(2015) 05 DEL CK 0147

In the Delhi High Court

Case No : Company Petition No. 716 of 2014

In Re: RPS Vikas Castings Private Limited and Others

Date of Decision : 08-05-2015

Acts Referred:
Companies Act, 1956 — Section 100, 100, 101, 102, 103

Citation : (2015) 05 DEL CK 0147

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : S. Sengupta, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.

1. This joint petition has been filed under Sections 391(1), 393 and 394 read with Sections 100 to 104 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of RPS Vikas Castings Private Limited (hereinafter referred to as the transferor company) with Garima Vikas Metals Private Limited (now HNV Castings Private Limited) (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this court.

3. The transferor company was incorporated under the Companies Act, 1956 on 29th December, 2004 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 12th January, 2005 with the Registrar of Companies, Rajasthan at Jaipur under the name and style of Garima Overseas Private Limited. The company changed its name to Garima Overseas Limited and obtained the fresh certificate of incorporation on 22nd December, 2005. Thereafter, the company shifted its registered office from the State of Rajasthan to Delhi and obtained a certificate in

this regard from the Registrar of Companies, NCT of Delhi and Haryana at New Delhi on 31st July, 2012. The company again changed its name to Garima Vikas Metals Limited and obtained the fresh certificate of incorporation on 17th August, 2012. The company again changed its name to Garima Vikas Metals Private Limited and obtained the fresh certificate of incorporation on 18th September, 2012. The company finally changed its name to HNV Castings Private Limited and obtained the fresh certificate of incorporation on 17th September, 2014.

5. The authorized share capital of the transferor company, as on 31st March, 2014, was Rs.18,88,78,000/- divided into 1,88,87,800 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company was Rs.18,88,78,000/- divided into 1,88,87,800 equity shares of Rs.10/- each.

6. The authorized share capital of the transferee company, as on 31st March, 2014, was Rs.54,67,45,000/- divided into 5,46,74,500 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company was Rs.54,67,45,000/- divided into 5,46,74,500 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 115/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2013, of the transferor and transferee companies, along with the report of the auditors, and the unaudited balance sheets, as on 31st March, 2014, of the transferor and transferee companies had also been filed.

8. A copy of the Scheme of Amalgamation 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 claimed that the proposed amalgamation will provide emergence of a fully integrated single entity positioned to provide more extensive and integrated products in the automobile castings sector. It is further claimed that by the proposed amalgamation, benefit of financial resources, managerial, technical and marketing expertise of both the companies shall be available to the amalgamated entity. It is further claimed that the amalgamation would result in enhanced potential for increase in revenues and profits for the amalgamated entity and its shareholders and would also provide synergistic linkages besides economies in costs and other benefits resulting from the economies of scale, by combining the businesses and operations of both the companies and thus contribute to the profitability of the amalgamated entity by rationalization of management and administrative structure.

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

"27 equity shares of Rs.10/- each fully paid up of the transferee company for every 10 equity shares of Rs.10/- each fully paid up held by the shareholders in the transferor company."

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 transferor and transferee companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 14th May, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 115/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their secured creditors and for convening of separate meetings of their equity shareholders and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 4th September, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the secured creditors of the transferor and transferee companies and directed convening of separate meetings of their equity shareholders and unsecured creditors, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. The Court, however, directed the petitioners to issue specific individual notices to their secured creditors at the time of moving second motion petition calling for their objection, if any, to the Scheme.

13. The Chairpersons of the ordered meetings of the equity shareholders and unsecured creditors of the transferor and transferee companies have filed their reports stating that the meetings were duly held on 30th October, 2014, as directed, and that the Scheme of Amalgamation has been approved unanimously by the equity shareholders and unsecured creditors of the transferor and transferee companies, present and voting, in the meetings.

14. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 21st November, 2014, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in ''Indian Express'' (English) and ''Dainik Bhaskar'' (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 26th December, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit. The petitioners also placed on record the factum of service on the secured creditors of the transferor and transferee companies, calling their objections, if any, to the Scheme as directed by the court vide order dated 4th September, 2014,.

