

(2012) 12 DEL CK 0264

In the Delhi High Court

Case No : Co. Petition 424 of 2012

In Re: Receivable Management Services India Pvt. Ltd., Iqor India Services Pvt. Ltd. and Collectively the Transferor Company and the Transferee Company

Date of Decision : 14-12-2012

Acts Referred:

Companies Act, 1956 — Section 159, 217, 220, 274(1)(g), 391

Citation : (2012) 12 DEL CK 0264

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Vikas Goel, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This Second motion joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as Act) by the Petitioner Companies seeking sanction of the Scheme of Amalgamation (hereinafter referred to as "Scheme"). The Petitioner companies had earlier filed C.A. (M) No. 138 of 2012 seeking directions of this Court for (a) dispensation of the meetings of Equity Shareholders and unsecured creditors of both the Petitioner Companies. Vide Order dated 29.08.2012, this court allowed the application and was pleased to direct dispensing with convening the meetings of the equity shareholders and Unsecured Creditors of the Petitioner Companies.

2. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 12.09.2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region, the Citations were also directed to be published in "Times of India" (English, Delhi Edition) and "Danik Jagran" (Hindi, Delhi Edition). Affidavit of service dated 06.12.2012 alongwith copies of publications in both the newspapers have been filed by the Petitioners showing compliance regarding service of the petition on the Regional Director, Northern Region and also regarding Publication of Citations in the aforesaid Newspapers on 19.11.2012 and 24.11.2012 respectively, copies

of the newspapers cuttings in original, containing the publications have been filed with the affidavit of service.

3. In response to the notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit / report dated 23rd November, 2012 wherein certain observations have been made for consideration of this Court. The Petitioner companies have filed their affidavits in response to the observation of the Regional Director vide two separate affidavits both dated 13.12.2012.

4. The Regional Director has observed that pursuant to the scheme proposed by the Petitioner companies, the objects of transferor company are required to be added to Clause 3(a) of Memorandum of Association of the transferee company. It is accordingly submitted that the transferee company may be asked to follow the procedure prescribed under the Companies Act, 1956. In response, the Ld. Counsel for the Petitioners has submitted that upon sanction of the scheme by this Court, Memorandum of Association of the transferee company will stand amended and no further act on the part of the transferee company is required to be taken for giving effect to the said amendment in Memorandum of Association of the transferee company. Reliance in this regard has been placed on the judgment of In Re: Pmp Auto Industries Ltd., , whereby the Hon'ble Bombay High Court held as follows:-

Section 391 invests the court with powers to approve or sanction the scheme of amalgamation/arrangement which is for the benefit of the company. In doing so, if there are any other things which, for effectuation, require a special procedure to be followed - except reduction of capital - then the court has power to sanction them while sanctioning the scheme itself. It would not be necessary for the company to resort to other provisions of the Companies Act or to follow other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme, which is sanctioned by the court. Not only is section 391 a complete code, as held by the courts, but, in my view, it is intended to be in the nature of a "single window clearance" system, to ensure that the parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated applications to the court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme, whose overall fairness and feasibility has been judged by the court u/s 394 of the Act.

5. The above judgment in no uncertain term clarify that the parties are not put to avoidable, necessary and cumbersome for making repeated application to the court for various other alternations or changes which might be needed to effectively implement the scheme. The observation of the Regional Director on this issue are fully addressed by the above case cited by the Petitioners and this court finds no reason to disagree to the law laid down therein. It would also be relevant to mention here that the transferee company in its rejoinder affidavit has undertaken to make necessary filings to the MCA in order to make a change in object clause recorded in the online database.

6. The Regional Director has also pointed out that since the shareholding patterns of both the transferor and the transferee company show the shares thereof being held by foreign shareholders, both the companies may be asked to give an undertaking that necessary formalities under FEMA would be complied with for the purpose of transferring the shares. Both the companies in their respective affidavits have given the undertaking to that effect and accordingly the observation of the Regional Director stands satisfied.

7. It is further pointed out by the Regional Director that the transferor company has not filed its balance-sheet as on 31.3.2011 as well as its annual return for the year 2011 and thus stated that it is in contravention of section 159 /220 of the Companies Act, 1956. In response to the said objection, the counsel for the Petitioners has referred to para 3 of the rejoinder affidavit filed by the transferor company through its authorized signatory Shri Anil Agarwal wherein it is stated that the balance-sheet as well as annual return for the year 2011 have been filed with the Registrar of Companies. Acknowledgment thereof is placed on record as Annexure-A to the rejoinder affidavit. Annexure-A reveals that filing has been done on 06.11.2012 subject to payment of delayed fee. The filing having been done, no contravention survives.

8. It is further pointed out by the Regional Director that there is a contravention of provision of Section 217 of the Companies Act, 1956 on the part of the transferee company. In response, the Ld. Counsel for the Petitioners has referred to para 5 of the rejoinder affidavit filed by the transferee company through its authorized signatory Shri Ajay Kapoor wherein it is stated that the alleged violation is neither intentional nor deliberate and is only a minor inadvertent omission which in any case is compoundable. The transferee company further states that it shall apply for compounding of the offence if any action taken by the Registrar of Companies. It is also contented by the Petitioners that the provisions of section 274 (1)(g) are not applicable to a private limited company.

9. In view of the reply filed by the Petitioner Companies and undertaking given by the Petitioner Companies and after hearing the oral submissions made by Mr. Vikas Goel, Ld. Counsel for the Petitioners, this Court is of the view that neither the Regional Director nor the official liquidator has pointed out, as to how the proposed scheme is against the interest of any of the stakeholders of both the companies or is against the public interest as the observations made by the Regional Director have been sufficiently answered by the Petitioner Companies and the Scheme of Amalgamation needs to be sanctioned by this Court.

10. No objection has been received to the Scheme of Amalgamation from any other party. In this regard, Mr. Vikas Goel, Advocate of the Petitioner Companies has referred to the affidavits dated 6th December, 2012 filed on behalf of the Petitioner Companies stating that neither the management of Petitioner Companies nor he has received any notice from any person opposing the Petition pursuant to the citations published in the Newspapers respectively.

11. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Anil Agarwal, Senior Vice President of the Transferor Company/ Demerged Company and Mr. Ajay Kapoor, Vice President and Controller of the Transferee Company have filed their respective affidavits dated 6th December, 2012 confirming that neither the Petitioner Companies nor their Legal Counsel have received any objection pursuant to the citations published in the Newspapers.

12. Even today, During the Course of hearing Mr. K.S. Pradhan, Deputy Registrar Of Companies for Regional Director (Northern Region) states that he has no objection to the present Scheme being sanctioned.

13. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies, representations/ reports filed by the Regional Director, Northern Region to the proposed Scheme of Amalgamation and the rejoinder affidavit dated 13.12.2012 of the Petitioner Companies, and the submissions made in the Court today there appears to be no impediment to the grant of Sanction to the Scheme of Amalgamation (Annexure-D). Consequently, sanction is hereby granted to the Scheme of Amalgamation u/s 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within 30 days from receipt of the same. In terms of the provisions of Section 391 and 394 of the Companies Act, 1956 and interms of the Scheme, all the properties whether movables or immovable, all debts, liabilities, contingent liabilities, duties and obligations of every kind, nature and description, all documents of title, deeds, papers, contracts, licenses, permissions, approvals, Registration, Authorizations, Rights, lease etc. of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes 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.

14. Learned counsel for the petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs. One lac in the Common Pool Fund of the Official Liquidator within four weeks from today. The statement is accepted.

15. The petition is allowed in the above terms. Order dasti.