

(2015) 01 KAR CK 0072

In the Karnataka High Court

Case No : Company Petition Nos. 144 and 145/2014

In Re: Biesse Manufacturing Co. Pvt. Ltd. and Ors.

Date of Decision : 16-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0072

Hon'ble Judges : B.V. Nagarathna, J.

Bench : Single Bench

Advocate : N. Lomesh Kiran, Advocate, for the Appellant

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—These petitions are filed under Sections 391 to 394 of the Companies Act, 1956. The petitioner in Co.P. No. 144/2014, M/s. Nuova Faos International Manufacturing Private Limited is the transferor company. The petitioner in Co.P. No. 145/2014, M/s. Biesse Manufacturing Company Private Limited is the transferee company.

2. The transferor - company was incorporated on 5.3.2010 under the provisions of the Companies Act, 1956, as a Private Limited Company. The Memorandum and Articles of Association of the transferor company are produced as Annexure "A" to the petition. The registered office of the transferor company is at No. 16B, Peenya Industrial Area, Peenya I Stage, Bangalore - 560058. The petitioner/transferor company is engaged in the business of rolling, casting, fabricating iron and steel and other ferrous and non-ferrous metals and metal products. It is stated that the transferor company is a wholly owned subsidiary of the transferee company called M/s. Biesse Manufacturing Co. Pvt. Ltd., (hereinafter referred to as a transferee company).

3. The share capitals of the transferor company as on the date of filing of the petition is as under:

4. The Transferor - company had filed C.A. No. 529/2014 seeking dispensation of the requirement of holding of meetings of unsecured creditors and shareholders of the petitioner/transferor company. By an order dated 5.6.2014, the said

Company Application was allowed. A copy of the order is produced as Annexure "K" to the company petition. It is stated that there are no investigations under Sections 235-251 of the Companies Act, 1956 against the transferor company as well as the transferee company.

5. The transferee - company was incorporated on 8.2.2006 under the provisions of the Companies Act, 1956, as a Private Limited Company. The Memorandum and Articles of Association of the transferor company are produced as Annexure "A" to the petition. The registered office of the transferee company is at Sy. No. 32, No. 469, Sondekoppa road, Jakkasandra village, Nelamangala, Bangalore - 562123. The petitioner/transferee company is engaged in the business of manufacture and sale of on its behalf and or on behalf of third parties, industrial machinery/machinery tools in general and manufacture and sale of woodworking machines and other industrial machinery.

6. The share capitals of the transferee company as on the date of filing of the petition is as under:

7. The transferee company had filed C.A. No. 528/2014 seeking dispensation of the requirement of holding of meetings of unsecured creditors and shareholders of the petitioner/transferee company. By an order dated 5.6.2014, the said Company Application was allowed. A copy of the order is produced as Annexure "K" to the company petition.

8. It is stated that the Board of Directors of the transferee company as well as the transferor company held their respective meetings on 23.10.2013 and resolved to have a scheme of amalgamation of the two companies and get the same approved by this Court. The Board Resolutions of the two companies are at Annexures "G" and "H" respectively. The scheme of amalgamation is at Annexure "J", giving details of the manner in which the transferor company would be amalgamated/merged with the transferee company.

9. Pursuant to the amalgamation, the transferor company shall be transferred into transferee company and with effect from the appointed date i.e., 1.4.2013 which is of course, subject to approvals and sanctions to be given by this Court and the concerned authorities. The reasons for the scheme of amalgamation is to have integration in the business processes of the two companies for more efficient management and control and to achieve cost savings and have business synergies which would be mutually beneficial both for growth as well as for diversification.

10. The salient features of the scheme of amalgamation are as under:

1) The entire undertaking of the business, assets and liabilities of the petitioner/transferor company will stand vested with the transferee company.

2) The petitioner/transferor company will stand merged into the transferee company.

3) Upon sanction of the Scheme of Amalgamation by this Hon"ble Court, the entire undertaking of the petitioner/transferor company shall stand vested in the transferee company and the petitioner/transferor company will be dissolved without winding up.

4) In terms of clause 15 of the Scheme of Amalgamation, no shares of the transferee company will be issued or allotted in respect of the holding of the transferee company in the petitioner/transferor company.

5) Sanctioning of the scheme of arrangement will be for the benefit of all the shareholders and creditors of the petitioner/transferor company and no prejudice will be caused to them if the Scheme of Amalgamation is sanctioned by this Hon"ble Court.

11. On filing of the company petitions, notices were ordered to the Registrar of Companies as well as to the Official Liquidator and also directed the petitioners in both the petitions to take out advertisement of the petitions in "The Hindu" and "Udaya Vani" newspapers, Bangalore edition, fixing the date of hearing as 21.8.2014. Accordingly, the petitioners have taken out advertisement in the newspapers and has filed a memo on 4.8.2014 enclosing the copies of the newspapers.

12. The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad has filed his affidavit 9.12.2014 with the following observations:

"The notice dated 30.7.2014 was issued to the Income Tax Department as required by Ministry of Corporate Affairs General Circular No. 1/2014 dated 15.1.2014 giving 15 days time. The Income Tax Officer, Office of the Commissioner of Income Tax, Ward 12(1), Bangalore vide letter dated 14.8.2014 (annexed to this affidavit as Annexure - R-1) has made the following observations:-

(i) M/s. Nuova Faos International Manufacturing Pvt. Ltd. Is assessed in this Ward with PAN - AADCN205IN.

(ii) There is no tax outstanding against the assessee as well as no other proceedings in this case.

(iii) The jurisdiction over the assessee is basically in this Ward. Scrutiny assessment is pending for A.Y.2012-13 in this case and getting barred by limitation by 31.3.2015. Since the income limit in this particular year is above Rs. 30 lakhs, the records for this year has been transferred to the ACIT, Circle-12(2) for doing the scrutiny assessment. There is no TP issue involved in this case."

13. The OL has filed his report which is OLR No. 532/2014 extracting the conclusions of the report of the Chartered Accountant M/s. T. Gandhi & Co., dated 22.11.2014. The OLR states that on scrutiny of the accounts, no objections were raised for the transferor company to be dissolved pursuant to merger with

the transferee company.

14. I have heard learned counsel for the petitioners and learned counsel for ROC and learned counsel for OL and perused the material on record.

15. During the course of submission, learned counsel for the petitioners has drawn my attention to the salient features of the scheme of amalgamation and also the objects and reasons for the arrangement proposed between the transferor company as well as the transferee company. Learned counsel submits that there is no impediment for the scheme of amalgamation being approved by this Court.

16. Learned counsel for ROC with reference to the affidavit filed on behalf of the Regional Director states that the observations made by the Regional Director in no way would impede the proposed amalgamation.

17. Learned counsel for the OL has also stated that the report of the OL may be accepted and no objection has been raised for the proposed amalgamation.

18. Having regard to the objects of the transferor company as well as the transferee company, the nature of business they are engaged in and keeping in mind the reasons for the scheme of amalgamation and the salient feature of scheme of amalgamation and having heard the learned counsel for the respective parties, I am of the view that the proposed scheme of amalgamation between the transferor company and the transferee company requires to be approved. Accordingly, it is ordered as under:

(i) Company petitions are allowed.

(ii) The scheme of amalgamation at Annexure "J" is hereby sanctioned, subject to the compliance to be made with the Registrar of Companies.

(iii) The petitioner - companies shall file a copy of this order with the Registrar of Companies of Karnataka within a period of 30 days from the date of receipt of a copy of this order.

(iv) Office is directed to draw up a decree in Form No. 42 on payment of stamp duty.