(2015) 09 DEL CK 0056

In the Delhi High Court

Case No : Company Petition No. 792 of 2014

In Re: DLF City Developers Private Limited and Others

Date of Decision : 09-09-2015

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 143(3), 271

Citation : (2015) 09 DEL CK 0056

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Ravi Bassi, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J—This joint petition has been filed under Sections 391 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of DLF City Developers Private Limited (hereinafter referred to as the transferor company No. 1); Macaria Builders & Developers Private Limited (hereinafter referred to as the transferor company No. 2); DLF New Gurgaon Retail Developers Private Limited (hereinafter referred to as the transferor company No. 3); DT Real Estate Developers Private Limited (hereinafter referred to as the transferor company No. 4); Laman Real Estates Private Limited (hereinafter referred to as the transferor company No. 5); Melanctha Builders & Developers Private Limited (hereinafter referred to as the transferor company No. 6); and Philana Builders & Developers Private Limited (hereinafter referred to as the transferor company No. 7) with DLF Home Developers 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 originally incorporated under the Companies Act, 1956 on 25th April, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Alvita Builders and Developers Private Limited. The company changed its name to DLF Gurgaon

Golflink Private Limited and obtained the fresh certificate of incorporation on 12th March, 2012. The company again changed its name to DLF City Developers Private Limited and obtained the fresh certificate of incorporation on 17th August, 2012. Thereafter, the company shifted its registered office from the State of Haryana to Delhi and obtained a certificate in this regard on 1st November, 2013.

4. The transferor company No. 2 was incorporated under the Companies Act, 1956 on 30th November, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company No. 3 was originally incorporated under the Companies Act, 1956 on 13th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Lacey Builders & Constructions Private Limited. The company changed its name to DLF New Gurgaon Retail Developers Private Limited and obtained the fresh certificate of incorporation on 31st March, 2007.

6. The transferor company No. 4 was originally incorporated under the Companies Act, 1956 on 18th August, 2000 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Digital Talkies Private Limited. The company changed its name to DT Real Estate Developers Private Limited and obtained the fresh certificate of incorporation on 5th September, 2013.

7. The transferor company No. 5 was incorporated under the Companies Act, 1956 on 24th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

8. The transferor company No. 6 was incorporated under the Companies Act, 1956 on 30th November, 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 30th November, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The transferee company was originally incorporated under the Companies Act, 1956 on 29th December, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Uppal Hotels Private Limited. The word ''Private'' was deleted from the name of the company w.e.f. 5th May, 2000. The company changed its name to Uppal Hotels Limited and obtained the fresh certificate of incorporation on 19th October, 2001. The company again changed its name to DLF Home Developers Limited and obtained the fresh certificate of incorporation on 19th June, 2004.

11. The present authorized share capital of the transferor company No. 1 is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each. The 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.

12. The present authorized share capital of the transferor company No. 2 is Rs. 1,50,000/- divided into 15,000 equity shares of Rs. 10/- each. The 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. 16,00,00,000/- divided into 50,000 equity shares of Rs. 10/- each aggregating to Rs. 5,00,000/- and 15,95,000 redeemable preference shares of Rs. 100/- each aggregating to Rs. 15,95,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs. 16,00,00,000/- divided into 50,000 equity shares of Rs. 10/- each aggregating to Rs. 5,00,000/- and 15,95,000 redeemable preference shares of Rs. 100/- each aggregating to Rs. 15,95,00,000/-.

14. The present authorized share capital of the transferor company No. 4 is Rs. 1,00,00,000/- divided into 1,50,000 equity shares of Rs. 10/- each aggregating to Rs. 15,00,000/-; and 85,000 12% non-cumulative redeemable preference shares of Rs. 100/- each aggregating to Rs. 85,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs. 91,54,300/- divided into 78,630 equity shares of Rs. 10/- each aggregating to Rs. 7,86,300/-; and 83,680 12% non-cumulative redeemable preference shares of Rs. 100/- each aggregating to Rs. 83,68,000/-.

15. The present authorized share capital of the transferor company No. 5 is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each. The 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.

