

(2015) 11 KAR CK 0272

In the Karnataka High Court

Case No : Co. P. Nos. 145 and 146/2015

In Re: Global E-Business Operations Private Limited

Date of Decision : 06-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0272

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Aditya Sondhi, Sr. Counsel, Pallavi Smriti and Rohan Kumar,
Advocates, for the Appellant

Final Decision : Allowed

Judgement

Aravind Kumar, J.—These petitions are filed under Sections 391 & 394 of the Companies Act, 1956 (hereinafter referred to as "the Act" for short) for sanction of Scheme of Arrangement for demerger of Inc. Division of applicant Company in COP No. 145/2015 i.e., Global E-Business Operations Private Limited (hereinafter referred to as "demerger company") for being transferred to and vested in the company known and called as "HP Computing and Printing Systems India Private Limited" (hereinafter referred to as "resulting company") as per the Scheme of Arrangement of demerger, Annexure-F, as approved unanimously by the shareholders and convening of meeting of unsecured creditors having been dispensed with by this Court by order dated 02.06.2014, Annexure-M, so as to bind all the shareholders, secured creditors and unsecured creditors of petitioner company.

2. Resulting company (petitioner in CO.P. No. 146/2015) was incorporated under the provisions of Companies Act, 1956, and the main object is to carry on the business of manufacturing, designing, exporting, developing, installing, dealing, buying, selling, importing, exporting, repairing and maintenance of computer hardware, computer systems, etc. as indicated in the petition and it is yet to commence the business though incorporated on 27.03.2015.

3. Authorised share capital of demerger company as per audited balance sheet

as on 31.03.2015 is at Rs. 200,00,000 of 20,00,000 equity shares of Rs. 10/- each and issued, subscribed & paid up share capital is at Rs. 93,23,540/- of 9,32,354 equity shares of Rs. 10/- each. Statement of accounts of demerger company as on 31.03.2015, is at Annexure-D. As the resulting company was incorporated on 27.03.2015 and yet to commence business, financial statement of resulting company has not been prepared. Board of Directors of demerger company and resulting company have approved the Scheme of Arrangement, Annexure-C (in Cop 146/2015). By resolution dated 30.04.2015, they have approved the scheme vide Annexures-G and K respectively. It is stated by the authorised signatory of resulting company that there are no creditors and two shareholders have given their consent for the scheme and this Court by order dated 02.06.2015 in C.A. No. 412/2015 has dispensed with the convening of meeting of shareholders and creditors of resulting company, which order is at Annexure-M. Authorised signatory of demerged company has stated that there are six shareholders, no secured creditors and there are 172 unsecured creditors and this Court by Order dated 02.06.2014 passed in C.A. No. 413/2015 had dispensed with convening of meetings of shareholders and unsecured creditors vide Annexure -M.

4. Notice of this petition CO.P. No. 145/2015 came to be issued to the Regional Director and petitioner was also directed to take out advertisement of the petition in "The Hindu" and "Kannada Prabha" indicating the date of hearing as 24.07.2015. Both demerger company as well as resulting company have received notices from the Regional Director and a report has been filed by the Registrar of Companies on behalf of Regional Director with following two observations:

"(i) The notice dated 10.7.2015 was issued to income-tax Department as required by Ministry of Corporate Affairs General Circular No. 1/2014 dated 15.1.2014 giving 15 days time. But no comments/objections have been received so far from the Income Tax Department by the office of RD (SER).

(ii) Appointed date is 01.8.2015. However, the petitioner companies have not submitted the list of assets and liabilities being transferred by the transferor company as on the appointed date. The petitioner companies may submit the list of assets and liabilities being transferred through demerger by the transferor company as on the appointed date before this Hon"ble Court."

5. Sri. Adithya Sondhi, learned Senior Counsel appearing for petitioner would submit that on account of no comments or objections having been received by the Registrar of Companies from the Income Tax Department it would indicate that there is no objection to the scheme from said Department and he would also submit that insofar as second observation of the Regional Director regarding non-furnishing of assets and liabilities by the transferor company to the transferee company as on appointed date would recede to the background, inasmuch as, same having been furnished to the Registrar of Companies. Learned counsel appearing on behalf of Registrar of Companies, Smt. Anitha H.P. would also submit that said observation made is met with by the petitioner company and as

such, she would submit that second observation has also been complied by filing the assets and liabilities before this Court.

6. As could be seen from the records an affidavit has been filed by the authorized signatory of petitioner company in COP No. 145/15 enclosing therewith unaudited details of assets and liabilities of demerger company, which would now stand transferred to resulting company. As could be seen from the account of demerger company made upto 31.03.2015 it has recorded profit of Rs. 15628.85 after tax. Resulting company is yet to commence its business and it is a solvent company. Assets of demerger company as well as resulting company are more than adequate to meet their respective liabilities. Perusal of Scheme of Arrangement would indicate that it is for the benefit of both demerger company and resulting company and their shareholders, creditors and all those who deal with the demerger company/undertaking company. No prejudice would be caused to anyone by the proposed scheme of arrangement.

7. Notice of these petitions having been published in "The Hindu" and "Kannada Prabha" daily newspapers on 02.07.2015 and copies of said paper publication has been filed along with the a memo. None of the shareholders, creditors, employees or any other person have appeared before this Court to oppose the scheme of arrangement of demerger. In the circumstances aforesaid, this Court is of the considered view that petitioner companies have made out case for sanctioning of scheme of arrangement of demerger, Annexure-F (in COP No. 145/2015). Hence, I proceed to pass the following:

"ORDER

(i) Company Petitions are hereby allowed.

(ii) The Scheme of Arrangement, Annexure-F, for demerger company of Inc. Division of applicant Co., in COP No. 145/2015 is hereby sanctioned for being transferred to and vested in the resulting company i.e., petitioner in COP No. 146/15.

(iii) Petitioners shall serve a copy of this order to the Registrar of Companies in the state of Karnataka within 30 days from date of receipt of certified copy of this order."