

(2014) 07 DEL CK 0136
In the Delhi High Court
Case No : CO. PET. 96/2014

In Re : Airwaves Telefilms Pvt. Ltd.

Date of Decision : 15-07-2014

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2014) 07 DEL CK 0136

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Dilip Singh, Advocate, Atma Sah, Assistant Registrar and Rajiv Behl, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.—This second motion joint petition filed under Sections 391 to 394 of the Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of M/s. Airwaves Telefilms Private Limited (Transferor Company No 1), M/s. Lavitra Technologies Private Limited (Transferor Company No 2, M/s. Suave Technologies Private Limited (Transferor Company No 3) and Waves Telefilms Private Limited (Transferor Company No 4) with M/s. Dolf Leasing Limited (the Transferee Company) and their respective Shareholders and Creditors, (Collectively hereinafter referred as Petitioner Companies). A copy of the scheme has been enclosed with the petition.

2. The registered offices of Transferor Company and the Transferee Company are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of the Transferor and Transferee Company, their authorized, issued, subscribed and paid up capital have been set out in the Petition.

4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2011 as well as year ended 31st March 2012 of the Petitioner Companies have also been enclosed

with the Petition.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme of Amalgamation have also been placed on record.

6. Learned counsel for the petitioner Companies submits that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed CA (M) No. 20 of 2014 seeking directions of this Court for dispensation/convening of meetings vide order dated 28.01.2014, this Court allowed the Application and requirement of convening all the meetings of shareholders and Un-secured Creditors of the Transferor Companies and the Transferee Company were dispensed with. None of the Applicant Transferor Companies and the Transferee Company had any secured Creditors.

8. The Petitioner Companies had thereafter filed the present Petition seeking sanction of the Scheme. By an order dated 07.02.2014, notice of the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator attached with this Court, Citations were also directed to be published in "Statesman" (English) and Jansatta (Hindi). An affidavit of service and publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator and also regarding publication of citations in the aforesaid newspapers on 29th March, 2014. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

9. In response to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report dated 22.05.2014 wherein he has stated that he has not received any complaint against the proposed Scheme from any person/ party interested in the Scheme in any manner 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, creditors or to public interest as per 2nd proviso of section 394(1) of the Act.

10. In response to the notices issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 21.05.2014 stating some observations in paragraph 4 and 5 as follows:-

4. M/s. Dolf Leasing Limited (Transferee Company) is a Non Banking Finance Company (NBFC) and registered with the Reserve Bank of India. It is submitted that the Petitioner Transferee Company may be asked to give an undertaking for all compliances from Reserve Bank of India being concerned Regulator, if deemed fit & proper by the Hon"ble Court.

5. That the Deponent further craves leave to submit that the Petitioner Company

has submitted two set of copy of scheme of Amalgamation in the office of Deponent. One set of Scheme of Amalgamation submitted along with copy of Company Application No. 20 of 2014, wherein at Para 5.6 of the Scheme provides that if the Scheme cannot be made effective on or before 31st December, 2012, the Scheme shall become null & void & be of no effect. Whereas, Scheme of Amalgamation submitted along with second motion Petition, Para 5.6 of the Scheme provides that if the Scheme cannot be made effective on or before 31st December, 2014, the Scheme shall become null & void & be of no effect. It is submitted that all the Petitioner Companies may be asked to clarify the same that which Scheme of Amalgamation is correct and desires to enforce the same through Hon''ble Court.

11. In reply to aforesaid observations of the Regional Director, the petitioner Companies have filed an affidavit dated 27.05.2014, wherein it is stated that transferee company undertakes to comply with all guidelines and norms of Reserve Bank of India, as and when required, pursuant to the scheme of amalgamation of M/s. Airwaves Telefilms Private Limited, M/s. Lavitra Technologies Private Limited, M/s. Suave Technologies Private Limited & M/s. Waves Telefilms Private Limited (being the Transferor Companies) with M/s. Dolf Leasing Limited (being the Transferee Company).

12. In reply to the Para 5 of observations of the Regional Director the petitioner Company have filed an affidavit dated 26.05.2014, wherein it is stated that Para No. 5.6(a) of the Scheme of Amalgamation contained a typographical error with respect to the year mentioned over there. It should be read as 2014 and not 2012, whole Para is represented below:

In the event of any of the said sanctions and approvals not being obtained and/or the Scheme not being sanctioned by the Hon''ble High Court and/or the order not being passed as aforesaid on or before 31st day of December, 2014 or within such further period or periods as may be agreed upon by and between the Transferor Companies and the Transferee Company, this Scheme shall stand revoked and cancelled and become null and void and be of no effect and in that event, no rights and liabilities whatsoever, shall accrue to or be incurred inter-se by the Transferor and/or Transferee Companies or their shareholders or creditors or employees or any other person.

13. It is directed that in case it is found that transferor and transferee companies have violated any provisions of the Reserve Bank of India Act then Directors of the transferor and transferee companies guilty of breaching the applicable provisions of the Reserve Bank of India Act shall continue to be liable irrespective of the sanction of the scheme.

14. Despite notice, Income Tax Authorities have not raised any objection with regard to scheme.

15. In view of the aforesaid clarification and undertaking given by the Petitioners, the concern of the Regional Director has been duly addressed.

16. No objection has been received to the Scheme from any other party. Mr. Pawan Kumar Mittal, Director of the Transferee Company, has filed an affidavit confirming that neither the Petitioner Companies nor their counsel has received any objection pursuant to citations published in the newspapers.

17. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies, affidavit/report filed by the Regional Director, Northern Region and the Official Liquidator, attached with this court to the proposed Scheme, there appears to be no impediment to the grant of sanction in the scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner Companies will comply with the statutory requirements in accordance with law.

18. Certified copy of the order be filed with the Registrar of Companies within thirty days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act, and in terms of the Scheme, the whole or part of the undertakings, all properties, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Companies be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company/Companies shall stand dissolved without winding up.

19. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

20. Learned Counsel for the Petitioner submits that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 1 Lac in the common Pool fund of the Official Liquidator within three weeks from today. The Statement is accepted.

21. The petition is allowed in the above terms.