(2015) 04 DEL CK 0223

In the Delhi High Court

Case No : Company Petition No. 13 of 2015

In Re: Avalokiteshvar Valinv Limited and Others

Date of Decision : 16-04-2015

Acts Referred:
Companies Act, 1956 — Section 100, 101, 101, 102, 102
Companies Act, 2013 — Section 52

Citation : (2015) 04 DEL CK 0223

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Sharad Vaid, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.

1. This joint petition has been filed under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and Section 52 of the Companies Act, 2013 by the petitioner companies seeking sanction of the Scheme of Arrangement between Avalokiteshvar Valinv Limited (hereinafter referred to as the Demerged company no. 1); Renaissance Asset Management Company Private Limited (hereinafter referred to as the Demerged company no. 2) and Renaissance Advanced Consultancy Limited (hereinafter referred to as the Resulting company).

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 no. 1 was originally incorporated under the Companies Act, 1956 on 25th April, 1974 with the Registrar of Companies, Orissa under the name and style of Utkal Investments Limited. The company shifted its registered office from the State of Orissa to State of West Bengal and obtained a certificate in this regard from the Registrar of Companies, West Bengal on 7th July, 2000. Thereafter, the company again shifted its registered office from the State of West Bengal to NCT of Delhi and obtained a certificate in this regard

from the Registrar of Companies, NCT of Delhi and Haryana at New Delhi on 18th June, 2003. Subsequently, the company changed its name to Avalokiteshvar Valinv Limited and obtained the fresh certificate of incorporation on 5th March, 2012.

4. The Demerged company no. 2 was originally incorporated under the Companies Act, 1956 on 28th September, 2000 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name and style of Renaissance Estates Limited. Thereafter, the company changed its name to Renaissance Asset Management Company Limited and obtained the fresh certificate of incorporation on 2nd August, 2001. The company again changed is name to Renaissance Asset Management Company Private Limited and obtained the fresh certificate of incorporation on 4th October, 2001.

5. The Resulting Company was incorporated under the Companies Act, 2013 on 1st September, 2014 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

6. The present authorized share capital of the Demerged company no. 1 is Rs. 25,00,00,000/- divided into 1,08,50,000 equity shares of Rs. 10/- each aggregating to Rs. 10,85,00,000/- and 1,41,50,000 preference shares of Rs. 10/- each aggregating to Rs. 14,15,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs. 4,98,83,500/- divided into 49,88,350 equity shares of Rs. 10/- each fully paid-up.

7. The present authorized share capital of the Demerged company no. 2 is Rs. 30,00,00,000/- divided into 1,50,00,000 equity shares of Rs. 10/- each aggregating to Rs. 15,00,00,000/- and 1,10,00,000 12% preference shares of Rs. 10/- each aggregating to Rs. 11,00,00,000/- and 40,00,000 8% preference shares of Rs. 10/- each aggregating to Rs. 4,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs. 5,15,00,000/- divided into 51,50,000 equity shares of Rs. 10/- each.

8. The present authorized share capital of the Resulting company 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 fully paid-up.

9. Copies of the Memorandum and Articles of Association of the Demerged and Resulting companies have been filed on record with the joint application, being CA(M) 151/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the Demerged and Resulting companies, along with the report of the auditors, as well as the audited balance sheets of the demerged companies including audited balance sheets of their consultancy division, as on 30th September, 2014, have also been filed. Amended Memorandum of Association of the resulting company has also been filed and the same was taken on record vide order dated 23.03.2015.

10. A copy of the Scheme of 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 that the Scheme, inter alia, provides for demerger of Consulting Services Division of the Demerged Company No. 1 and Demerged Company No. 2 into the Resulting Company and reduction of share capital and reserves and surplus of the demerged companies no. 1 and 2. It is claimed that the proposed demerger would lead to concentrated and focused business approach and attention to the two businesses being carried on by the demerged companies by segregating them and consolidating their consulting services business into the resulting company so that full anticipated growth potential of the two businesses could be better exploited by the respective companies for the benefit of all stakeholders. It is further claimed that proposed arrangement would have rationalization of use of available resources and management efforts for achieving higher efficiencies, thereby reducing administrative and operational overheads and other costs and expenses.

11. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme and upon transfer and vesting of Consulting Services Division of the Demerged Companies into the Resulting Company, the Resulting Company shall issue and allot equity shares to the shareholders of the Demerged companies in the following ratio:

"100 new ordinary shares shall be issue and allotted, at par, by the resulting company for every 246 fully paid-up equity shares of Rs. 10/- each held in Demerged company no. 1."

"100 new ordinary shares shall be issue and allotted, at par, by the resulting company for every 894 fully paid-up equity shares of Rs. 10/- each held in Demerged 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 Demerged and Resulting companies.

13. The Board of Directors of the Demerged and Resulting companies in their separate meetings held on 11th October, 2014 have unanimously approved the proposed Scheme of 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. The members of the Demerged Company No. 1 and Demerged Company No. 2 in their separate Extra-Ordinary General Meetings held on 13th December, 2014 and 12th December, 2014 respectively have also approved the proposed reduction of share capital and reserves and surplus of the demerged companies. Copies of the resolutions passed in the Extra-Ordinary General Meetings of the Members of the demerged companies have also been placed on record.

14. The petitioner companies had earlier filed CA (M) No. 151/2014 seeking directions of this court to dispense with the requirement of convening the

meetings of their secured and unsecured creditors and the equity shareholders of demerged company no. 2 and the resulting company and for convening the meeting of the equity shareholders of demerged company no. 1, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 3rd November, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of demerged company no. 2 and resulting company, there being no secured and unsecured creditors of the petitioner companies, and directed convening of a meeting of the equity shareholders of the demerged company no. 1, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

15. The Chairperson of the ordered meeting of the equity shareholders of the demerged company no. 1 has filed his report stating that the meeting was duly held on 13th December, 2014, as directed, and that the Scheme of Arrangement has been approved unanimously by the equity shareholders of the demerged company no. 1, present and voting, in the meeting.

16. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 13th January, 2015, 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 ''The Financial Express'' (English) and ''Jansatta'' (Hindi) editions. It was also directed that no separate application/petition need to be filed by the petitioners under Sections 101 to 104 of the Companies Act, 1956 in relation to reduction of issued, subscribed and paid-up share capital, securities premium account and general reserves and surplus of the demerged company nos. 1 and 2. Thereafter, vide order dated 23rd March, 2015 passed in CA 755/2015, in view of the fact that the present petition merely concerns the Scheme of Demerger and not amalgamation, it was directed that notice is not required to be served on the Official Liquidator. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 26th February, 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 19th March, 2015. Relying on Clauses 3.2.6(a) of Part-III and 4.2.6(a) of Part-IV of the Scheme, he has stated that, upon sanction of the Scheme of Arrangement, all the employees of the Demerged companies in connection with the work of their Consulting Services Division shall become the employees of the Resulting Company without any break or interruption in their services.

18. No objection has been received to the Scheme of Arrangement from any other party. The petitioner companies, in the affidavit dated 18th March, 2015 of

Mr. Arun Sharma, 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 26th February, 2015.

19. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Arrangement and the affidavit filed by the Regional Director, Northern Region, not raising any objection to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the Scheme of Arrangement under Sections 391 and 394 read with Sections 100 to 103 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 Arrangement, i.e. 1st October, 2014, the ''Consulting Services Division'' of the Demerged Company nos. 1 and 2 shall stand merged with the Resulting Company.

20. The petition is allowed in the above terms.