15. Pursuant to the notices issued, the Official Liquidator sought information

from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 13th February, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

16. 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 20th February, 2015. Relying on Clause 5 of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 9 of Part-III of the Scheme, it has been stated that the accounting treatment shall be in compliance with Accounting Standard-14 governed by the Companies (Accounting Standards) Rules, 2006. He further submitted that in Clause 12 of Part-III of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

17. Although no objection has been raised by the Regional Director, but in para 10 of his report, he has pointed out that the appointed date for the proposed Scheme has been fixed on 01.05.2014. Accordingly, the valuation report has been prepared on the basis of financial information upto 30.04.2014. But both the companies have filed the balance sheets for the year ended at 31.03.2014 and have taken the figures as on 30.04.2014 for valuation. The Regional Director, therefore, prays that an undertaking from both the companies be taken that there is no material change/transactions within one month i.e. from 01.04.2014 to 30.04.2014.

18. The Regional Director in para 10 of his report has further submitted that subsequent to 31.03.2014, Hitachi Metals Singapore Pte. Limited and Namyang Metals Company Limited (both subsidiaries of Hitachi Metals Limited) have acquired 51% stake in the share capital of the transferor and transferee companies and accordingly the paid-up share capital of both these companies was increased to Rs.18,88,78,000/- and Rs.54,67,45,000/- on 22.04.2014. He, therefore, prays that an undertaking from the transferee company be sought stating that the proposed Scheme of Amalgamation and resultant allotment of shares to the shareholders of the transferor company especially foreign entities does not exceed the sectoral cap under FDI policy and that its other terms and conditions have been complied with.

19. In reply to the aforesaid observations, the petitioner companies in the affidavit dated 23rd March, 2015 of Sh. Ki Ho Park, authorized representative of the petitioner companies has submitted that between 31st March, 2014 (i.e. the

date of audited accounts) and 1st May, 2014 (i.e. the appointed date of amalgamation), there has been no material financial changes in the accounts of the transferor and transferee companies apart from the investment by Hitachi Metals Singapore Pte. Limited and Namyang Metals Company Limited and, consequently, the deferred tax has been written off to the extent of carried forward losses. It is further submitted that the joint valuation report submitted along with CA(M) 115/2014 takes into account the investment by Hitachi Metals Singapore Pte. Limited of Rs.11,71,37,280/- in the transferor company; of Rs.12,53,66,464/- in the transferee company; and the investment of Namyang Metals Company Limited of Rs.17,57,05,920/- in the transferor company; and of Rs.18,80,49,696/- in the transferee company for the purpose of conducting the valuation as on 30th April, 2014 and the consequent adjustments made in the deferred tax carried in the books. Therefore, the said investment does not have any adverse effect on the proposed Scheme of Amalgamation. The petitioner companies have further submitted that at present the foreign shareholders are holding 51% of paid-up share capital of the transferee company and remaining 49% is held by the resident shareholders, and the current shareholding held by the foreign shareholders are within the permitted sectoral cap under the provisions of Foreign Direct Investment Policy (FDI) issued by RBI i.e. upto 100% FDI under the automatic route. The transferee company undertakes that subsequent to sanction of the Scheme, the allotment of shares to the shareholders of the transferor company including allotment of shares to the foreign shareholders will continue to be within the permitted sectoral cap under the FDI. The Assistant Registrar of Companies has stated that after considering the reply of the petitioner, the Regional Director had no further objections. In view of the aforesaid, the observations raised by the Regional Director stand satisfied.

20. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 23rd March, 2015 of Sh. Ki Ho Park, authorized representative of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 26th December, 2014.

21. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation 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 Amalgamation, i.e. 1st May, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

22. Learned counsel for the Official Liquidator prays that costs may be imposed on the petitioner companies in view the fact that the matter has involved examination of voluminous record and prioritized hearings. He submits that cost of at least Rs.1,00,000/- per company be imposed. Learned counsel for the petitioners states that the petitioner companies are ready and willing to pay cost of Rs.1.0 lakh each. Looking to the circumstances, the petitioner companies shall deposit cost of Rs.1.0 lakh each in the Common Pool Fund of the Official Liquidator within one week from today.

23. The petition is allowed in the above terms.

