

(2012) 10 DEL CK 0024
In the Delhi High Court
Case No : C.P. No. 261 of 2012

In Re: M/s Kanchenjunga Advertising Private Limited and M/s Karma Lakelands Private Limited

Date of Decision : 03-10-2012

Acts Referred:

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

Citation : (2012) 10 DEL CK 0024

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Ashish Middha and Mr. K.S. Pradhan, Dy. ROC on Behalf of R.D, for the Appellant;

Judgement

Indermeet Kaur, J.

1 This joint petition has been filed under Sections 391 and 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of arrangement (Demerger) of M/s Kanchenjunga Advertising Private Limited (hereinafter referred to as Demerged Company) and M/s Karma Lakelands Private limited (hereinafter referred to as Resulting Company). The registered offices of the Demerged Company and the Resulting Company are situated at New Delhi, within the jurisdiction of this Court.

2 The Demerged Company was incorporated under the Companies Act, 1956 on 20th October, 1982 with the Registrar of Companies, Delhi Haryana at New Delhi.

3. The Resulting Company was incorporated under the Companies Act, 1956 on 6th October, 1986 with the Registrar of Companies, Delhi and Haryana at New Delhi.

4. The present Authorized Share Capital of the Demerged Company is Rs. 1,00,00,000/- (Rupees One Crore only) divided into 1,00,000 (one lac) Nos. of Equity Shares of Rs. 100/- (Rupees One Hundred only) each and the issued, subscribed and paid-up share capital of the Company is Rs. 42,76,300/- (Rupees Forty Two Lacs and Seventy Six Thousand and Three Hundred Only) divided into

42,763 (Forty Two Thousand Seven Hundred and Sixty Three) Nos. of Equity Shares of Rs. 100/- (Rupees One Hundred only) each fully paid up.

5. The present Authorized Share Capital of the Resulting Company is Rs. 12,15,00,000/- (Rupees Twelve Crore and Fifteen Lacs only) divided into 1,21,50,000 (One Crore Twenty One Lacs and Fifty Thousands) Nos. of Equity Shares of Rs. 10/- (Rupees Ten only) each. The present Issued, Subscribed and Paid-up Share Capital of Resulting Company is Rs. 10,15,33,820/- (Rupees Ten Crores Fifteen Lacs Thirty Three Thousand Eight Hundred and Twenty only) divided into 1,01,53,382 (One Crore One Lac Fifty Three Thousand Three Hundred Eighty Two) Nos. of the Equity Shares of Rs. 10/- (Rupees Ten only) each fully paid-up.

6. Copies of the Memorandum and Articles of Association of the Demerged Company and the Resulting Company have been filed on record. The audited Balance Sheets as on 31st March 2011 of the Demerged Company and the Resulting Company, along with the report of the auditors have also been filed.

7. A copy of the Scheme of Arrangement (Demerger) has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavits. It is submitted that both the Demerged Company and the Resulting Company are promoted by the same group of promoters and they are under the same management and control. It is claimed that the proposed Scheme will result in reduction in overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, better and more productive utilization of various resources and will enable the undertakings concerned to affect internal economies and optimize productivity. It is further claimed that the proposed Scheme will contribute in fulfilling and furthering the objects of the Demerged and Resulting Companies. It will also strengthen, consolidate and stabilize the businesses of these Companies and will facilitate further expansion and growth of their businesses. It is also claimed that both the Demerged Company and Resulting Company will be able to participate more vigorously and profitably in the competitive market scenario.

8. 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 to the shareholders of the Demerged Company, equity shares in the following ratio:

12.396 Nos. of Equity Shares of Rs. 10/- each, credited as fully paid-up, of the Resulting Company for every 1 No. of Equity Shares of Rs. 100/- each held in the Demerged Company, Kanchenjunga Advertising Pvt. Ltd.

