(2007) 09 DEL CK 0254

In the Delhi High Court

Case No : Company Application (M) No. 141 of 2007

In Re: Dabur Foods Limited and Another

Date of Decision : 18-09-2007

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

Citation : (2008) 144 CompCas 378 : (2008) 88 SCL 325

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : Nidhesh Gupta, for the Appellant;

Final Decision : Allowed

Judgement

Rekha Sharma, J.—This is an application under Sections 391 and 394 of the Companies Act, 1956, for approving the scheme of amalgamation of Dabur Foods Ltd., transferor-company with Dabur India Ltd., transferee-company.

2. The registered offices of the transferor and transferee-companies are situated at Delhi within the jurisdiction of this Court.

3. The applicant-companies have enumerated the salient features of the scheme of amalgamation and have also produced a copy of the proposed scheme. According to the applicant the amalgamation will unlock operational efficiencies and derive synergies in the combined businesses. The amalgamation will provide better strategic insight into the operations of the combined company and will facilitate focus on the growth. The amalgamation is poised for meeting future growth and expansion opportunities with enhanced scale, profitability and global reach.

4. The applicants have contended that no proceedings under Sections 235 to 251 of the Companies Act, 1956, are pending against the transferor and the transferee-companies.

5. The transferor-company, Dabur Foods Ltd., was incorporated on December 3, 1996, under the provisions of the Companies Act, 1956, with the Registrar of

Companies, Delhi and Haryana. A copy of memorandum and articles of association of the transferor-company with certificate of incorporation has been filed. The board of directors of the transferor-company has approved the scheme of amalgamation by a resolution dated July 11, 2007. The transferor-company has also filed the audited accounts of the transferor-company as on March 31, 2007. The authorised share capital of the transferor-company is Rs. 20,00,00,000 divided into 2,00,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the transferor-company is Rs. 20,00,00,000 divided into 2,00,00,000 equity shares of Rs. 10 each.

6. The transferor-company has seven equity shareholders and their consent/ no objection to the scheme of amalgamation has been filed by applicants. Considering the facts and circumstances, convening and holding of the meeting of the equity shareholders of the transferor-company for consideration and approval of the scheme of amalgamation is dispensed with.

7. The transferor-company has two secured creditors. The transferor-company has sought dispensation from holding the meeting of secured creditors on the ground that their consents/no objection in writing had been obtained. Considering the facts and circumstances the holding and convening the meeting of the secured creditors of the transferor-company is dispensed with.

8. The transferor-company has 155 unsecured creditors. The transferor-company has sought dispensation from holding the meeting of unsecured creditors on the ground that the proposed scheme of amalgamation will not affect the rights of the unsecured creditors and no sacrifice or waiver is at all called for from them. Moreover, the unsecured creditors represent ordinary working capital financing and would be paid off in the ordinary course of business. Be that as it may, considering the facts and circumstances, it would be appropriate to hold the meeting of the unsecured creditors of the transferor-company. Consequently, the meeting of the unsecured creditors of the transferor-company shall be held on November 3, 2007, at 11.00 a.m at Punjabi Bhawan, 10, Rouse Avenue, New Delhi-110002. I appoint Mrs. Lalit Mohini Bhat, advocate, (9910155009), Law Links, C-47, Nizamuddin East, Delhi-110013 as the chairperson and Mrs. Pooja Aganpal, advocate, (9899958069), 4/401 Aganpal Chowk, Mehrauli, New Delhi-110030 as the alternate chairperson for the meeting of the unsecured creditors of the transferor-company. The quorum for the said meeting of the unsecured creditors will be 20 unsecured creditors representing 15 per cent, of the debts. In case the minimum quorum is not present, the meeting would be adjourned for half an hour and thereafter the minimum quorum will be deemed to be present. The transferor-company is directed to supply the complete list of its sundry creditors to the chairman appointed for convening the meeting. The chairperson and the alternate chairperson shall ensure that notices convening the meeting of unsecured creditors of the transferor-company along with copies of scheme and the statement u/s 393 of the Companies Act, 1956, are sent to the unsecured creditors by registered post at their registered or last known

addresses at least twenty one days before the appointed date of the meeting. The notice shall be sent in the presence of the chairperson/alternate chairperson or in the presence of their authorised representative. Notice convening the aforesaid meeting shall state that the copies of the proposed scheme of amalgamation and the statement u/s 393 of the Companies Act, 1956, can be obtained free of charge from the registered office of the transferor-company, and it shall also be published in the newspapers namely The Statesman (English edition) and Jansatta (Hindi edition) in terms of the Companies (Court) Rules, 1959 at least twenty one days before the appointed day of the meeting.

