

(2015) 12 DEL CK 0130

In the Delhi High Court

Case No : Company Application (Main) No. 188/2015

In Re: Avantha Business Solutions Limited

Date of Decision : 23-12-2015

Acts Referred:

Citation : (2015) 12 DEL CK 0130

Hon'ble Judges : Sudershan Kumar Misra, J.

Bench : Single Bench

Advocate : Anirudh Das and Kamal, Advocate, for the Appellant

Judgement

Sudershan Kumar Misra, J.—This joint application has been filed under Section 391 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of the equity shareholders and secured creditors of the transferor company and equity shareholders and preference shareholders of the transferee company and for convening of separate meetings of the unsecured creditors of the transferor company and secured and unsecured creditors of the transferee company to consider and approve, with or without modification, the proposed Scheme of Arrangement between Avantha Business Solutions Limited (hereinafter referred to as the transferor company) and Avantha Holdings Limited (hereinafter referred to as the transferee company).

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

3. The transferor company was originally incorporated under the Companies Act, 1956 on 9th May, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Salient Business Solutions Limited. The company changed its name to Avantha Business Solutions Limited and obtained the fresh certificate of incorporation on 15th October, 2014.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 29th May, 1998 with the Registrar of Companies, Maharashtra at

Mumbai under the name and style of Bilt Investments Limited. The company changed its name to Bilt Trading & Infrastructure Limited and obtained the fresh certificate of incorporation on 19th July, 2001. The company again changed its name to NewQuest Corporation Limited and obtained the fresh certificate of incorporation on 18th July, 2002. The company again changed its name to NewQuest Corporation Private Limited and obtained the fresh certificate of incorporation on 2nd September, 2002. The company again changed its name to NewQuest Corporation Limited and obtained the fresh certificate of incorporation on 4th March, 2005. The company finally changed its name to Avantha Holdings Limited and obtained the fresh certificate of incorporation on 28th July, 2009. Thereafter, the company shifted its registered office from the State of Maharashtra to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 2nd February, 2010.

5. The present authorized share capital of the transferor company is Rs. 1,40,00,00,000/- divided into 14,00,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 1,38,60,00,000/- divided into 13,86,00,000 equity shares of Rs. 10/- each.

6. The present authorized share capital of the transferee company is Rs. 3,75,87,00,000/- divided into 55,85,000 equity shares of Rs. 100/- each aggregating to Rs. 55,85,00,000/-; 2,98,02,000 preference shares of Rs. 100/- each aggregating to Rs. 2,98,02,00,000/-; and 22,00,000 unclassified shares of Rs. 100/- each aggregating to Rs. 22,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs. 45,03,90,900/- divided into 4,53,909 equity shares of Rs. 100/- each aggregating to Rs. 4,53,90,900/-; 50,000 8% cumulative fully redeemable optionally convertible preference shares of Rs. 100/- each aggregating to Rs. 50,00,000/-; and 40,00,000 8.5% redeemable cumulative non-convertible preference shares of Rs. 100/- each aggregating to Rs. 40,00,00,000/-.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. 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 application and the accompanying affidavit. It is claimed by the applicants that the proposed scheme will result in consolidation of the businesses presently being carried on by the applicant companies, which shall be beneficial to the interest of the shareholders, creditors and employees of both the companies and to the interests of public at large, as such amalgamation would create greater synergies between the businesses of both the companies would enable them to have a larger asset base, wider market coverage and access to better financial resources. It is further claimed that the proposed scheme will also result in economization and reduction of administrative and managerial costs.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

"11 equity shares of Rs. 1,00,000/- each of the transferee company for every 5,00,00,000/- equity shares of Rs. 10/- each held by such shareholder in the transferor company."

It has been further provided that no shares shall be issued to the transferee company in lieu of shares held by it in the transferor company and all equity shares held by the transferee company in the transferor company shall stand cancelled.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 250A of the Companies Act, 1956 or the applicable provisions of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 21st November, 2015 have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The transferor company has 09 equity shareholders. 08 out of 09 equity shareholders, being 88.88% in number and 98.37% in value, have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with. There is no secured creditor of the transferor company, as on 31st October, 2015.

13. The transferee company has 08 equity shareholders and 02 preference shareholders. All the equity shareholders and both the preference shareholders have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and preference shareholders of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with.

