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as "Act") has been filed by Idea Mobile Commerce Services Limited (hereinafter referred to as "Transferor Company") seeking sanction to the proposed scheme of Amalgamation (hereinafter referred to as the "proposed Scheme") of the Transferor Company with Aditya Birla Idea Payments Bank Limited (hereinafter referred to as the "Transferee Company").

2. The registered office of the Transferor Company is situated at National Capital Territory of Delhi, within the jurisdiction of this Court.

3. The registered office of the Transferee Company is situated at Mumbai, outside the jurisdiction of this Court.

4. The Transferor Company was originally incorporated under the Act on 19.10.2007 with the Registrar of Companies, N.C.T. of Delhi and Haryana under the name and style of Carlos Towers Limited. Thereafter, the name of the

Transferor Company was changed to its present name and a fresh certificate of incorporation dated 04.02.2011, was issued by the Registrar of Companies, N.C.T. of Delhi and Haryana.

5. The Transferee Company was incorporated under the Companies Act, 2013 on 19.02.2016 with the Registrar of Companies, Maharashtra.

6. The present authorised share capital of the Transferor Company is Rs.1,00,00,00,000/-, divided into 10,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company is Rs.90,00,00,000/-, divided into 9,00,00,000 equity shares of Rs.10/- each.

7. It has been submitted on behalf of the Transferor Company that there are no proceedings under Sections 235 to 251 of the Act (including their corresponding sections of the Companies Act, 2013) are pending against them, as on the date of filing of the present petition.

8. The Board of Directors of the Transferor Company and the Transferee Company in their separate meetings held on 22.07.2016 and 26.07.2016 respectively, have unanimously approved the proposed scheme. Copies of the Resolutions passed at the meetings of the Board of Directors of the Transferor Company and the Transferee Company have been placed on record.

9. Copies of the Memorandum of Association and Articles of Association, of the Transferor Company and the Transferee Company, have been filed on record as annexures to the Company Application (M) no.129 of 2016, which had been earlier filed by the Transferor Company. The audited balance sheet, as on 31.03.2016, along with the report of the auditors; and the unaudited financial results as on 31.07.2016, of the Transferor Company have also been filed on record as annexures to the Company Application (M) no.129 of 2016.

10. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and set out in detail in the present petition. The background and rationale for the proposed scheme are as hereunder:-

(a) The Transferor Company till June 2016 was acting as one of the Business Correspondent of Axis Bank Limited under financial inclusion program of RBI to enable banking services to rural and unbanked customers. The services offered by the Transferor Company under the Business Correspondent arrangement were opening of accounts, cash deposit, cash withdrawal, fund transfers and utility payments using the telecom connections provided by telecom operators through retail outlets set up by the Transferor Company. The Transferor Company has also been granted Certificate of Authorisation dated 25th November 2013 by RBI under Section 7 of the Payment and Settlement Systems Act, 2007 to operate payment system for semi-closed Prepaid Payment Instruments (PPI) in India. Under the said authorization, the customers can avail wallet services using PPI except cash withdrawal. The Transferor Company, under PPI, is offering multiple

services like Mobile & DTH recharges, utility bill payments and money transfer to any bank accounts across the country.

(b) The Transferee Company has been incorporated to set up a payments bank in the private sector pursuant to the Guidelines for Licensing of "Payments Banks" dated 27th November 2014 ("Guidelines") read with the Clarifications to Queries on Guidelines for Licensing of Payments Banks in the Private Sector dated 1st January 2015 ("Clarifications") issued by RBI. Pursuant to the "in-principle" approval dated 7th September 2015 from RBI to establish a payments bank in the private sector under Section 22 of the Banking Regulation Act, 1949, Aditya Birla Nuvo Limited (promoting entity), incorporated the Transferee Company. Both, Aditya Birla Nuvo Limited and Idea Cellular Limited, are part of the same promoter group.

(c) In terms of the Guidelines and Clarifications issued by RBI, same promoter group cannot have PPI business in one entity and a payment bank in another entity. In light of the aforesaid, the Transferor Company, inter alia, carrying on the business of PPI would be required to be folded into the Transferee Company which is set up to establish a payments bank. The present Scheme is proposed to amalgamate the Transferor Company with the Transferee Company to comply with the Clarifications issued by RBI.

(d) Further, the present Scheme shall be effective, inter alia, on compliance of the terms, conditions and procedures enumerated in the letter dated 13th June 2016 addressed by RBI to the Transferor Company for the transfer of the PPI business from the Transferor Company to the Transferee Company.

11. So far as share exchange ratio is concerned, clause 10.1 of the proposed scheme provides as hereunder: -

"Upon the Scheme being effective, and in consideration of the transfer of and vesting of the Undertaking of the Transferor Company in the Transferee Company in terms of the Scheme, the Transferee Company shall without any further application, act, instrument or deed, issue and allot to the equity shareholders of the Transferor Company whose names are recorded in the register of members of the Transferor Company, on a date to be fixed in that behalf by the Board of Directors of the Transferee Company (hereinafter referred to as the "Record Date"), equity shares of Rs.10/- (Rupees Ten only) each credited as fully paid-up in the ratio of 1,16,522 (One Lac Sixteen Thousand Five Hundred & Twenty Two) equity shares of the face value of Rs.10/- (Rupees Ten only) in the Transferee Company for every 1,00,000 (One Lac) equity shares of the face value of Rs.10/- (Rupees Ten only) each held in the Transferor Company."

