

(2014) 08 DEL CK 0074

In the Delhi High Court

Case No : Co. Pet. 84 /2014

In Re: LRSD Global Holding Private Limited

Date of Decision : 01-08-2014

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2014) 08 DEL CK 0074

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : P. Nagesh, Rajat Arora, Advocates, Atma Sah, Assistant Registrar and Rajiv Bhel, Advocate for official Liquidator, Advocate for the Appellant

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.—This second motion joint Petition filed under sections 391 to 394 of the Companies Act, 1956 ("Act") seeking sanction to the Scheme of Amalgamation ("Scheme") Co. Pet. 84/2014 2 of LRSD Global Holdings Private Limited (Transferor Company) with Rajasthan Global Securities Limited (Transferee Company)(Collectively referred as the Petitioner Companies). A copy of the Scheme has been enclosed with the petition.

2. The registered offices of all the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The details of respective dates of incorporation of the petitioner companies, their authorised, issued, subscribed and paid up capital have been set out in the petition.

4. The copies of the Memorandum and Articles of Association of the Petitioner Companies have been enclosed with the Petition.

5. The copies of resolutions passed by the Boards of Directors of the Petitioner Companies approving the scheme have also been filed along with the petition.

6. Learned counsel for the petitioner Companies submits that no proceedings under sections 235 to 251 of the CO.PET. 84/2014 3 Companies Act, 1956 is

pending against the Petitioner Companies.

7. The Petitioner Company had earlier filed C.A. (M) No. 11 of 2014 seeking directions of this Court for dispensation of meetings of the shareholders, secured creditors and unsecured creditors. Vide order dated 20.01.2014; this Court has allowed the application and dispensed with the requirement of convening meetings of the share holders and creditors of the Petitioner Companies.

8. The Petitioner Companies have thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide Order dated 03.02.2014 notice of the Petition was issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in "Statesman" (English, Delhi Edition) and "Navbharat Times" (Hindi Delhi Edition). Affidavit of Service and Publication has been filed on 20.03.2014 by the Petitioner Company showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator and also regarding Publication of Citations in the aforesaid CO.PET. 84/2014 4 News papers. Copies of the news papers cuttings, in original, containing the publications have been filed with the Affidavit of Service.

9. In response to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, learned Official Liquidator has filed his report dated 24th March, 2014, wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Company, which is subject matter of dissolution, do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per 2nd proviso of Section 394(1) of the Act.

10. In response to the notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 25th March, 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their CO.PET. 84/2014 5 services. Despite notice, the Income Tax Authorities have not raised any objection with regard to the Scheme.

11. The Learned Regional Director has raised concern with respect to the valuation of the shares, it is submitted that in the Scheme of Amalgamation in the year 2012- 13 with respect to the Transferee Company, the shares of the transferee company were valued at Rs. 20 per share for the purpose of buy back. Some of the shareholders had opted for the exit option and transferred the shares at the said valuation. It is submitted that for the purposes of the present Scheme of Amalgamation the shares have been valued at Rs. 309.27 per share. It is further submitted that with regard to the transferor company in the scheme of amalgamation in the year 2012, the shares of the transferor company were valued at Rs. 252 per share for the purposes of buy back option. For the purpose

of present scheme of amalgamation, the shares have been valued at Rs. 162.93. The submission on behalf of the Regional Director is that on account of the variation in the valuation, the share exchange ratio would be prejudicial to the interests of the shareholders of the CO.PET. 84/2014 6 transferor company. It is submitted that if the respective valuations of the year 2012 were to be taken, the share exchange ratio between the transferor and Transferee Company would have been 1:12.5 whereas under the present Scheme, the share exchange ratio between the transferor and transferee is 100:53.

12. The Petitioner in the reply to the concern raised by the Regional Director has filed an affidavit stating as under:

3. I say that on 25.03.2014 the Regional Director filed his affidavit stating inter alia that there is no any objection in the report however as per clause 4, it has stated that there is no disclosure about value per shares. However, Chartered Accountant who determined the Valuation Report for the scheme of Amalgamation, valued the price at Rs. 309.27 per share as arrived from the valuation report which was specifically given only for the purpose of recommendation of the Fair Share Exchange Ratio for the proposed merger with LRSD Global Holdings Pvt. Ltd. It would be pertinent to note that the Chartered Accountant while preparing the valuation report has made an effort and craved to determine a fair share exchange ratio of Rajasthan Global Securities Limited with respect to LRSD Global Holdings Pvt. Ltd. rather than determining what should be the CO.PET. 84/2014 7 value of Rajasthan Global Securities Limited as a standalone entity.

4. To elaborate this point further, the fair value per share is determined so as to calculate what should be the suggested merger ratio. We would further like to emphasis that in the case of merger, the Supreme Court has laid down an elaborate formula which was determined in the case of Hindustan Lever Ltd. Vs. Hindustan Lever Employees Union (1994) which has been followed over here and this formula takes into account the earning per share, NAV and the market price of both the companies and gives a price per share for both the companies based upon which the SWAP Ratio is to be determined. To further state in clear and precise terms this formula does not attempt to determine the fair value of an entity on a standalone basis but to determine a value to arrive a possible SWAP Ratio with the other targeted merged entity.

