

(2015) 05 DEL CK 0256

In the Delhi High Court

Case No : Company Petition No. 652 of 2014

In Re: Eros Resorts and Hotels Limited and Others

Date of Decision : 05-05-2015

Acts Referred:

Companies Act, 1956 — Section 100, 235, 236, 237, 238

Citation : (2015) 05 DEL CK 0256

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Malini Sud and Aditi Sharma, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.

1. This joint petition has been filed under Sections 391(2) and 394 read with Section 100 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Arrangement between Eros Resorts and Hotels Limited (hereinafter referred to as the demerged company) and Eros Grand Resorts and Hotels Private Limited (hereinafter referred to as the resulting company).
2. The registered offices of the demerged and resulting companies are situated at New Delhi, within the jurisdiction of this court.
3. The demerged company was originally incorporated under the Companies Act, 1956 on 27th February, 2006 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name and style of Eros Resorts and Hotels Private Limited. The company changed its name to Eros Resorts and Hotels Limited and obtained the fresh certificate of incorporation on 8th May, 2009.
4. The resulting company was incorporated under the Companies Act, 1956 on 27th February, 2006 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.
5. The present authorized share capital of the demerged company is Rs.2,82,00,00,000/- divided into 3,20,00,000 equity shares of Rs.10/- each

aggregating to Rs.32,00,00,000/-; 3,00,00,000 10% non-cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.30,00,00,000/-; and 22,00,00,000 8.5% non-cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.2,20,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.2,60,35,70,500/- divided into 3,12,00,000 equity shares of Rs.10/- each aggregating to Rs.31,20,00,000/-; 3,00,00,000 10% non-cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.30,00,00,000/-; and 19,91,57,050 8.5% non-cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.1,99,15,70,500/-.

6. The present authorized share capital of the resulting company is Rs.14,05,00,000/- divided into 1,40,50,000 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.

7. Copies of the Memorandum and Articles of Association of the demerged and resulting companies have been filed on record with the joint application, being CA(M) 102/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st October, 2013, of the demerged and resulting companies, along with the report of the auditors, had also been filed.

8. A copy of the Scheme of Arrangement 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 that the Scheme, inter alia, provides for demerger of the Demerged Undertaking viz. the Hotel known as Hotel Holiday Inn situated on Plot No. 13A, Mayur Vihar, District Centre, Delhi into the resulting company. It is claimed by the petitioners that the proposed demerger will result in independent growth of business of both the companies and at the same time benefit the stakeholders and creditors with returns.

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

"46.52 equity shares of Rs.10/- each of the resulting company credited as fully paid up for every 100 equity shares of Rs.10/- each held in the demerged company."

It is further provided that for every 100 fully paid up preference shares held by the preference shareholders in the demerged company, they shall be allotted 46.52 preference shares in the resulting company and corresponding preference shares in the demerged company shall stand cancelled.

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

11. The Board of Directors of the demerged and resulting companies in their

separate meetings held on 24th December, 2013 have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the demerged and resulting companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 102/2014 seeking directions of this court to dispense with the requirement of convening the meetings of the equity and preference shareholders of the demerged company and equity shareholders, secured and unsecured creditors of the resulting company and for convening of separate meetings of the secured and unsecured creditors of the demerged company, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 29th May, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity and preference shareholders of the demerged company and equity shareholders, secured and unsecured creditors of the resulting company and directed convening of separate meetings of the secured and unsecured creditors of the demerged company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement. Thereafter, vide order dated 13th August, 2014, the demerged company was permitted to reconvene the meeting of its secured creditors.

13. The Chairpersons of the ordered meetings of the secured and unsecured creditors of the demerged company have filed their reports stating that the meetings were duly convened and re-convened, as directed, and that the Scheme of Arrangement has been approved unanimously by the secured and unsecured creditors of the demerged company, present and voting, in the meetings.

14. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 17th October, 2014, notice in the petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in "Business Standard" (English) and "Jansatta" (Hindi) editions. Affidavit of services has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 19th December, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

15. 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 14th January, 2015. Relying on Clause 4.12(a) of Part-II of the Scheme, he has stated that, upon sanction of the Scheme of Arrangement, all the employees of the demerged company engaged in the Demerged Undertaking shall become the employees of the resulting company without any break or interruption in their services.

16. No objection has been received to the Scheme of Arrangement from any

other party. The petitioner companies, in the affidavit dated 20th January, 2015 of Ms. Malini Sud, counsel for the petitioner companies, have submitted that no objection have been received pursuant to the citations published in the newspapers on 19th December, 2014.

17. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Arrangement and the affidavit filed by the Regional Director, Northern Region, not raising any objection to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the Scheme of Arrangement under Sections 391 and 394 read with Section 100 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 Arrangement, i.e. 1st November, 2013, the Demerged Undertaking of the demerged company shall stand merged in the resulting company.

18. Assistant Registrar of Companies on behalf of the Regional Director prays that costs of Rs.1.0 lakh should be paid by the petitioners keeping in view the fact that the matter has involved examination of voluminous record from the office of the Regional Director as well as the office of the Registrar of Companies for filing the reports. Learned counsel for the petitioners states that the petitioner companies are willing to pay the costs. Looking to the circumstances, the petitioner shall deposit a sum of Rs.1.0 lakh by way of costs in the Common Pool Fund of the Official Liquidator within one week from today.

19. The petition is allowed in the above terms.