

(2015) 12 DEL CK 0014

In the Delhi High Court

Case No : Company Petition No. 311/2015

In Re: Crayons Global Finance Private Limited and Ors.

Date of Decision : 10-12-2015

Acts Referred:

Citation : (2015) 12 DEL CK 0014

Hon'ble Judges : Sudershan Kumar Misra, J.

Bench : Single Bench

Advocate : Mukesh Sukhija, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.—This joint petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Crayons Global Finance Private Limited (hereinafter referred to as the transferor company No. 1), Ganges Radio Taxi Private Limited (hereinafter referred to as the transferor company No. 2), J Tech Communication India Private Limited (hereinafter referred to as the transferor company No. 3), Ludhiana Call Taxi Private Limited (hereinafter referred to as the transferor company No. 4), Mega Holidays Private Limited (hereinafter referred to as the transferor company No. 5), Mega Infotel Private Limited (hereinafter referred to as the transferor company No. 6) and Maxim Radio Cabs Limited (hereinafter referred to as the transferor company No. 7) with Vimi Investments and Finance Private Limited (hereinafter referred to as the transferee company).

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

3. The transferor company No. 1 was incorporated under the Companies Act, 1956 on 7th February, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company No. 2 was incorporated under the Companies Act, 1956 on 20th October, 2010 with the Registrar of Companies, NCT of Delhi &

Haryana at New Delhi.

5. The transferor company No. 3 was incorporated under the Companies Act, 1956 on 8th August, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferor company No. 4 was incorporated under the Companies Act, 1956 on 9th March, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferor company No. 5 was originally incorporated under the Companies Act, 1956 on 27th April, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Mega Holidays Limited. The company changed its name to Mega Holidays Private Limited and obtained the fresh certificate of incorporation on 4th May, 2013.

8. The transferor company No. 6 was incorporated under the Companies Act, 1956 on 15th April, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

9. The transferor company No. 7 was incorporated under the Companies Act, 1956 on 28th January, 1999 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The transferee company was incorporated under the Companies Act, 1956 on 17th February 1992 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The present authorized share capital of the transferor company No. 1 is Rs. 50,00,000/- divided into 5,00,000 equity shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the company is Rs. 37,26,000/- divided into 3,72,600 equity shares of Rs. 10/- each.

12. The present authorized share capital of the transferor company No. 2 is Rs. 10,00,000/- divided into 1,00,000 equity shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each.

13. The present authorized share capital of the transferor company No. 3 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. 41,00,000/- divided into 4,10,000 equity shares of Rs. 10/- each.

14. The present authorized share capital of the transferor company No. 4 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. 63,50,000/- divided into 6,35,000 equity shares of Rs. 10/- each.

15. The present authorized share capital of the transferor company No. 5 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. 31,00,000/- divided into 3,10,000 equity shares of Rs. 10/- each.

16. The present authorized share capital of the transferor company No. 6 is Rs. 10,00,000/- divided into 1,00,000 equity shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the company is Rs. 2,00,000/- divided into 20,000 equity shares of Rs. 10/- each.

17. The present authorized share capital of the transferor company No. 7 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. 5,00,700/- divided into 50,070 equity shares of Rs. 10/- each.

18. The present authorized share capital of the transferee company is Rs. 1,00,00,000/- divided into 1,00,000 equity shares of Rs. 100/- each. The present issued, subscribed and paid-up share capital of the company is Rs. 99,75,000/- divided into 99,750 equity shares of Rs. 100/- each.

19. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 52/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

20. 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 petition and the accompanying affidavit. It is claimed that the proposed amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base. It is further claimed that the proposed amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

21. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor companies in the following ratio:--

"09 equity shares of Rs. 100/- each of the transferee company for every 08 equity shares of Rs. 10/- each held in the transferor company No. 1."

"01 equity share of Rs. 100/- each of the transferee company for every 03 equity shares of Rs. 10/- each held in the transferor company No. 2."

"03 equity shares of Rs. 100/- each of the transferee company for every 01

equity share of Rs. 10/- each held in the transferor company No. 3."