9. It has been submitted by the petitioners that no investigation proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

10. The Board of Directors of the Demerged Company and the Resulting

Company in their separate meetings held on 31st July, 2011 have unanimously approved the proposed Scheme of Arrangement (Demerged). Copies of the Resolutions passed at the meetings of the Board of Directors of the Demerged Company and the Resulting Company have been placed on record.

11. The petitioner companies had earlier filed CA (M) No. 34 of 2012 seeking directions of this Court to dispense with the requirement of convening the meetings of their equity shareholders and secured creditors, which are statutorily required for sanction of the Scheme of Arrangement (Demerger). Vide order dated 2nd March, 2012 this Court allowed the application and dispensed with the requirement of convening and holding the meetings of the Secured and Unsecured creditors of the Demerged Company and the Resulting Company. Vide orders dated 2nd March 2012, the meetings of Shareholders of the Demerged Company and the Resulting Company were held on 7th April, 2012 to consider and approve, the proposed Scheme of Arrangement (Demerger). The resolution approving the Scheme of Arrangement (Demerger) was approved by the Shareholders of both the Demerged and Resulting Companies and the report of both the Demerged and Resulting Companies and the report of the chairman of the meetings have been placed on record.

12. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 25th May, 2012, notice in the petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in the newspapers "Business Standard" (English) and "Nav Bharat times" (Hindi) in terms of the Companies (Court) Rules, 1959. The citations were published by the petitioners in the aforesaid newspapers on 18th August, 2012. Copies of the newspaper clippings containing the publications have been placed on record.

13. In response to the notice issued in the petition, Mr. Rakesh Chandra, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 18th September, 2012. He has stated that upon sanction of the Scheme of Arrangement (Demerger), all the employees of the Printing/Real Estate division of the De merged Company shall become the employees of the resulting company without any break or interruption in their services. He has further stated that the valuation had been carried on the basis of the balance sheet as on March 31, 2010 and the present authorized share capital of the resulting company was insufficient to accommodate allotment of equity shares to the shareholders of the demerged company. He further stated that the Registrar of Companies has in its office received one complaint from Ms. Kanta Vashisht through her husband Sh. D.P. Vashisht alleging certain irregularities in the affairs of the companies.

14. That in response to the affidavit filed by the Regional Director, Northern Region, the petitioner companies through its Director, Mr. Ashwani Khurana, filed a reply on September 29, 2012 stating that there was a typing error in the valuation report submitted to the office of Regional Director, N.R. and the present

authorized share capital of the resulting company is adequate and sufficient to allot equity shares to the shareholders of the demerged company. He further states that the petitioner company has not been done any wrong; nor is the purpose of the demerger to destroy evidence of any nature. He undertakes to cooperate in investigation, if any, ordered against the company. That para 11.1 of the Scheme further states for the continuance of any legal proceedings against the demerged company and/or resulting company, as the case may be the effective date will be date of the sanction of the scheme.

15. No objection has been received to the Scheme of Arrangement (Demerger) from any other party. The petitioner companies have filed the affidavit dated 28th September, 2012 through Mr. Ashwani Khurana, Director submitting that he has not received any objection pursuant to the citations published on 18th August, 2012.

16. In fact, today, during the course of hearing Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director (Northern Region) has also stated that he has no objection to the present Scheme of Arrangement (Demerger) being sanctioned by this Court.

17. Consequently, keeping in view the aforesaid facts and no objection given by the Regional Director (Northern Region), the Scheme of Arrangement (Demerger) is hereby approved/sanctioned under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. It is clarified that stamp duty or taxes, if payable, will be paid in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation i.e. 1st April, 2011, the printing division of the Demerged Company shall stand demerged, transferred to and vest in the Resulting Company. A certified copy of the order shall be filed with the Registrar of Companies, NCT of Delhi and Haryana within 30 days from the date of receipt of certified copy of this order.

18. Mr. Ashish Middha, learned counsel voluntarily states that Resulting Company would deposit a sum of Rs. 1,00,000/- in the Common Pool Fund of the Official Liquidator within three weeks from today. The said statement is accepted. The petition is allowed in the above terms.

Order dasti.