

(2014) 09 DEL CK 0334
In the Delhi High Court
Case No : CO.PET. 195/2014

In Re: Aradhana Foods and Juices Pvt. Ltd.

Date of Decision : 11-09-2014

Acts Referred:

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

Citation : (2014) 09 DEL CK 0334

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Amit S. Chaddha, Sr. Advocate, Dheeraj Nair, Divyam Agarwal, Pragya Chauhan, P.K. Mallik, Deputy Registrar of Companies and Mayank Goel, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.

CA No.2056/2014

This is an application by the Regional Director seeking condonation of delay in filing the reply.

For the reasons stated in the application, the application is allowed and the delay in filing the reply is condoned.

The reply is directed to be taken on record.

CO.PET. 195/2014

1. This second motion joint Petition has been filed under Sections 391 to 394 of the Companies Act, 1956 ("Act"), seeking sanction to the Scheme of Amalgamation ("Scheme ") of Aradhana Foods and Juices Private Limited (Transferor Company No. 1) and Lehar Foods Private Limited (Transferor Company No. 2)(collectively referred as Petitioner Companies) with PepsiCo India Holdings Private Limited (Transferee Company). A copy of the Scheme has been enclosed with the Petition.

2. The registered offices of the Petitioner/Transferor Companies are situated at New Delhi, within the jurisdiction of this Court. The registered office of the Transferee Company is situated in Gurgaon, Haryana. The present joint petition has been filed only by the Petitioner Transferor Companies.

3. The details of the respective dates of incorporation of the Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4. The copies of the Memorandum and Articles of Association as well as the Annual Accounts of the Petitioner Companies for the year ended 31st March 2013 have also been enclosed with the Petition.

5. The copies of Resolutions passed by the Board of Director of the Petitioner Companies approving the Scheme of Amalgamation have also been filed along with the Petition.

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. 174 of 2013 seeking directions of this Court for dispensation with the requirement of convening meetings of the shareholders, secured and unsecured creditors. By order dated January 9, 2014 in CA (M) No. 174 of 2013, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders and Creditors of the Petitioner No.2/ Transferor Company No. 2 and the Transferee Company. The Court however, directed that a meeting of the unsecured creditors of the Petitioner No.1/Transferor Company No. 1 with an outstanding credit of more than Rs. 5 lac as on March31, 2012 ("Unsecured Creditors ") be convened. In accordance with the directions of this Court, a meeting of the Unsecured Creditors of the Transferor Company No. 1 was convened on February 25, 2014. The Unsecured Creditors have duly approved the Scheme at the said meeting. The Report has been filed by the Chairperson.

8. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. By order dated March 25, 2014, notice in the Petition was directed to be issued to the Regional Director, Northern Region, Ministry of Corporate Affairs, Noida, the Registrar of Companies and the Official Liquidator attached with this Court. Citations were also directed to be published in "Business Standard " (English Edition) and "Jansatta " (Hindi Edition). An Affidavit of service and publication has been filed by the Petitioners on May 12, 2014 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. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

9. In response to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, Official Liquidator has filed his report dated July 31, 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 Companies, which are subject matter of dissolution, do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per the second proviso of Section 394(1) of the Companies Act, 1956.

10. The Regional Director has filed his Affidavit dated September 1, 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services. Further the Regional Director submits that despite notice, the Income Tax Authorities have not raised any objection with regard to the scheme.

11. The Learned Regional Director in his Affidavit has observed that the Petitioner Companies may be asked to comply with the Accounting Treatment as prescribed under Accounting Standard 14 issued by the Institute of Chartered Accountants of India.

12. In response to the aforesaid observation, the Petitioner Companies have filed their Affidavit dated September 9, 2014 wherein they have undertaken confirmed that they have complied with Accounting Standard 14 and have further undertaken to comply with the same in future as well.

13. Further the Regional Director in his Affidavit has observed that the Transferee Company has not filed a separate application before the High Court of Punjab and Haryana.

14. In response to the said observation learned Counsel for the Petitioner Companies submits that the Transferor Companies are wholly owned subsidiary of the Transferee Company. He submits that by order dated 9.1.2014 in Company Appeal (M) No.174/2013 passed at the time of first motion of the present scheme of amalgamation; this Court had accepted the contention of the petitioners that no separate application u/s 391-394 of the Companies Act was required.

15. Further this issue has been considered and approved by this Court in the case of M/s. CL Media Private Limited (Company Petition No. 74 of 2014), Auto Tools India Pvt. Ltd. [Co. Appl. (M) No. 41 of 2010], In Re: Sharat Hardware Industries P. Ltd., , Mahaamba Investments Ltd. Vs. IDI Limited, Andhra Bank Housing Finance Limited Vs. Andhra Bank, .

16. In view of the aforesaid clarifications and undertaking given by the Petitioners, the concerns of the Regional Director have been duly addressed.

17. No objection has been received to the Scheme of Amalgamation from any

other party. Mr. Divyam Agarwal, Counsel for the Petitioners, has filed an affidavit dated September 2, 2014 confirming that neither the Petitioner Companies nor their Counsel has received any objection pursuant to citations published in the newspapers.

18. In view of the approval accorded by the shareholders and creditors of the Petitioner/Transferor Companies; representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court 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/Transferor Companies will comply with the statutory requirements in accordance with law.

19. A certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, all the property, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all the liabilities and duties of the Petitioner/ Transferor Companies be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Petitioner/Transferor Companies shall stand dissolved without winding up.

20. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty 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.

21. Learned Counsel for the Petitioner states that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

22. The Petition is allowed in the above terms.