

(2012) 11 DEL CK 0300

In the Delhi High Court

Case No : Company Petition No: 398 of 2012

In Re: Citicorp Maruti Finance Limited

Date of Decision : 21-11-2012

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2013) 133 DRJ 35

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Abhishek Seth, Mr. Rajeev Kumar and Mr. Rahul Raj, Mr. Pradhan, Deputy Registrar of Companies, for the Regional Director and Mr. Rajeev Bahl, for the Official Liquidator, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This petition has been filed u/s 391 to 394 of the Companies Act, 1956 by Citicorp Maruti Finance Limited (hereinafter referred to as Petitioner/ Transferor Company), in respect of a Scheme of Amalgamation (Scheme for short) between the said Petitioner Company and Citicorp Finance (India) Limited (hereinafter referred to as Transferee Company). As per the scheme, the Petitioner Company is proposed to be merged in the Transferee Company. The registered office of the Petitioner Company is situated in New Delhi, within the jurisdiction of this Court. The registered office of the Transferee Company is situated in Mumbai. High Court of Bombay has allowed the Application filed by the Transferee Company vide order dated 24.08.2012. The present petition has been filed only by Transferor Company.

2. Details with regard to the date of incorporation of Petitioner Company and Transferee Company, their authorized, issued, subscribed and paid up capital have been given in the petition.

3. Copies of the Memorandum and Articles of Association of the Petitioner Company and Transferee Company as well as their latest audited Annual Accounts have also been placed on record.

4. Copies of the Resolutions passed by the Board of Directors of the Petitioner Company and the Transferee Company approving the Scheme have also been placed on record.

5. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the Transferee Company and Petitioner Company.

6. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that the Transferee Company shall not be required to issue any shares, since the Transferor Company is a wholly owned subsidiary of the Transferee Company, accordingly all the equity shares held by the Transferee Company in the Transferor Company shall be cancelled.

7. The Petitioner Company had earlier filed CA (M) No 114 of 2012 seeking directions of this Court for dispensation of the requirement of meetings of Shareholders and Secured creditors of the Petitioner/Transferor Company and to hold a separate meeting of the Unsecured Creditors of the Transferor Company for the purpose of considering and if thought fit approving with or without modifications, the Scheme of Amalgamation. Vide order dated July 11, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders, Secured Creditors of the Transferor Company and a separate meeting of the Unsecured Creditors of the Transferor Company was ordered to be convened. From the report of the Chairperson at the aforesaid meeting, it is apparent that Scheme was approved unanimously by the Unsecured Creditors of the Petitioner Company.

8. The Petitioner Company thereafter filed the present petition seeking sanction of the Scheme. Vide order dated August 31, 2012 notice in the petition was directed to be issued to the Regional Director, Northern Region and Official Liquidator and a copy of the Petition was directed to be served upon the Registrar of Companies. Citations were also directed to be published in Indian Express" (English, Delhi Edition) and Danik Jagaran (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed showing compliance regarding service of the petition on the Regional Director, Northern Region, the Registrar of Companies and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on October 06, 2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

9. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Company. Based on the information received, the Official Liquidator has filed his report dated 17th November, 2012 wherein he has stated that 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 Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest. The

Official Liquidator has not raised any objection to the scheme of amalgamation.

10. In response to the notices issued in the petition, Mr. R.K. Chandra, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 09.11.2012. In Para 5, of the Affidavit of the Learned Regional Director, it has been observed that the Transferor Company and the Transferee Company are Non Banking Finance Companies and registered with the Reserve Bank of India and may be required to give an undertaking for compliance of all the Rules and Regulations of the Reserve Bank of India being the concerned regulator of its activities for proposed amalgamation.

11. In response to the above mentioned observations it has been undertaken that the Transferor and Transferee Company will comply with all the applicable Rules and Regulations of Reserve Bank of India. In view of the above said undertaking, the observation made by the Regional Director no longer survive.

12. The Regional Director in para No. 6 of his affidavit has observed that the Transferor Company is a wholly owned subsidiary of the Transferee Company and the Transferee Company is a wholly owned subsidiary of a Foreign Company and accordingly the Transferee Company may be asked to give an undertaking for compliance of any approval from Reserve Bank of India as required under FEMA, if deemed fit and proper by the Hon'ble High Court.

13. In response to the aforesaid observation of the Regional Director, it is undertaken that, the Transferor and Transferee Company would comply with all applicable regulations under FEMA as may be required by the Reserve Bank of India. In view of the above said undertaking, the observation made by the Regional Director no longer survive.

14. Further the Learned Regional Director in para 7 of his affidavit has observed that the Petitioner Company may be asked to give an undertaking for necessary compliance/approval from Competition Commission of India with regards to proposed merger/amalgamation, if deemed fit and proper by the Hon'ble High Court.

15. In response to the above mentioned observations it is stated that, as per Regulation 4 read with Schedule I category (8A) (as inserted via Amendment Regulations, 2012) of The Competition Commission of India (Procedure with regard to transaction of business relating to combinations) 2011 ("Regulations") any merger or amalgamation involving a holding company and its subsidiary wholly owned by enterprises belonging to the same group and/or mergers or amalgamations involving subsidiaries wholly owned by enterprises belonging to the same group need not file any notice with the Commission as it is not likely to cause an appreciable adverse effect on competition in India. Accordingly, the Company states that the said Regulations make it clear that no such notice is required to be given to the commission in case of an amalgamation which involves an Holding company and its subsidiaries, which are wholly owned by enterprises belonging to the same group.

16. The Petitioner Company further Undertakes that if under any law or regulation applicable to it, it is required to give any notice or seek an approval from any governmental authority or regulator including the Competition Commission of India then the Petitioner Company shall comply with the said law/regulation. In view of the above said clarifications, the observations made by the Regional Director no longer survive.

17. No objection has been received to the Scheme from any other party. Mr. Rajesh Kumar Aggarwal, authorized signatory of the Petitioner Company, has filed an affidavit dated 19th November, 2012 confirming that the Petitioner Company has not received any objection pursuant to citations published in the newspapers.

18. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Company, representation/reports filed by the Regional Director and the Official Liquidator, and no objections received to the proposed Scheme, there appears to be no impediment to grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Companies Act, 1956. The Petitioner Company will comply with the statutory requirements in accordance with law. Certified copy of the order will 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, and in terms of the Scheme, the Petitioner Company and the property, rights and powers concerning the same will be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties pertaining to the Petitioner Company will be transferred to the Transferee Company without any further act or deed. 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 department which may be specifically required under any law. The Transferor Company shall stand dissolved without following the procedure of winding up.

19. Learned Counsel for the Petitioner Company states that the Petitioner Company would voluntarily deposit a total sum of Rs. 1,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted. The Petition is allowed in the above terms.

Order dasti.