16. The present authorized share capital of the transferor company No. 6 is Rs. 3,00,00,000/- divided into 30,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company is Rs. 3,00,00,000/- divided into 30,00,000 equity shares of Rs. 10/- each.

17. The present authorized share capital of the transferor company No. 7 is Rs. 1,50,000/- divided into 15,000 equity shares of Rs. 10/- each. The 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.

18. The present authorized share capital of the transferee company is Rs. 77,40,55,20,000/- divided into 3,34,94,52,000 equity shares of Rs. 10/- each aggregating to Rs. 33,49,45,20,000/- and 43,91,10,000 preference shares of Rs. 100/- each aggregating to Rs. 43,91,10,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs. 9,26,65,38,390/- divided into 4,12,13,839 equity shares of Rs. 10/- each aggregating to Rs. 41,21,38,390/- and 8,85,44,000 redeemable preference shares of Rs. 100/- each aggregating to Rs. 8,85,44,00,000/-.

19. Copies of the Memorandum and Articles of Association of the transferor and

transferee companies have been filed on record with the joint application, being CA(M) 134/2014, 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 submitted by the petitioners that the transferor companies and the transferee company are direct or indirect subsidiaries of one holding company i.e. DLF Limited, which is not part of the Scheme of Amalgamation. It is claimed that the amalgamation will enable the petitioner companies to pool their financial, commercial and other resources into one company with sufficient cost reduction, control and administrative efficiency. It is further claimed that with enhanced capabilities and resources at its disposal, the transferee company will have greater flexibility and strength and will be able to compete more effectively as an efficient entity.

21. So far as the share exchange ratio is concerned, the Scheme provides that since all the transferor companies are direct or indirect subsidiaries of the transferee company, therefore, the entire share capital of all the transferor companies shall automatically stand cancelled and extinguished, upon sanction of the Scheme and the transferee company shall not allot any shares to the shareholders of the transferor companies.

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 transferor and transferee companies.

23. The Board of Directors of the transferor companies No. 1, 2, 3, 4, 5, 6 & 7 and transferee company in their separate meetings held on 28th May, 2014, 27th May, 2014, 23rd May, 2014, 28th May, 2014, 26th May, 2014, 28th May, 2014, 27th May, 2014 and 29th May, 2014 respectively 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. 134/2014 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 26th September, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor company No. 1 and the transferee company; and equity shareholders and unsecured creditors of the transferor companies No. 2 to 7; there being no secured creditors of the transferor companies, and directed convening of separate meetings of the unsecured creditors of the transferor company No. 1 and the transferee company, to consider and, if thought fit,

approve, with or without modification, the proposed Scheme of Amalgamation. The Court further directed the petitioner companies to produce the consent letters of the secured creditors of the transferee company before the Chairman and Co-chairman at the time of the meeting of the unsecured creditors of the transferee company. The Court further directed that in case the said consent is not accompanied with the Board Resolution of the corporate entities that comprise the secured creditors, individual notices shall be issued to the said secured creditors at the time of moving of the second motion calling for their objection, if any, to the Scheme.

25. The Chairpersons of the ordered meetings of the unsecured creditors of the transferor company No. 1 and the transferee company have filed their reports stating that the meetings were duly held on 29th November, 2014, as directed, and that the Scheme of Amalgamation has been approved unanimously by the unsecured creditors of the transferor company No. 1 and the transferee company, present and voting, in their respective meetings.

26. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 17th December, 2014, 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 ''Veer Arjun'' (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 10th February, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

27. 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 24th July, 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.

28. The Official Liquidator in Para 37 of his report has observed as under:

"37. That as per the reply submitted by the petitioners transferor companies the details of pending assessment and disputed liabilities are as follows:

(i) Appeal CIT (A) for Assessment Year 2012-13 is pending in the case of DLF New Gurgaon Retail Developers Pvt. Ltd. and Assessment for Assessment Year 2013-14 is also pending.

