

(2013) 07 DEL CK 0538

In the Delhi High Court

Case No : Company Petition No. 140 of 2013

In Re: Standard Microsystems India Private Limited

Date of Decision : 30-07-2013

Acts Referred:

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

Citation : (2013) 07 DEL CK 0538

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

Bench : Single Bench

Advocate : Kunal Sabharwal, Mr. Pradhan, Dy. Registrar of Companies for the Regional Director and Mr. Rajiv Bahl, for the Official Liquidator, for the Appellant;

Final Decision : Allowed

Judgement

R.V. Easwar, J.—This is a second motion petition under Sections 391 and 394 of the Companies Act, 1956 ("Act") in connection with the Scheme of Amalgamation ("Scheme") among Standard Microsystems India Private Limited (hereafter referred to as "Petitioner Transferor company 2"), Bridgeco Technologies India Private Limited (hereafter referred to as "Transferor company 1") and Microchip Technology (India) Private Limited (hereafter referred to as "Transferee company"). A copy of the Scheme has been enclosed with the petition. The registered office of the Petitioner Transferor company 2 is situated within the National Capital Territory of Delhi and within the jurisdiction of this Court.

2. Learned counsel for the Petitioner submits that the registered office of the Transferor company 1 and the Transferee company are situated in Bangalore, Karnataka. Accordingly, a similar company petition has been filed by the Transferor company 1 and the Transferee company, which is listed for hearing before the Hon'ble High Court of Karnataka at Bangalore on 31st July 2013.

3. The details of the dates of incorporation of the Petitioner Transferor company 2, Transferor company 1 and the Transferee company, their authorized, issued, subscribed and paid-up capital have been set out in the petition.

4. The copies of the Memorandum and Articles of Association as well as the latest audited annual accounts for the year ended 31st March 2012 of the Petitioner Transferor company 2, Transferor company 1 and the Transferee company have been placed on record.

5. The copies of the resolutions passed by the Boards of Directors ("BoDs") of the Petitioner Transferor company 2, Transferor company 1 and the Transferee company approving the Scheme have been enclosed with the petition.

6. Learned counsel for the Petitioner submits that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner Transferor company 2.

7. The salient features of the Scheme are detailed out in the petition and in the accompanying affidavit. It is submitted that the Transferor company and the Transferee company are part of the same group of companies and are engaged in similar type of businesses. The restructuring embodied in the Scheme is intended to provide greater business focus in the Transferee company. The amalgamation is being undertaken as part of the global strategy to integrate entities in each location. It is submitted that the restructuring embodied in the Scheme is intended to provide greater integration, financial strength and flexibility for the amalgamated entity in cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently. Also, improved organizational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry. Further, the merger will be beneficial to the shareholders, creditors, and employees of the Petitioner Transferor company 2, the Transferor company 1 and the Transferee company.

8. So far as the exchange ratio is concerned, the Scheme provides that upon this Scheme coming into effect and in consideration thereof, the Transferee company shall, without any application or deed, issue and allot to every member of the Transferor company holding fully paid-up equity shares in the Transferor company and whose names appear in the register of members of the Transferor company on such date ("Record Date") as the BoDs of the Transferee company will determine:

a. 372 (Three Hundred Seventy Two) fully paid-up equity shares of Rs. 10/- each of the Transferee company shall be issued and allotted for every 1 (One) fully paid-up equity share of Rs. 10 each held in the Petitioner Transferor company 2; and

b. 688 (Six Hundred Eighty Eight) fully paid-up equity shares of Rs. 10/- each of Transferee company shall be issued and allotted for every 1 (One) fully paid-up equity share of Rs. 100 each held in the Transferor company 1.

9. The new equity shares to be issued to the members of the Petitioner Transferor company 2 and the Transferor company 1 shall be in multiples of 1

(One). Any fractional shares shall be rounded-off to the next higher multiple of 1(One).

10. The Petitioner Transferor company 2 had earlier filed CA (M) No. 28 of 2013 in this Court seeking directions for dispensation of the requirements of holding meetings of the shareholders and the creditors of the Petitioner Transferor company 2. By order dated 5th March 2013, the Court allowed the application and dispensed with the requirements of convening and holding their meetings.

11. The Petitioner Transferor company 2 has thereafter filed the present petition seeking sanction of the Scheme. By order dated 2nd April 2013, notices of the petition were 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 "Jansatta" (Hindi). An affidavit of service has been filed by the Petitioner showing compliance regarding service and also publication of citations in the abovesaid newspapers on 17th May 2013. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. Pursuant to the notice issued, the RD has filed his affidavit dated 19th July 2013. Relying on Clause 5.1 of Part B of the Scheme, he has stated that all the employees of the Petitioner Transferor company 2 shall become employees of the Transferee company without any break or interruption in their services upon sanctioning of the Scheme.

13. The RD further submitted that as per the shareholding pattern of the Petitioner Transferor company 2, the entire shareholding is held by foreign companies i.e. Standard Microsystems Corporation and Standard Microsystems Corporation, Asia. Thus, the Petitioner Transferor company 2 be asked to give an undertaking that it shall comply with all the laws, rules, regulations, provisions, notifications as may be issued by Reserve Bank of India (RBI) or provided under the Foreign Exchange Management Act, 1999 (FEMA). The learned counsel for the Petitioner has submitted that the Petitioner undertakes to comply with all the provisions as required under FEMA and/or RBI.

14. Pursuant to the notice issued, the OL sought certain information/documents from the Petitioner. Upon examination of the Scheme, the OL has filed his report dated 3rd July 2013 wherein he has submitted that no complaint has been received against the proposed Scheme from any person/party interested in the Scheme in any manner. He has further stated that the affairs of the Petitioner do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

15. Learned counsel for the Petitioner submits that no objection has been received to the Scheme from any party. Mr. K.S. Pradhan, Dy. ROC for Regional Director and Mr. Rajiv Bahl, learned counsel for the OL states that they have no objection to the present Scheme being sanctioned.

16. In view of the approval accorded by the shareholders and creditors of the Petitioner, representations/reports filed by the RD and the OL to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 to 394 of the Act. Since, the registered office of the Transferor company 1 and the Transferee company is situated in the State of Karnataka, the second motion petition is pending adjudication before the Bangalore Bench of Karnataka High Court. The Scheme shall come into operation only after the same is also sanctioned by the Bangalore Bench of Karnataka High Court. The Petitioner company will comply with the statutory requirements in accordance with law.

17. Upon sanctioning of the Scheme by Bangalore Bench of Karnataka High Court, the certified copy of this order shall be filed with the Registrar of Companies within 30 days. In terms of Sections 391 and 394 of Act and in terms of the Scheme, the whole of the undertaking, the property, rights and powers of the Petitioner Transferor company 2 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.

18. 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.

19. Learned counsel for the Petitioner submits that the Petitioner Transferor company 2 would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool Fund of the OL within three weeks from today. The statement is taken on record.

20. The petition stands allowed in the terms above. Order be given Dasti.