(2015) 07 KAR CK 0327

In the Karnataka High Court

Case No : Company Petition Nos. 104 and 105 of 2015

In Re: Camson Seeds Limited and Others

Date of Decision : 31-07-2015

Acts Referred:

Citation : (2015) 07 KAR CK 0327

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S. Vivekananda, for the Appellant

Final Decision : Allowed

Judgement

Anand Byrareddy, J—These petitions are filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as ''the Companies Act'', for brevity), praying to sanction the Scheme of Arrangement so as to be binding on Camson Bio Technologies Limited (hereinafter referred to as ''the Demerged Company'', for brevity), and Camson Seeds Limited (hereinafter referred to as "the Resulting Company" for brevity) and their respective shareholders and creditors, by virtue of which the entire property, assets, liabilities, rights, operations of Seed Business of Camson Bio Technologies Limited would be demerged into Camson Seeds Limited. All businesses except Seeds Business of the Demerged Company would continue to remain with the Demerged Company. The Resulting Company it is claimed, would issue equity shares to the shareholders of the Demerged company in consideration for the said transfer, as per the Scheme of Arrangement for Demerger.

2. The petitioner in COP. 104/2015 - Resulting Company was incorporated on 04.07.2013 with the Registrar of Companies in the State of Karnataka with its registered office at No. C7, 7th Floor, Corporate Bank, 55, Golden Enclave, Old Airport Road, Bengaluru-560 017, with the main objects to carry on the business of production, cultivation, processing or otherwise creation and supply of quality seeds for enhancing agriculture, floriculture, forestry, horticulture productivity and animal husbandry.

The authorized share capital of the Resulting Company as on 31.1.2015 was Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each and the issued, subscribed and paid-up capital was also Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each.

3. The petitioner in COP. 105/2015 - Demerged Company was incorporated on 19.11.1993 as a private limited company under the name "Camson Agritech Private Limited". The Demerged Company was then converted into a public limited company pursuant to which the name of the company was changed to "Camson Agritech Limited" and then further to "Camson Bio Technologies Limited" with its registered office at Sy. Nos. 133, 132, 125, 130, 84, Madhure Hobli, Madagondanahalli, Doddaballapur, Bengaluru-561 203. The Demerged Company is engaged in the business of manufacturing and dealing of biocides, biofertilizers, natural fertilizers, seeds and seed products, packing, bottling, canning, blending, all types and varieties of tissue and cultured plants, fruits, etc., and also engaged in manufacturing and dealing in manures, plant growth regulators, hormones, pesticides and fertilizers.

The authorized share capital of the Demerged Company as on 31.1.2014 was Rs. 35,00,00,000/- divided into 3,50,00,000 equity shares of Rs. 10/- each and the issued, subscribed and paid-up capital was Rs. 25,22,55,130/- divided into 2,52,25,513 equity shares of Rs. 10/- each.

4. There are only one class of shareholders, namely Equity shareholders in both the Resulting and the Demerged Companies.

5. The Board of Directors of the Demerged as well as the Resulting Companies had approved and adopted a scheme of arrangement for demerger as proposed at their respective meetings held on 24.09.2014, subject to the approval of this Court. The Board Resolutions passed at the meetings are also annexed to the petitions.

6. Upon the Scheme becoming effective, in consideration of the demerger, transfer and vesting of the Demerged Undertaking into the Resulting Company in terms of the Scheme of Arrangement, the Resulting Company shall without any further application, act, instrument or deed, issue and allot one (1) equity share of the face value of Rs. 10/- each credited as fully paid-up of the Resulting Company for every one (1) equity shares of Rs. 10/- each fully paid-up held by the equity shareholders whose name appear in the Register of Members of Demerged Company as on the Record Date.

The difference if any, between the Book Value of the assets and Book Value of the liabilities of the Demerged Undertaking vested in the Resulting Company shall be adjusted against the balance of Profit and Loss Account or General Reserve as decided by the Board of Directors of Demerged Company.

It is stated that the Scheme will be beneficial to both the companies and their respective members and will result in a better and more efficient operation of the

Resulting and Demerged Companies.

The proposed Scheme it is stated, would take effect from 1.4.2014, which would be the appointed date. By virtue of the Scheme, the entire assets and liabilities of the demerged undertaking of the demerged company would stand transferred to the Resulting Company with effect from the appointed date.

It is stated that the interests of the employees of the Demerged Undertaking of the Demerged Company are also safeguarded as per Clause 2.6 of the Scheme, which envisages transfer of their employment to the Resulting Company on terms which is not less favourable.

It is claimed that there are no investigation proceedings pending against the Resulting Company.

7. The Resulting company having filed an application in C.A. 255/2015 seeking dispensing with the meetings of the equity shareholders, secured creditors and unsecured creditors of the company, was allowed by order dated 26.03.2015.

The Demerged company having filed an application in C.A. 256/2015 seeking dispensing with the meetings of the equity shareholders, secured creditors and unsecured creditors of the company, was allowed by order dated 26.03.2015.

8. Notice was issued on the present petitions to the Regional Director and advertisement of the petitions were published in the daily newspapers, "The New Indian Express" and the "Kannada Prabha".

The Registrar of Companies had filed reports in both the petitions pointing out certain defects and an objection that the present authorized capital of the Resulting Company is not sufficient to meet clause 2.2.1 of the Scheme regarding issue and allotment of equity shares. Hence, the Resulting Company has to invariably increase its authorized capital to the extent required for the purpose. However, the Resulting Company has undertaken in Clause 5.3.1 of the Scheme that it shall increase its authorized capital from the present to Rs. 35,00,00,000/- consisting of 3,50,00,000 equity shares of Rs. 10/- each to discharge the consideration as stated in clause 2.2.1. Hence, the Registrar of Companies has observed that the above compliance has to be as per law, i.e., by paying requisite registration fees, stamp duty as prescribed in the Companies Act, 2013 and by filing relevant e-forms with the Registrar of Companies, Karnataka.

It is stated that all the objections raised by the Registrar of Companies will be complied with.

9. In the light of the above claims being supported by an affidavit of the authorized representative of the Resulting Company and in view of the undertaking by him that the objections raised by the Registrar of Companies will be complied with, the petitions are allowed.

The scheme of arrangement for demerger is hereby sanctioned and shall be binding on the Demerged Company, the Resulting Company, their respective shareholders and all other persons.

It is hereby declared that with effect from the appointed date, the entire business and undertakings including all movable, immovable, intangible and other assets and all contracts, deeds, bonds, agreements, licenses, permits, registrations, approvals and other instruments, if any, all other assets, rights, privileges and benefits of whatsoever nature of the Demerged Undertaking of the Demerged Company shall be transferred without further act or deed in favour of the Resulting Company.

It is further declared that with effect from the appointed date, all the debts, liabilities, duties and obligations of the Demerged Undertaking of the Demerged Company shall be transferred to and deemed to be those of the Resulting Company without any further act or deed.

It is also declared that all the proceedings by or against the Demerged Undertaking of the Demerged Company pending before any Court, Tribunal or any other authority, on the appointed date and relating to the property, rights, powers, liabilities, obligations and duties shall be continued and may be enforced by or against the Resulting Company.

The petitioners shall furnish a copy of this order to the Registrar of Companies in Karnataka within a period of 30 days from the date of receipt of the order.