(2012) 07 MAD CK 0079

In the Madras High Court

Case No : C.P. No. 94 of 2012

In Re: Doosan Chennai Works P. Ltd.

Date of Decision : 31-07-2012

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

Citation : (2013) 114 CLA 70 : (2012) 175 CompCas 144 : (2013) 2 CompLJ 219

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : Arvind P. Datar for K. Ramasamy, for the Appellant; R.S. Angamuthu, Additional/Assistant Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—This petition has been filed by the transferee company under sections 391 to 394 of the Companies Act, 1956, for sanction of the scheme of amalgamation of M/s. Doosan Power Systems India P. Ltd. (transferor company) with the transferee company, namely, Doosan Chennai Works P. Ltd., the petitioner herein. The arguments advanced by Mr. Arvind P. Datar, learned senior counsel representing counsel on record for the petitioner and by Mr. R. S. Angamuthu, learned Additional Central Government Standing Counsel representing the Regional Director, Ministry of Corporate Affairs, were heard.

2. The petitioner-company was incorporated on July 20, 2000, under the name and style of Babcock Borsig Power Chennai Works Ltd., under the provisions of the Companies Act, 1956 and subsequently, the name of the company was changed to AE and E Chennai Works Ltd. The name of the company was again changed as Doosan Chennai Works P. Ltd., with effect from February 21, 2011. A copy of the memorandum and articles of association of the petitioner-company, namely, the transferee company, has been filed as annexure A. The share capital of the petitioner-company as on March 31, 2011, was as follows:

The authorised share capital of the petitioner/transferee company is Rs. 50,00,00,000 divided into 50,00,000 equity shares of Rs. 100 each. The issued, subscribed and paid-up capital of the transferee company is Rs. 50,00,00,000 comprising of 50,00,000 equity shares of Rs. 100 each. The share capital of the petitioner-company as on January 5, 2012, is as follows: The authorised share capital of the petitioner/transferee company is Rs. 250,00,00,000 divided into 2,50,00,000 equity shares of Rs. 100 each. The issued, subscribed and paid-up capital of the transferee company is Rs. 245,18,25,300 comprising of 2,45,18,253 equity shares of Rs. 100 each. A copy of the audited accounts of the petitioner/transferee company for the period ending with March 31, 2011, as approved by the shareholders has been produced as annexure B. The unaudited accounts of the petitioner-company as on January 31, 2012, has been filed as annexure B1.

3. The transferor company, namely, M/s. Doosan Power Systems India P. Ltd., was originally incorporated on December 30, 1996, in the name and style of M/s. Beten Engineering P. Ltd., under the provisions of the Companies Act, 1956 and the name of the said company was subsequently changed as Inkor Engineering P. Ltd., and then to Doosan Projects India P. Ltd. Again, the name of the company was changed to Doosan Power Systems India P. Ltd., with effect from March 4, 2011. A copy of the memorandum and articles of association of the transferor company has been produced as annexure D. The registered office of the transferor company is at 17/53, 201, Arya Complex, Mall Road, Tilak Nagar, New Delhi-110 018. Its authorised share capital is Rs. 65,51,50,000 divided into 65,51,500 equity shares of Rs. 100 each. The issued, subscribed and paid-up share capital of the transferor company are Rs. 2,32,13,100 comprising of 2,32,131 equity shares of Rs. 100 each. The petitioner/transferee company wishes the merger of M/s. Doosan Power Systems India P. Ltd., with them.

4. A copy of the audited accounts of the transferor company for the period ending with March 31, 2011, has been produced as annexure E and the unaudited financials of the transferor company as on January 31, 2012, has been filed herewith as annexure E1. Copies of the board resolutions of the board of directors of the transferee and the board of directors of the transferor companies have been produced as annexures C and F. A copy of the scheme of amalgamation as approved, by the board of directors of the petitioner/transferee company and the transferor company at their respective board meetings respectively held on February 16, 2012 and February 21, 2012, has been produced as annexure G.