14. The transferor company has 23 unsecured creditors and a direction is sought to convene and hold their meetings to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferor company shall be held on 21st February, 2016 at 10:30 a.m. at PHD Chambers of Commerce and Industry,

PHD House, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi - 110016. Mr. Rishi Manchanda, Advocate, (Mobile No. 9911681178) is appointed as the Chairperson and Mr. Dheeraj Trikha, Advocate, (Mobile No. 9873377707) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferor company shall be 5 in number and more than 25% in value of the total unsecured debt.

15. The transferee company has 9 secured creditors and a direction is sought to convene and hold their meetings to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the transferee company shall be held on 21st February, 2016 at 12:00 noon at PHD Chambers of Commerce and Industry, PHD House, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi - 110016. Mr. Saurabh Kansal, Advocate, (Mobile No. 9958378565) is appointed as the Chairperson and Mr. Pramod Tyagi, Advocate, (Mobile No. 9999710366) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the transferee company shall be 3 in number and more than 25% in value of the total secured debt.

16. The transferee company has 139 unsecured creditors and a direction is sought to convene and hold their meetings to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferee company shall be held on 21st February, 2016 at 02:00 p.m. at PHD Chambers of Commerce and Industry, PHD House, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi - 110016. Mr. Nishant Anand, Advocate, (Mobile No. 9717061109) is appointed as the Chairperson and Mr. Jitender Bhardwaj, Advocate, (Mobile No. 9811672065) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferee company shall be 30 in number and more than 25% in value of the total unsecured debt.

17. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings is filed with the registered office of the applicant companies at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

18. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the unsecured creditors of the transferor company and secured and unsecured creditors of the transferee company, along with copies of the Scheme of Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the

transferor company and secured and unsecured creditors of the transferee company by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meetings, in their presence or in the presence of their authorized representatives. Notice of the meetings shall also be published in the Delhi editions of the newspapers "Statesman" (English) and "Jansatta" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

19. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the applicant companies so that the aforesaid meetings of the unsecured creditors of the transferor company and secured and unsecured creditors of the transferee company are conducted in a just, free and fair manner.

20. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs. 50,000/- each in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

21. The application stands allowed in the aforesaid terms.

Co.Appl. No. 3772/2015

This application under Section 101(3) of the Companies Act, 1956 is filed by the transferee company seeking dispensation from following the procedure prescribed under Section 101(2) of the Act.

It is contented that as an integral part of the Scheme of Arrangement and consequent upon the Scheme becoming effective:

(i) 167 shares of the transferee company held by PNR Investment Advisors Private Limited shall be cancelled and an amount of Rs. 1,10,26,759.50/- shall be transferred to the Investor Education and Protection Fund established by the Central Government, in terms of Clause 4.6 of the Scheme; and

(ii) 742 equity shares of Rs. 100/- each prior to the consolidation of shares at Clause 4.1 of the Scheme shall be cancelled by refunding an amount of Rs. 4,89,93,147/- to the existing equity shareholders, in terms of Clause 4.6 of the Scheme."

Learned counsel for the applicants submits that the provisions of Section 101(2) of the Act will be duly complied with since:

"(a) The aforesaid proposed reduction in terms of the Scheme has been duly approved by the shareholders of the transferee company at the Extra-Ordinary General Meeting held on 23rd November, 2015, which is placed on record.

(b) The refund of amount totaling Rs. 6,00,19,906.50, in terms of Clause 4.6 of the Scheme, does not involve diminution of liability in respect of unpaid share capital. The amount of Rs. 1,10,26,759.50/- shall be transferred to the Investor

and Education Fund of India and an amount of Rs. 4,89,93,147/- only shall be refunded in view of the fractional entitlement. Further, the aforesaid payouts also does not affects the rights of the creditors; and

(c) The secured and unsecured creditors of the applicant companies, there being no secured creditor of the transferor company, will also consider the said reduction at the time of their meetings which will be convened pursuant to the directions of this Court."

Applicants, therefore, have prayed for dispensation of the requirement of following the procedure under Section 101(2) of the Act by the applicant companies.

During the course of arguments on 15.12.2015, it was stated by the learned counsel for the applicants that they shall file affidavits within a week clarifying the aspect with respect to all the shareholders whose holding is subject to either diminution or extinction as a result of proposed reduction in capital. The affidavits are not yet filed.

Further, it was stated by the learned counsel for the applicants on 15.12.2015 that the amount proposed to be refunded to the existing shareholders will be placed in a separate interest bearing account subject to further orders. Applicants to also place on record, by way of affidavit, the steps taken in this behalf.

Re-notify Co. Appl. No. 3772/2015 on 15th January, 2016.