

(2015) 12 DEL CK 0135

In the Delhi High Court

Case No : Company Petition No. 458/2015

In Re: ASF Insignia SEZ Private Limited and Ors.

Date of Decision : 10-12-2015

Acts Referred:

Citation : (2015) 12 DEL CK 0135

Hon'ble Judges : Sudershan Kumar Misra, J.

Bench : Single Bench

Advocate : Rajiv Nayar, Sr. Advocate, Anirudh Dads, Manu Krishnan and Kamaljeet Singh, Advocates, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.—This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Demerger and Arrangement between ASF Insignia SEZ Private Limited (hereinafter referred to as the demerged company) and Kings Canyon SEZ Private Limited (hereinafter referred to as the resulting company No. 1) and Grand Canyon SEZ Private Limited (hereinafter referred to as the resulting company No. 2).

2. The registered offices of the demerged and resulting companies are situated at New Delhi, within the jurisdiction of this Court.

3. The demerged company was originally incorporated under the Companies Act, 1956 on 6th September, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Canton Buildwell Private Limited. The company changed its name to ASF Insignia SEZ Private Limited and obtained the fresh certificate of incorporation on 9th February, 2012.

4. The resulting company No. 1 was originally incorporated under the Companies Act, 1956 on 26th May, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Idyllic Infrastructure Private Limited. The company changed its name to Kings Canyon Insignia SEZ Private Limited and obtained the fresh certificate of incorporation on 7th March, 2012.

The company again changed its name to Kings Canyon SEZ Private Limited and obtained the fresh certificate of incorporation on 28th January, 2015.

5. The resulting company No. 2 was originally incorporated under the Companies Act, 1956 on 25th May, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Idyllic Buildcon Private Limited. The company changed its name to Grand Canyon SEZ Private Limited and obtained the fresh certificate of incorporation on 20th January, 2014.

6. The present authorized share capital of the demerged company is Rs. 5,00,00,000/- divided into 50,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 1,06,42,590/- divided into 10,64,259 equity shares of Rs. 10/- each.

7. The present authorized share capital of the resulting company No. 1 is Rs. 10,00,000/- divided into 1,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each.

8. The present authorized share capital of the resulting company No. 2 is Rs. 10,00,000/- divided into 1,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each.

9. Copies of the Memorandum and Articles of Association of the demerged and resulting companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the demerged and resulting companies have also been filed.

10. A copy of the Scheme of Demerger and Arrangement 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 submitted by the Petitioners that the Scheme, inter alia, provides that, upon coming into effect of this Scheme, the Demerged Undertaking 1 and the Demerged Undertaking 2 of the demerged company shall stand merged with the resulting company No. 1 and resulting company No. 2 respectively. It is claimed that the proposed demerger shall facilitate and result in creation of greater management focus and easier speedy decision process to achieve strategic advantage involving focused strategy in development and/or operation of each such business; optimal utilization of resources vesting in each of the demerged undertakings; and keeping track of profitability of each demerged undertaking distinctly.

11. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the resulting company No. 1 and 2 shall issue and allot equity shares to the shareholders of the demerged company in the following ratio:--

"In consideration of and subsequent to vesting of demerged undertaking 1 to the resulting company No. 1, the resulting company No. 1 shall issue, in aggregate, 18,67,121 equity shares of Rs. 10/- each to the equity shareholders of the

demerged company in a manner that each such equity shareholder of demerged company shall be entitled to be issued 100 fully paid up equity shares of the resulting company No. 1 for every 57 fully paid up equity shares held by them in the demerged company."

"In consideration of and subsequent to vesting of demerged undertaking 2 to the resulting company No. 2, the resulting company No. 2 shall issue, in aggregate, 19,73,717 equity shares of Rs. 10/- each to the equity shareholders of the demerged company in a manner that each such equity shareholder of demerged company shall be entitled to be issued 102 fully paid up equity shares of the resulting company No. 2 for every 55 fully paid up equity shares held by them in the demerged company."

12. It has been submitted by the petitioners that no proceedings under Sections 235 and 250A of the Companies Act, 1956 and the applicable provisions of the Companies Act, 2013 are pending against the petitioner companies.

