(2014) 05 DEL CK 0374

In the Delhi High Court

Case No : Co. Pet. 162/2014

In Re: Birlasoft Technologies Ltd. and Others

Date of Decision : 09-05-2014

Acts Referred:
Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2014) 05 DEL CK 0374

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Shilpi Jain, Sharad, Advocates and Atma Sah, Asstt. Registrar of Companies, Advocates for the Appellant

Judgement

Sanjeev Sachdeva, J.—This is a Second Motion Petition filed under Sections 391 to 394 of the Companies Act, 1956 by the Petitioner Companies, seeking sanction of the Scheme of Amalgamation of Birlasoft Technologies Ltd. and Birlasoft Enterprises Ltd. with Birlasoft (India) Ltd. ("Scheme" for short). A copy of the proposed Scheme is enclosed with the Petition.

2. The Registered Offices of both the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

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

4. The copies of Memorandum and Articles of Association of the Petitioner Companies have been enclosed with the Petition.

5. The copies of resolutions passed by the Board of Directors of the Petitioners Companies approving the Scheme 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 are pending against the Petitioner Companies.

7. A copy of the Scheme has been placed on record and the salient features of

the Scheme have been detailed in the Petition. The Scheme provides that upon sanction of the Scheme by the Court, the Amalgamation of the Petitioner Transferor Companies with the Petitioner Transferee Company will take effect from the Appointed Date as mentioned in the Scheme (i.e. 01.04.2014).

8. The Petitioner Companies had earlier filed CA (M) No. 39 of 2014 seeking directions of this Court for dispensation from convening and holding the meetings of the shareholders, secured creditors and unsecured creditors of the Petitioner Companies.

9. By order dated 26.02.2014, the Court allowed the Application and dispensed with the requirement of convening and holding the meetings of the shareholders, secured creditors and unsecured creditors of the Petitioner Companies.

10. The Petitioner Companies have filed the present Petition seeking sanction of the Scheme. By order dated 11.03.2014, notice of the Petition was directed to be issued to the Official Liquidator, Registrar of Companies and the Central Government (through Regional Director, Northern Region, Ministry of Corporate Affairs). Citations were also directed to be published in "Business Standard" (English Edition) and "Business Standard" (Hindi Edition). An affidavit of service and publication has been filed by the Petitioner Companies, inter alia, affirming that the citations as directed were published in the aforesaid newspapers on 04.04.2014.

11. In response to the notice issued in the Petition, Mr. Alok Samantarai, Regional Director, Northern Region, Ministry of Corporate Affairs ("Regional Director" for short) has filed his Affidavit/Representation dated 06.05.2014. In his affidavit, the Regional Director has inter alia, stated that the submission made in Para 4 and 5 of his Affidavit may be considered and the case be decided on its merits.

12. In para 4 of his affidavit, the Regional Director has submitted that 11.215 shares of the Petitioner Transferor Company No. 1 viz. Birlasoft Technologies Ltd. are held by a foreign company (M/s. GE Capital Mauritius Equity Investment III) and the Petitioner Transferor Company No. 1 may be asked to give an undertaking for all compliances from RBI as required under FEMA for the above transactions involving foreign banks/ entities.

13. The learned counsel pointed out that there is an apparent inadvertent error in the number of shares mentioned by the Regional Director in para 4 of his affidavit. The correct number of shares held by M/s. GE Capital Mauritius Equity Investment III in Petitioner Transferor Company No. 1, viz. Birlasoft Technologies Ltd., is 20,20,000 shares constituting 11.20977 % of its total paid-up share capital.

14. The learned counsel further pointed out that, in view of the aforesaid submission of the Regional Director, the Petitioner Transferor Company No. 1 has filed an affidavit, suo moto, confirming, acknowledging and assuring this Hon''ble

Court and undertaking that all compliances required to be made under the Foreign Exchange Management Act, 1999 ("FEMA") and all applicable rules, regulations, notifications, directions and circulars made/issued thereunder, have been and shall be duly made and complied with by it in relation to all the shares of the Petitioner Transferor Company No. 1 held by a foreign company, namely, M/s. GE Capital Mauritius Equity Investment III.

15. In para 5 of his affidavit, the Regional Director has submitted that in compliance with Ministry of Corporate Affair''s Circular No. 1/2014 dated 15.01.2014, the Chief Income Tax Commissioner, New Delhi was requested vide letter dated 24.03.2014 to examine the Scheme and to submit their comments within 15 day and a letter dated 03.04.2014 has been received by the Regional Director from the Chief Income Tax Commissioner, New Delhi that it has transferred the letter to The Commissioner of Income Tax, Delhi - I and requested them to furnish their comments / observations to the office of Regional Director. The said 15 days period has lapsed and no comments have been received from Income Tax Department.

16. It was submitted by the learned counsel that since the above submission made by the Regional Director in his Affidavit is only a statement of fact, and since no comments have been received by the Regional Director from the Chief Income tax Commissioner despite lapse of 15 days after giving of notice to him as has been provided in Ministry of Corporate Affair''s Circular No. 1/2014 dated 15.01.2014, in view of compliance having been made in terms of the above Circular, in the circumstances, it would be appropriate and proper to assume that the Chief Income tax Commissioner has no comments to make in this case.

17. In view of the above, the observations made by the Regional Director stand addressed.

18. Pursuant to the notices issued in the Petition, the Official Liquidator sought information from the Petitioner Transferor Companies. Based on the information received, the Official Liquidator has filed his report dated 07.05.2014 wherein he has stated that, until the date of filing of his report, 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 Petitioner Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the second proviso of Section 394(1) of the Companies Act, 1956.

19. No objection(s) have been received to the Scheme from any other party. Mr. Sonam Sarin, the authorized signatory of the Petitioner Companies, has filed an affidavit dated 05.05.2014 whereby it has been affirmed that neither the Petitioner Companies nor their Counsel have received any objection pursuant to citations published in the newspapers.

20. In view of the approval accorded by the Shareholders and Creditors of the Petitioner 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 Companies will comply with the statutory requirements in accordance with law.

21. A certified copy of the formal 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 Company be transferred to and vest in the Transferee Company without any further Act or deed. Similarly, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up.

22. In view of the approval accorded by the shareholders and creditors of the Petitioner Companies by giving their consent to the Scheme in writing; representation/reports filed by the Regional Director, Northern Region and the Official Liquidator attached with this Court, on the proposed Scheme, the Scheme is hereby sanctioned.

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

24. The Petitioner Transferor Companies and the Petitioner Transferee Company will comply with the statutory requirements in accordance with law. Certified copy of the formal order be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

25. The Petitioner Transferee Company states that it would voluntarily deposit a sum of Rs. 50,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

26. The Petition is allowed in the above terms.