"01 equity share of Rs. 100/- each of the transferee company for every 01 equity share of Rs. 10/- each held in the transferor company No. 4."

"01 equity share of Rs. 100/- each of the transferee company for every 180 equity shares of Rs. 10/- each held in the transferor company No. 5."

"01 equity share of Rs. 100/- each of the transferee company for every 03 equity shares of Rs. 10/- each held in the transferor company No. 6."

"01 equity share of Rs. 100/- each of the transferee company for every 03 equity shares of Rs. 10/- each held in the transferor company No. 7."

22. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

23. The Board of Directors of the transferor and transferee companies in their separate meetings held on 20th January, 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.

24. The petitioner companies had earlier filed CA (M) No. 52/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 18th May, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor and transferee companies and unsecured creditors of transferor company No. 2 and the transferee company, there being no secured creditor of the transferor company No. 2 and the transferee company and no secured or unsecured creditors of the transferor companies No. 1, 3, 4, 5, 6 & 7, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

25. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 25th May, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in "Business Standard" (English) and (Hindi) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 27th June, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

26. Pursuant to the notices issued, the Official Liquidator sought information

from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 30th September, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

27. In response to the notices issued in the petition, Mr. A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 5th October, 2015. Relying on Clause 8(a) of Section D of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor companies shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 15(a) of Section G of the Scheme, it has been stated that amalgamation shall be an "amalgamation in the nature of merger" as defined in Accounting Standard-14 issued by the Institute of Chartered Accountants of India and shall be accounted for under the "pooling of interest" method in accordance with the said AS-14. He further submitted that in Clause 10 of Section E of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies shall stand dissolved without the process of winding up.

28. Although no objection has been raised by the Regional Director to the proposed Scheme of Amalgamation but in para 7.3 of his report he has observed that all the petitioner companies are closely held companies and are doing the business relating to making investment and/or granting loan & advances whereas there is no mention as to whether these companies are registered with RBI as NBFC, if so, whether they have obtained no objection from the RBI with regard to the proposed Scheme of Amalgamation. Further, as per balance sheet as at 31.03.2014, the transferor company Nos. 3, 4 and 6 are having share application money pending for allotment and that none of the said companies have disclosed the treatment of such share application money pending for allotment. In response to the aforesaid observation, the petitioner companies in their affidavits dated 6th October, 2015 of Mr. Kunal Lalani, Director of transferor companies No. 1, 6 and the transferee company; Mr. Manish Jain, Director of transferor company No. 2; Ms. Sachi Lalani, Director of transferor companies Nos. 3, 4 & 5; and Mr. Surendra Chhalani, Director of transferor company No. 7, have submitted that none of the petitioner companies are NBFCs and therefore, the question of obtaining the NOC from the RBI with regard to the proposed Scheme of Amalgamation does not arise. It has been further submitted that transferor companies No. 3 and 4 have allotted the share application money and have also filed the requisite Form PAS-3 with the Registrar of Companies in this behalf. As regards the transferor company No. 6, the share application money has been duly refunded to Mega Airways Limited in the month of April, 2014. The

petitioner companies have also annexed a certificate dated 5th October, 2015 of Sipani & Associates, Chartered Accountants confirming refund of the share application money as also copies of the challans filed by transferor companies Nos. 3 & 4. In view of the aforesaid, the observations raised by the Regional Director stand satisfied.

29. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 3rd October, 2015 of Sh. Kunal Lalani, Director of the transferor companies No. 1, 6 and the transferee company; Sh. Manish Jain, Director of transferor company No. 2; Ms. Sachi Lalani, Director of transferor companies No. 3, 4, and 5 and Sh. Surendra Chhalani, Director of transferor company No. 7 have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 27th June, 2015.

30. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection 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. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st April, 2015, the transferor companies No. 1 to 7 shall stand dissolved without undergoing the process of winding up.

31. Learned counsel for the Official Liquidator prays that costs of at least Rs. 1,00,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner companies states that the same is acceptable to him. As already directed vide order dated 04.11.2015, the petitioners shall deposit a sum of Rs. 1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

32. The petition is allowed in the above terms.