13. The Board of Directors of the demerged company and resulting company No. 1 & 2 in their separate meetings held on 10th March, 2015 and 19th March, 2015 respectively have unanimously approved the proposed Scheme of Demerger and Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the demerged and resulting companies have been placed on record.

14. The petitioner companies had earlier filed CA (M) No. 60/2015 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 Demerger and Arrangement. Vide order dated 25th May, 2015 this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the demerged and resulting companies, there being no secured or unsecured creditors of the resulting companies, and directed convening of separate meetings of the secured and unsecured creditors of the demerged company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Demerger and Arrangement.

15. The Chairpersons of the ordered meetings of the secured and unsecured creditors of the demerged company have filed their reports stating that the meetings were duly held on 30th June, 2015, as directed, and that the Scheme of Demerger and Arrangement has been approved unanimously by the secured and unsecured creditors of the demerged company, present and voting, in their respective meetings.

16. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Demerger and Arrangement. Vide order dated 28th July, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in "Indian Express" (English) and "Jansatta" (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Regional

Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 15th September, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

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 15th October, 2015. Relying on Clauses 3.1.2 (viii) of Part-III and 4.1.2 (viii) of the Scheme, he has stated that, upon sanction of the Scheme of Demerger and Arrangement, all the employees of the Demerged Undertaking I shall become the employees of the Resulting Company I and all the employees of the Demerged Undertaking II shall become the employees of the Resulting Company II respectively, without any break or interruption in their services.

18. The Regional Director has not raised any objection to the proposed Scheme, although in para 9 of his report he has submitted that the demerged company is operating an IT SEZ and post the approval of the Scheme, the resulting companies shall seek necessary approval of the SEZ section, Department of Commerce, Ministry of Commerce and Industry, Government of India and Board of Approval and the Scheme of Arrangement becomes effective only after the said necessary approvals. In response to the aforesaid observation, learned counsel for the petitioner states that the aforesaid observations are in consonance with prayer (f) of the petition as also with para 8.9(ii) of the Scheme propounded, which states as follows:

"8.9 This scheme shall become effective on the last date of following dates ("Effective Date"):

(i) xx xx xx

(ii) the date on which SEZ Section, Department of Commerce, Ministry of Commerce and Industry, Government of India and Board of Approval for SEZs approve Resulting Companies as co-developers of the Project, as contemplated in this Schema and the requirement agreements in terms of Clauses 3.1.4(i) and 4.1.4(i) are executed; or

(iii) xx xx xx"

In view of the aforesaid, the observation of the Regional Director, Northern Region stands satisfied.

19. No objection has been received to the Scheme of Demerger and Arrangement from any other party. The petitioner companies in their affidavits dated 13th October, 2015 of Mr. Anil Saraf, Mr. K.S.C. Shekhar and Mr. Subhash Vaidyanathan, Directors 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 15th September, 2015.

20. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Demerger and

Arrangement and the affidavit filed by the Regional Director, Northern Region not raising any objection to the proposed Scheme of Demerger and Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Demerger and Arrangement. Consequently, sanction is hereby granted to the Scheme of Demerger and Arrangement 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 of the date on which the SEZ Section, Department of Commerce, Ministry of Commerce and Industry, Government of India and Board of Approval for SEZs grants approval in terms of Clause 8.9(ii) of the Scheme. 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 Arrangement, i.e. 1st April, 2014, the Demerged Undertaking I of the demerged company shall stand merged in the resulting company No. 1 and Demerged Undertaking II of the demerged company shall stand merged in the resulting company No. 2.

21. The representative of the Regional Director, Northern Region prays that costs may also be imposed keeping in view the fact that the matter has involved examination of extensive records and prioritized hearings. He submits that at least costs of Rs. 1,00,000/- should be paid by the petitioners. Learned counsel for the petitioners states that the same is acceptable to him. As already directed vide order dated 03.11.2015, the petitioners shall deposit a sum of Rs. 1,00,000/- by way of costs in the Common Pool Fund of the Official Liquidator.

22. The petition is allowed in the above terms.