9. The voting by proxy shall be permitted, if a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the registered office of the transferor-company at least forty eight hours before the meeting. The chairperson and alternate chairperson shall also ensure that the proxy registers are properly maintained and they will inspect the same from time to time.

10. The fee of the chairperson for the meeting of unsecured creditors of the transferor-company shall be Rs. 35,000 and the fee of the alternate chairperson shall be Rs. 25,000 in addition to meeting their incidental expenses. The chairperson appointed by this Court will file his report within two weeks from the date of holding of the meeting of the unsecured creditors. The alternate chairperson shall also attend the meeting and assist the chairperson in conducting the meeting and in filing the report.

11. The chairperson and alternate chairperson will be at liberty to issue-direction to the management of the company so that the meeting of the unsecured creditors are conducted in a just, free and fair manner.

12. The transferee-company, Dabur India Ltd., was incorporated on September 16, 1975, under the provisions of the Companies Act, 1956, with the Registrar of Companies, NCT of Delhi and Haryana. The board of directors has approved the scheme of amalgamation by a resolution dated July 11, 2007. The transferee-company has filed the audited accounts of the transferee-company as on March 31, 2007. The authorised share capital of the transferee-company is Rs. 1,25,00,00,000 divided into 1,25,00,00,000 equity shares of Re. 1 each.

13. The issued, subscribed and paid-up share capital of the transferee-company is Rs. 86,40,06,788 divided into 86,40,06,788 equity shares of Re. 1 each. The transferee-company has 1,17,685 equity shareholders. The transferee-company has sought dispensation from holding and convening the meeting of its equity shareholders on the ground that since the amalgamation is between the parent and its wholly owned subsidiary, there would be no change in the share capital structure of the transferee-company and also no new shares shall be issued, the shareholders of the transferee-company would not be affected by the scheme. The applicant has placed reliance in the case of Sharat Hardware Industries P. Ltd. In re In Re: Sharat Hardware Industries P. Ltd., it was held as under (page

26):

I also noticed that the transferor-company (the petitioner) was a wholly owned subsidiary company of the transferee-company and, therefore it was not necessary for the transferee-company to approve the scheme. The reason I reached this conclusion was that Section 391 of the Act deals with two special cases : (a) when there is a compromise or arrangement between a company and its creditors or any class of them and, (b) where the compromise or arrangement is between a company and its members or any class of members. Considered from the point of view of the petitioner-company there is a scheme affecting the members of the company because, as a result of the scheme the transferor-company will cease to exist and will be fully merged in the transferee-company. When the scheme comes into operation the shareholders of the petitioner-company will cease to have any shares in the petitioner-company. Therefore, there is a compromise between the petitioner-company and its shareholders. Considered from the point of view of the transferee-company there is no such proposal. The assets and liabilities of the petitioner-company will be appropriated under the scheme by the transferee-company, the shareholding and other rights of the members of the transferee-company will be unaffected, because no new shares are being issued and there is not going to be any change in the capital structure of the transferee-company. These are facts which are ascertainable on an analysis of the scheme. Therefore, the scheme or arrangement considered from the point of view of the transferee-company is not a scheme or arrangement coming within the field of operation of Section 391 and does not seem to require the approval of creditors or a subsequent sanction by the court.

14. In view of the judgment relied upon by the applicants and the fact that the shareholding pattern prior to amalgamation and post amalgamation would remain the same and that the shareholders of the transferee-company would not be adversely affected by the scheme as no new shares are to be issued post amalgamation, therefore, the requirement to convene and hold the meeting of the equity shareholders of the transferee-company for consideration and approval of the scheme of amalgamation is dispensed with.

15. The transferee-company has ten secured creditors. The transferee-company has also sought dispensation from convening and holding the meetings of its secured creditors contending that the transferor-company is the wholly owned subsidiary of the transferee-company and that the scheme does not involve any reorganisation or restructuring of the capital thus the creditors of the applicant-companies would not be adversely affected pursuant to sanction being granted to the scheme. It has further been submitted that the secured creditors representing 97.6 per cent, of the debt has given their consents/no objection to the proposed scheme. Considering the facts and circumstances the meeting of the secured creditors of the transferee-company is dispensed with.

16. The transferee-company has 1075 unsecured creditors. The transferee-company has also sought dispensation from convening and holding the meetings

of its unsecured creditors contending that the transferor-company is the wholly owned subsidiary of the transferee-company and that the scheme does not involve any reorganisation or restructuring of the capital. Thus, the creditors of the applicant companies would not be adversely affected pursuant to sanction being granted to the scheme. Considering the facts and circumstances, the holding and convening of the meeting of the unsecured creditors of the transferee-company is dispensed with.

17. The applicants have stated that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the transferor-company and the transferee-company.

Considering the facts and circumstances the application is allowed in, terms hereof.

Dasti.