12. To recapitulate, the Transferor Company had in the earlier round filed Company Application (M) no. 129 of 2016, whereby a prayer was sought to dispense with the requirement of convening the meetings of its equity shareholders and unsecured creditors. The Transferor Company had no secured creditors. This Court vide order dated 03.10.2016 allowed the said application

and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the Transferor Company.

13. The Transferor Company has thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 21.10.2016 notice in the present petition was directed to be issued to the Official Liquidator, Registrar of Companies and the Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs. Furthermore, notice of hearing was directed to be uploaded on the website of the Transferor Company and the Ministry of Corporate Affairs along with the direction to publish notice of the hearing in two newspapers, namely, "Statesman" (English) and "Jansatta" (Hindi). Affidavit dated 23.11.2016 showing service of notice and publication of citations in compliance to the said order dated 21.10.2016 has been filed by the Transferor Company. Copies of the newspaper clippings, regarding publication carried out on 08.11.2016 have also been filed along with the said affidavit.

14. Pursuant to the notice issued in the present petition, the Official Liquidator sought information from the Transferor Company and the Transferee Company. Based on the information received, the Official Liquidator has filed a report dated 05.12.2016, wherein, it has been stated that he has not received any complaint against the proposed scheme from any interested person/party and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest, as per second proviso of Section 394(1) of the Act.

15. However, the Official Liquidator has observed in para 5 of the said report dated 05.12.2016, as hereunder:-

"5. That in the Minutes of the Board Meeting held on 22nd July, 2016 it was resolved that the scheme of Amalgamation of the Transferor Company was subject to approval, permission and sanction of the Government of India, Reserve Bank of India and any other regulatory authorities if required and such conditions as may be prescribed by any of the said authorities while granting such approvals, permissions and sanctions. Further the Transferee company vide its letter dated 01.12.2016 have stated that Aditya Birla Idea Payments Bank Limited undertake and confirm that they are neither a Non banking Financial Company nor any permission/approval of Reserve Bank of India is required for amalgamation of Idea Mobile Commerce Services Limited, the Transferor Company with Aditya Birla Idea Payments Bank Limited, the Transferee Company. Further after the Issuance of Payments Bank License by Department of Banking Regulation of Reserve Bank of India, the Transferor Company is required to follow the process and seek permission of Reserve Bank of India for transfer of its PPI Business to the transferee Company in manner enumerated in its letter dated 13th June, 2016. Undertaking of the Petitioner Company made through Director namely Sh. Akshaya Moondra may kindly be recorded (Copy of undertaking is enclosed and marked as Annexure A)"

16. Further, in response to the notice issued in the present petition the Regional Director, Northern Region, Ministry of Corporate Affairs has also filed his affidavit dated 02.12.2016 wherein, in effect, it has been stated that the Regional Director does not has any objection to the proposed scheme being sanctioned subject to compliance of the RBI regulations by the Transferee Company.

17. Thus, it has been stated on behalf of the Regional Director and the Official Liquidator that they have no objection to the grant of sanction to the proposed scheme in the event this Court were to direct the Transferor Company to comply with the RBI Regulations qua licensing guidelines in relation to a Payments Bank and the transfer of Pre-Paid Payment Instruments (PPI) business by the Transferor Company to the Transferee Company.

18. In this behalf, Mr. Nayar, on instructions from the Transferor Company, states that the latter shall comply with the RBI Regulations qua licensing guidelines in relation to a Payments Bank and the transfer of PPI business from the Transferor Company to the Transferee Company, in accordance with law.

19. The aforesaid undertaking given on behalf of the Transferor Company is accepted and thus, in view of the foregoing, the observations made by the Official Liquidator and the Regional Director stand satisfied.

20. It has been noted that no objections have been received to the proposed scheme from any other party. The Transferor Company, vide affidavit dated 02.12.2012, has submitted that neither the Transferor Company nor their counsel have received any objection to the proposed scheme pursuant to the citations published in the newspapers on 08.11.2016.

21. Considering the approval accorded by the shareholders and creditors of the Transferor Company to the proposed scheme; the affidavit filed by the Regional Director, Northern Region and the report filed by the Official Liquidator, having not raising any objection to the proposed scheme, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme. The Transferor Company will comply with the statutory requirements in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st August, 2016, the Transferor Company shall stand dissolved without undergoing the process of winding up.

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

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

24. It is made clear, that this order shall not be construed as an order granting

exemption, inter alia, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

25. Learned counsel for the Official Liquidator prays that costs of at least Rs.2,00,000/- should be paid by the Transferor Company keeping in view the fact that the matter has involved examination of extensive records. Learned counsel for the Transferor Company states that the same is acceptable to him. The Transferor Company shall deposit a sum of Rs.2,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi within a period of two weeks from today.

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