5. We may also like to point out that the company had in the past bought back shares at Rs. 20 per share through buy back of shares. The buyback was voluntarily and was not forced upon the shareholders. The net profit for the FY 2011-12 had substantially declined as compared to FY 2010-11. Some of the shareholders had expressed their intention to offer their shares in the buyback keeping in view the dismal track record of the company for the CO.PET. 84/2014 8 FY 2011-12. The buyback was an exit offer to the minority shareholders who may not be willing to continue as a shareholder of the company keeping in mind that there could be a longer gestation period in the newer areas that the

company proposed to diversify and also because of the fact that the promoters had almost no experience in the fresh proposed areas of diversification. The share Buy-back program was expected to contribute to the overall enhancement of valuation of remaining shareholders.

6. It is further emphasized that neither the fair price of the company was Rs.20 per share at which the buyback was done nor Rs.309.27 per share is the fair price which has been determined only for the sole purpose of arriving a SWAP Ratio with respect to the Transferee Company. Both the values cannot be painted with the same brush as there are different dates, formula, mechanism and purpose so as to determine and arrive.

7. I say that as far as the clause 5 of the Report it has stated that Company has bought back 170000 shares during the year 2012-13 and on the other hand at Note 1 under the heading "Securities Premium" it has shown as "Add: Transfer from Merged Companies" amounting to Rs. 61102500.00 and ; "Less: Utilised for the buy back of the shares amounting to Rs.42840000.00/-". The Company has bought back the shares at Rs, 252/- per CO.PET. 84/2014 9 share while the Chartered Accountants determine the price per shares at Rs.162.93. In this regard, it is submitted that the Chartered Accountant who determined the Valuation Report for the scheme of Amalgamation, valued the price at Rs. 162.93 per share as arrived from the valuation report which was specifically given only for the purpose of recommendation of the Fair Share Exchange Ratio for the merger of Rajasthan Global Securities Limited with LRSD Global Holdings Pvt. Ltd. It would be pertinent to note that the Chartered Accountant while preparing the valuation report has made an effort and craved to Rajasthan Global Securities Limited with respect to LRSD Global Holdings Pvt. Ltd. rather than determining what should be the value of LRSD Global Holdings Pvt. Ltd as a standalone entity. Further, the submissions made above in the affidavit are reiterated."

13. Learned Counsel for the Petitioner submits that the Transferor Company has 99.98% shareholdings in the Transferee Company. It is further submitted that the shareholders of both the Transferor and Transferee Company are fully aware of the share exchange ratio shares of 2012 as well as of the present Scheme of amalgamation and have consented to the said Scheme.

14. Since the Transferor Company is being dissolved, the CO.PET. 84/2014 10 shareholders of the Transferor Company would become of the shareholders of the Transferee Company in the above ratio of 100:53. As the Transferor Company has 99.98% shareholdings in the Transferee Company, the said entire 99.98% shares would be allotted to the shareholders of the transferor company. If the contention and calculation of the Regional Director were to be accepted, the shareholders of the transferor company at the ratio of 100:53 would still have approximately 99.96% shareholding in the Transferee Company. The shareholders of both the transferor and the transferee companies have approved the scheme. As such looked at from any angle, the scheme of amalgamation

would not be prejudicial to the interest of the shareholders of the transferor company.

15. The other concern raised by the Learned Regional Director raised is that since the Transferee Company is NBFC, the Transferee Company is required to give an undertaking for all compliances from the Reserve Bank of India (RBI).

16. In view of the said observation, the Transferee Company has filed an Affidavit undertaking that all CO.PET. 84/2014 11 compliances, applicable as per the RBI Guidelines to the Transferee NBFC shall be complied with.

17. In view of the aforesaid clarification and undertaking given by the Petitioners, the concern of the Regional Director has been duly addressed.

18. It is directed that in case it is found that the Transferee Company has violated any provision of the Reserve Bank of India Act then the Directors of the Transferee Company guilty of breaching the applicable provisions of the Reserve Bank of India Act shall continue to be liable irrespective of the sanction of the Scheme.

19. No objection has been received to the Scheme of Amalgamation from any other party. In this regard, Mr. Rajat Arora, counsel of Petitioner Companies has filed an Affidavit dated 4th March, 2014 confirming that neither the Petitioner Company nor the advocate has received any notice from any person opposing the Petition pursuant to the citations published in the Newspapers.

20. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, CO.PET. 84/2014 12 Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme. 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.

21. Certified copy of the formal Order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, all the property, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up.

22. It is, however, clarified that this order will not be construed as an order granting exemption from CO.PET. 84/2014 13 payment of stamp duty or any other charges, if payable, in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

23. The Learned Counsel for the Petitioner submits that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs.1,00,000/- in the Common Pool Fund of the Official Liquidator within three weeks from today. The Statement is accepted.

24. The Petition is allowed in the above terms.