5. The transferor company and transferee company (petitioner herein) are the group companies of the Doosan group and the scheme has been proposed for consolidation of the businesses presently being carried on by the transferor company and the transferee company including the consolidation of the group shareholding, which shall be beneficial to the interests of the shareholders, creditors and employees of both the companies. As such the amalgamation of the two companies would improve the efficiency of the business of both the companies and would enable them to have access to better financial resources

and to increase the managerial efficiencies, while effectively pooling the technical, distribution and marketing skills of each other. That is the reason why the transferee company has come forward with the present petition seeking sanction for the scheme of amalgamation. The board of directors of the transferor company and the board of directors of the transferee company have approved the scheme of amalgamation. It is stated in the petition that there are no secured creditors of the transferee company and the certificate issued by the chartered accountant has been produced as annexure H. The petitioner/ transferee company has only two shareholders and the consent affidavits obtained from both the shareholders have been produced as annexure I. The transferee company undertakes to discharge the obligations of the transferor company towards the unsecured creditors as and when they arise. Original consent affidavits obtained from the shareholders have also been produced in C.A. No. 343 of 2012 filed for dispensing with the meeting of the shareholders and this court passed an order on April 10, 2012, dispensing with the meeting of the shareholders of the company.

6. The Regional Director, Ministry of Corporate Affairs, Chennai has filed an affidavit to the effect that all the employees of the transferor company in service as on effective date shall become the employees of the transferee company without any break or interruption and that the scheme shall protect the interest of all the staff and employees of the transferor company. The Regional Director, Ministry of Corporate Affairs, has also chosen to raise the following objections:

(i) On amalgamation, the entire share capital of the transferor company shall stand cancelled and transferred to the transferee company, which will have the effect of increasing the share capital of the transferee company for which additional fee/stamp duty on the increase of authorised share capital should be paid.

(ii) With regard to the change of name of the transferee company as proposed under the scheme of amalgamation, the change of name cannot be allowed for a period of three years to avoid confusion among the general public and to prevent misuse of the name of companies.

7. With regard to the first objection, learned senior counsel for the petitioner/ transferee company relied on a judgment of a Division Bench of this court in The Regional Director, Ministry of Company Affairs and The Registrar of Companies Vs. Cavin Plastics and Chemicals (P) Ltd., has held that when a wholly owned subsidiary of the holding company gets amalgamated with the holding company, there is no need to pay additional fee or stamp duty. Hence the said objection deserves to be rejected.

8. With regard to the second objection, learned senior counsel appearing for the petitioner contended that the scheme of amalgamation is between two companies of the same group, namely, "Doosan" and the transferee company shall continue to do the business of the transferor company and there is no

intent to misuse the brand "Doosan Power Systems India". In this regard, learned senior counsel for the petitioner placed reliance on a judgment of the Delhi High Court in In Re: BSBK Engineers P. Ltd., and contended that in the said case the transferee company was allowed to change its name to that of the transferor company as part of the scheme on the ground that sections 391 to 394 of the Companies Act provide for a "single window clearance". Learned senior counsel appearing for the petitioner also placed reliance on a similar judgment of the Punjab and Haryana High Court rendered in the matter of M3M India Developers P. Ltd., In re (Company Petition No. 26 of 2012). Similar reliance is placed on a judgment of the Karnataka High Court made in the case of Mysore Cements Limited Vs. NIL, It is further stated in the reply filed by the petitioner that the change in the name will clear the confusion among the general public. In view of the abovesaid judgments, this court accepts the contention of learned senior counsel for the petitioner that the second objection raised by the Regional Director, Ministry of Corporate Affairs, Chennai, also, deserves to be rejected. Accordingly the said objection is rejected.

9. Publications were already effected in pursuance of the order of this court dated April 20, 2012 and go far no objections have been received from anybody. It has also been stated in the company petition that the affairs of the transferee company have not been conducted in a manner prejudicial to the interest of its members or the public interest and that there are no investigation or proceedings pending against the transferor company or the transferee company under sections 235 to 251 or any other provisions of the Companies Act, 1956. It has also been stated that the directors of the transferee company have not committed any misfeasance, diversion of funds, etc., attracting provisions u/s 542/543 of the Companies Act, 1956 and they have not acted against the interest of the company, shareholders or stakeholders of the transferor company.

10. Though the jurisdiction of the transferor company is before the Delhi High Court, the transferor company has already moved a petition before the Delhi High Court in C.P. No. 151 of 2012 (Doosan Power Systems India P. Ltd., Doosan Power Systems India Private Limited Vs. Doosan Chennai Works Private Limited, for the sanction of the scheme of amalgamation. The Delhi High Court has passed an order in the said petition on July 10, 2012, sanctioning the scheme of amalgamation subject to the sanction of the scheme by this court. A copy of the order of the Delhi High Court has also been produced. In view of the above, the petition is allowed and the scheme of amalgamation is sanctioned to take effect from April 1, 2011. The transferor company shall stand dissolved without being wound up. The necessary formalities may be complied with, within 30 days from the date of receipt of a copy of this order. The fee for counsel for the Ministry of Corporate Affairs is fixed at Rs. 2,500.