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(2015) 08 DEL CK 0233

In the Delhi High Court

Case No : Company Application (Main) No. 137 of 2015

In Re: Convergys Stream Private Limited and Others

Date of Decision : 28-08-2015

Acts Referred:

Citation : (2015) 08 DEL CK 0233

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Saurabh Kalia, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J—This application has been filed under Sections 391 to 394 of the Companies Act, 1956 by the applicant/transferor companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Convergys Stream Private Limited (hereinafter referred to as the applicant/transferor company no. 1) and Convergys Infowavz Private Limited (hereinafter referred to as the applicant/transferor company no. 2) with Convergys India Services Private Limited (hereinafter referred to as the transferee company) and to dispense with the requirement of the transferee company to approach this Court for seeking sanction of Scheme of Amalgamation.

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

3. The applicant/transferor company no. 1 was originally incorporated under the Companies Act, 1956 on 26th May, 2000 with the Registrar of Companies, Maharashtra at Mumbai under the name and style of Stream Tracmail Private Limited. The company changed its name to Stream International Services Private Limited and obtained the fresh certificate of incorporation on 24th November, 2004. The company again changed its name to Convergys Stream Private Limited and obtained the fresh certificate of incorporation on 8th October, 2014.

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 1st April, 2015.

4. The applicant/transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 16th February, 2000 with the Registrar of Companies, Maharashtra at Mumbai under the name and style of Infowavz International Private Limited. The company changed its name to Convergys Infowavz Private Limited and obtained the fresh certificate of incorporation on 11th December, 2014. Learned counsel for the applicants has submitted that the company had 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 7th April, 2015.

5. The present authorized share capital of the applicant/transferor company no. 1 is Rs. 53,00,00,000/- divided into 1,50,00,000 equity shares of Rs.10/- each aggregating to Rs.15,00,00,000/- and 38,00,000 preference shares of Rs.100/- each aggregating to Rs.38,00,00,000/-. The present issued, subscribed and paid-up share capital of the company is Rs.10,02,41,500/- divided into 1,00,24,150 equity shares of Rs.10/- each.

6. The present authorized share capital of the applicant/transferor company no. 2 is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.47,99,580/- divided into 4,79,958 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the applicant/ transferor companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of applicant/transferor companies, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation 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 applicant that the consolidation of entities will provide opportunities for operational synergies through integration of complementary businesses of the transferor companies and will provide cost and capital productivity synergies which will lead to economies of scale and better utilization of overlapping facilities and infrastructure. It is further claimed that the proposed amalgamation would result in simplified corporate structure and therefore lead to a more efficient utilization of capital and create a consolidated base for future growth of the transferee company.

9. So far as the share exchange ratio is concerned, the Scheme provides that the transferor company no. 1 is a wholly owned subsidiary of the transferee company and transferor company no. 2 is a wholly owned subsidiary of the transferor company no. 1, hence no shares will be issued pursuant to amalgamation of the transferor companies into the transferee company and the transferee company

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shall not be required to issue any shares or pay any consideration to the shareholders of the transferor companies.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or under Sections 206 to 229 of the Companies Act, 2013 are pending against the applicant/transferor companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 24th July, 2015 have unanimously approved the proposed Scheme of Amalgamation. 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 applicant/transferor company no. 1 has 02 equity shareholders and 02 unsecured creditors. Both the equity shareholders and both the unsecured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. 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 unsecured creditors of the applicant/transferor company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the applicant/transferor company no. 1, as on 27th July, 2015.

13. The applicant/transferor company no. 2 has 02 equity shareholders and 02 unsecured creditors. Both the equity shareholders and both the unsecured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. 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 unsecured creditors of the applicant/transferor company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the applicant/transferor company no. 2, as on 27th July, 2015.

14. The applicants also seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its shareholders since the transferor company no. 1 is a wholly owned subsidiary of the transferee company and transferor company no. 2 is a wholly owned subsidiary of the transferor company no. 1; no new shares will be issued by the transferee company in lieu of the shares of the transferor companies; and there will be no change in the control and management of the transferee company, therefore, the rights of the shareholders of the transferee company will not be affected in any manner whatsoever by the Scheme. It is further submitted that the assets of all the companies are more than sufficient to meet their respective

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and combined aggregate liabilities towards their respective creditors, therefore, the rights of the creditors of the transferee company will not be adversely affected. Learned counsel has also placed on record the pre and post amalgamation net worth of the transferee company showing that the net worth of the transferee company, post amalgamation, will be increased from Rs.518.03 crores to Rs.596.05 crores.

15. In support of his submissions, learned counsel placed reliance on the judgment of this Court in CA(M) 29/2015 titled as Satyam Cineplexes Limited with Inox Leisure Limited wherein this court under similar circumstances, and relying on the judgments of several High Courts including this Court in many cases such as eMeter India Pvt. Ltd.; (CA(M) 179/2012) Auto Tools India Pvt. Ltd. [CA(M) 41/2010], In Re: Sharat Hardware Industries P. Ltd., (1978) 48 CompCas 23 , Mahaamba Investments Ltd. Vs. IDI Limited, (2001) 105 CompCas 16 , Andhra Bank Housing Finance Limited Vs. Andhra Bank, (2003) 3 ALD 654 : (2004) 118 CompCas 295 : (2003) 47 SCL 513 and Prosell Field Marketing Pvt. Ltd. [CA(M) 63/2012], had dispensed with the requirement of the transferee company to approach the High Court of Gujarat under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation.

16. I have considered the aforesaid case law cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of the settled legal position and considering the Scheme of Amalgamation, the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with.

17. The application stands allowed in the aforesaid terms.

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