(ii) In the case of Laman Real Estates Pvt. Ltd. Demand was raised of Rs. 4,45,300/- for the Assessment Year 2013-14 as per intimation u/s. 143(1) of the

Income Tax Act.

(iii) In the case of Philana Builders & Developers Pvt. Ltd., appeal is pending with ITAT for Assessment Year 2007-08 u/s. 271 for Rs. 32,12,500/- and Rs. 42,70,155/- u/s. 143(3). Rs. 42,70,155/- was deposited under protest.

In view of the above it is respectfully submitted that liberty may kindly be given to the income tax department to assess against the liability which is payable by the transferor companies shall be paid by the transferee company and none of the provisions made in the Scheme shall affect the income tax liability of the companies including as arising from the present Scheme."

29. In response to the aforesaid objection, counsel for the petitioners undertakes on behalf of the transferee company that in case any liability, which is assessed and payable by the transferor companies to the Income Tax Authorities, the same shall be paid by the transferee company; and further that none of the provisions made in the Scheme shall prejudice the income-tax dues and that department shall be free to recover the same from the transferee company. Learned counsel has also placed on record an affidavit dated 3rd August, 2015 of Mr. Ankur Jain, authorized signatory of the transferee company whereby the transferee company has undertaken that in case of any tax liability, which was assessed and payable by the transferor companies to the Income Tax Authorities, the same shall be paid by the transferee company. This undertaking is accepted by the Court and the applicant companies, including the transferor companies, shall remain bound by the same. In view of the above, the objection raised by the Official Liquidator stands satisfied.

30. 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 27th May, 2015. Relying on Clause 7 of Part-IV 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 Clauses 4.10 of Part-IV of the Scheme, it has been stated that the transferee company shall follow the Accounting Standards and Principles as provided in Accounting Standard-14 issued by Institute of Chartered Accountants of India. He further submitted that in Clause 16.3.1 of Part-IV 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.

31. The Regional Director in para 14 of his report has referred to Clause 22 of Part-IV of the Scheme, wherein it has been stated that in the event, any of the sanctions and approvals referred to elsewhere in the Scheme is not being obtained and/or the Scheme not being sanctioned by the High Court and/or the order or orders are not being passed as aforesaid before 31.03.2015 or within such period(s) as may be agreed to from time to time and without any limitation by the transferee company and the transferor companies by their respective

Board of Directors. He, therefore, submits that from the said clause of the Scheme, it is not clear as to whether the Board of Directors of the transferor and transferee companies have agreed for extension of the date after 31.03.2015. He, thus, prays that the petitioner companies may be directed to state whether they have extended the Scheme, if any, before the Scheme is allowed, if not, the Scheme may kindly be treated as null and void. A similar objection has also been raised by the Official Liquidator in para 38 of his report.

32. In response to the aforesaid objections of the Regional Director, Northern Region and the Official Liquidator, learned counsel for the petitioners has submitted that the appropriate fresh resolutions have been passed by all the companies concerned extending the date to 31.03.2016. Copies of the Board Resolutions of the petitioner companies extending the date of the Scheme from 31.03.2015 to 31.03.2016 have been placed on record. In view of the aforesaid, the objections raised by the Regional Director, Northern Region and the Official Liquidator stand satisfied.

33. No objection has been received to the Scheme of Amalgamation from any other party. Learned counsel of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 10th February, 2015.

34. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and there being no surviving objection to the same by the Regional Director, Northern Region, and the Official Liquidator, 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 January, 2013, the transferor companies No. 1 to 7 shall stand dissolved without undergoing the process of winding up.

35. Learned counsel for the Official Liquidator prays that costs may be imposed on the petitioner companies in view the fact that the matter has involved examination of voluminous record and prioritized hearings. He submits that cost of at least Rs. 1,00,000/- be imposed. Learned counsel for the petitioners states that the petitioner companies are ready and willing to pay cost of Rs. 1,00,000/-. Looking to the circumstances, the petitioner companies shall deposit cost of Rs. 1,00,000/- in the Common Pool Fund of the Official Liquidator within two weeks from today.

36. The petition is allowed in the above terms.

