(2013) 07 DEL CK 0366

In the Delhi High Court

Case No : Company Petition No: 170 of 2013

In Re: Sony Mobile Communications (India) Private Limited and Another

Date of Decision : 23-07-2013

Acts Referred:
Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2013) 07 DEL CK 0366

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Pradhan, Dy. Registrar of Companies for the Regional Director, Mr. Rajiv Bahl, for the Official Liquidator and Mr. Abhishek Seth, Mr. Abhijit Singh, Mr. Rajeev Kumar and Mr. Rahul Raj, for the Appellant;

Final Decision : Allowed

Judgement

R.V. Easwar, J.—This second motion joint petition has been filed u/s 391 to 394 of the Companies Act, 1956 (''Act'') by the Petitioner seeking sanction of the Scheme of Amalgamation (''Scheme'') between Sony Mobile Communications (India) Private limited (hereinafter referred to as ''Transferor company'') and Sony India Private Limited (hereinafter referred to as ''Transferee company'') ("hereinafter collectively referred to as ''Petitioner companies''). The registered offices of the Petitioner companies are situated in New Delhi, within the jurisdiction of this Court.

2. The details of the dates of incorporation of the Petitioner companies, their authorized, issued, subscribed and paid up capital have been set out in the petition.

3. The copies of the Memorandum and Articles of Association as well as their latest audited annual accounts for the year ended 31st March 2012 of the Petitioner companies have also been placed on record.

4. The copies of the resolutions passed by the Boards of Directors (''BoDs'') of the Petitioner companies approving the Scheme have also been enclosed with the petition.

5. Learned counsel for the Petitioners submits that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner companies.

6. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that:-

Transferee company shall without any further act or deed, issue and allot 275 (''Two Hundred Seventy-five'') fully paid up equity shares of Rs. 10/- each in its share capital for every 2 (''Two'') fully paid equity shares of Rs. 10/- each held in Transferor company to the members of Transferor company on a proportionate basis holding fully paid up equity shares in Transferor company.

7. The Petitioner companies had earlier filed CA (M) No. 37 of 2013 in this Court seeking directions for dispensation of the requirements of convening the meetings of the shareholders and the unsecured creditors of the Petitioner companies. By order dated 8th April 2013, this Court allowed the application and dispensed with the requirements of convening their meetings.

8. The Petitioner companies have thereafter filed the present petition seeking sanction of the Scheme. By order dated 16th April 2013, notice in the petition was directed to be issued to the Regional Director (''RD'') and the Official Liquidator (''OL''). Citations were also directed to be published in ''The Indian Express'' (English) and ''Dainik Jagran'' (Hindi). An affidavit of service and publication dated 15th May 2013 has been filed showing compliance regarding service of the petition on the RD, the Registrar of Companies (''ROC'') and the OL, and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the said affidavit.

9. Pursuant to the notices issued, the OL sought information from the Petitioner companies. Based on the information received, the OL has filed his report 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 Petitioner companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

10. In response to the notices issued, the RD has filed his affidavit dated 19th July 2013. Relying on the Scheme, 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 services upon sanctioning of the Scheme. Further, in Para 5 of the said affidavit, the RD has observed that the exchange ratio has been determined by M/s. TXN Advisory Services LLP, which does not appear to be firm of Chartered Accountants.

11. In response to the RD affidavit, Mr. Sanjay Bhargava, authorized signatory of the Petitioner companies has filed an affidavit dated 20th July 2013 wherein it is

stated that M/s. TXN Advisory Services LLP is a firm having professionals comprising of chartered accountants and finance experts and are eminently qualified along with rich experience in these fields.

Further, it is stated that the valuation team at TXN is headed by Mr. Manish Khanna, who is a Chartered Accountant and Company Secretary by profession/ qualification and has prepared and signed the valuation report determining the exchange ratio. Mr. Manish Khanna is a member of the Institute of Chartered Accountants of India having the Membership No: 506656.

Further, all the shareholders of the Petitioner companies and the respective BoDs have given their consent to the proposed share exchange ratio indicated in the valuation report. Moreover, since 100% effective holding of the Petitioner companies ultimately being with the same entity i.e. Sony Corporation, Japan, any share exchange ratio is fair and reasonable from the point of view of ultimate equity shareholder''s interest for the amalgamation.

In view of the above said clarification, the observations made by the RD no longer survive.

12. Further, the RD in Para 6 of his affidavit has observed on perusal of the shareholding pattern of the Transferor company that all its shares are held by foreign companies viz. M/s. Sony Mobile Communications International AB, Sweden and M/s. Sony Mobile Communications AB, Sweden. Similarly, on perusal of the shareholding pattern of the Transferee company, it has been observed that all its shares are held by foreign companies viz. M/s. Sony Overseas Holdings (Asia) B.V. and M/s. Sony Middle East & Africa FZE. Further, in Para 6.1 of the said affidavit the RD has stated that the Petitioner Transferee company may be asked to give an undertaking for all compliances from the Reserve Bank of India (''RBI'') as required under FEMA.

13. In response to the aforesaid observation, it is undertaken by the Transferee company that it will comply with all the applicable Rules and Regulations of RBI as required under FEMA.

In view of the above said clarification, the observations made by the Regional Director no longer survive.

14. No objection has been received to the proposed Scheme from any other party. Mr. Sanjay Bhargava, authorized signatory of the Petitioner companies, has filed an affidavit dated July 19, 2013 confirming that the Petitioner companies have not received any objection pursuant to citations published in the said newspapers.

15. In view of the approval accorded by the shareholders and creditors of the Petitioner companies, representation/reports filed by the RD and the OL, and no objections received to the proposed Scheme, there appears to be no impediment to grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner companies will

comply with the statutory requirements in accordance with law.

16. The certified copy of the order will be filed with the ROC within 30 days from the date of receipt of the same. In terms of Sections 391 and 394 of the Act and in terms of the Scheme, the whole of the undertaking, the property, rights and powers of the Transferor company shall be transferred to and vest in the Transferee company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor company shall 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.

17. 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.

18. Learned counsel for the Petitioner states that the Petitioner companies would voluntarily deposit a sum of Rs. 2,00,000/- in the Common Pool Fund of the OL within three weeks from today. The statement is taken on record. The petition stands allowed in the above terms.

Order be given dasti.