(2008) 05 DEL CK 0213

In the Delhi High Court

Case No : C.P. No''s. 60 and 61 of 2008

In Re: UFO Moviez Ltd.; In Re: UFO India Ltd.

Date of Decision : 19-05-2008

Acts Referred:
Companies Act, 1956 — Section 391, 392, 393, 394

Citation : (2008) 146 CompCas 453

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : M.G. Ramachandran and P. Nagesh, for the Appellant; R.D. Kashyap, Deputy Registrar of Companies for Regional Director (Northern Region) and Manisha Tyagi, for official liquidator, for the Respondent

Judgement

S.N. Aggarwal, J.—Both these petitions are proposed to be disposed of by this common order. The petition being Co. P. No. 61 of 2008 has been filed by M/s. UFO Moviez Ltd. (hereinafter to be referred as "the transferor company") and petition being Co. P. No. 60 of 2008 has been filed by M/s. UFO India Ltd. (hereinafter to be referred as "the transferee company"). Both these petitions have been filed under Sections 391 - 394 of the Companies Act, 1956, for sanction of a scheme of amalgamation for amalgamation of the transferor company with the transferee company.

2. The brief facts giving rise to these petitions are as follows:

The transferor company was first incorporated under the name and style of M/s. Zefaan Media P. Ltd., on May 5, 2005. Later on, its name was changed to M/s. UFO Moviez P. Ltd., and consequent upon change of its name, a fresh certificate of incorporation was issued by the Registrar of Companies, NCT of Delhi and Haryana on August 30, 2006. The transferor company became a public company limited by shares with effect from November 13, 2006, vide fresh certificate of incorporation issued by the Registrar of Companies, NCT of Delhi and Haryana.

3. The authorised capital of the transferor company at present is Rs. 71 crores divided into 10,00,000 equity shares of Rs. 10 each; 15,00,000 11 per cent. cumulative redeemable preference shares of Rs. 100 each and 55,00,000

cumulative convertible preference shares of Rs. 100 each. The issued, subscribed and paid-up capital of the transferor company at present is 5,25,252 equity shares of Rs. 10 each of a total amount of Rs. 52,52,520 and 14,00,000 11 per cent. cumulative redeemable preference shares of Rs. 100 each of total amount of Rs. 14,00,00,000.

4. The objects for which the transferor company was incorporated are set out in its memorandum or articles of association.

The main object of the transferor company as mentioned in the memorandum or articles of association of the said company are as under:

1. To own, run and act as distribution for films, serials or other media content and to act as distributor to carry out, organise and participate and conduct the business of digital system using digital media including but not limited to DVD, fibre optics, satellite transmission, etc., and to store, transmit, retrieve and replay the audio visuals all over India and abroad.

2. To carry on the business of producers, exhibitors, importers, exporters, dealers and distributors of cinematographic films, TV documentary and advertisement films, TV programmes, serial, news based programmes, video and feature films, talkies (of every description), cinema slides and advertisement shorts in all their branches and to do all things necessary and expedient in connection with the business such as to erect, construct, purchase, take on lease or hire, otherwise acquire and maintain films production studios, laboratories, cinemas, picture places, halls, concert halls theatrical companies, entertainment groups, touring talkies and other kinds of buildings necessary on or required to carry on the businesses of the company and also to do such business on behalf of or in collaboration with films division, doordarshan, NFDC, Central and State Government Bodies, NGOs and other public and private sector companies in India and abroad.

3. To carry on the business related to media and communication which includes production, pre-production, post-production, exhibition, distribution and related services of all types of media content including but not limited to films, TV programming, news, current affairs, studios and allied works, including consultancy in all these areas in India and abroad.

4. To organise and deliver multimedia and create products (including hardware, software or other types of intellectual property) that enable delivery of multimedia services and over all types of broadcast, broadband and narrowband networks.

5. To produce, buy, sell import, export, trade, manage design, direct, distribute, provide consultancy and services or otherwise deal in any manner or otherwise associate with all kinds of media content, services and products, including but not limited to cinematograph, television, video, audio, text and all kinds of media.

6. To acquire, set up, run maintain, lease licence all types of facilities or networks

for distribution, redistribution of content and signal, telecast, broadcast, multicast, release, display transmission, exhibition through dealers, distributors, internet, satellite, v-sates, transponder or otherwise, directly or indirectly through agents, franchise lease licenses as also using the network and equipment for communication, via., satellite, cable, internet or otherwise.

7. Apart from the above main objects, the objects in the memorandum of association of the transferor company provides as under (in clause 9 of the incidental objects):

Subject to Sections 391 - 394 of the Companies Act, 1956, to amalgamate with any other such company or companies having all or any objects similar to the objects of this company in any manner whether with or without process of liquidation of that company.

5. The transferee company is a company incorporated under the provisions of the Companies Act, 1956. The transferee company was incorporated on June 14, 2004, as a private limited company limited by shares with name Valuable Media P. Ltd. The name of the transferee company was changed to UFO India P. Ltd., with effect from August 31, 2006. The transferee company became a public company on November 10, 2006, vide fresh certificate of incorporation issued by the Registrar of Companies, Maharashtra, Mumbai. The registered office of the transferee company was shifted to the National Capital Territory of Delhi on June 8, 2007.

6. The authorised capital of the transferee company at present is stated to be Rs. 2,50,00,000 divided into 25,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up capital of the said company at present is stated to be Rs. 2,47,50,000 divided into 24,75,000 equity shares of Rs. 10 each.

The object for which the transferee company was incorporated, as stated in its memorandum of articles of association, are as under:

To carry on the business of producers, exhibitors, importers, exporters, dealers and distributors of cinematographic films, TV documentary and advertisement films, TV programmes, serial, news based programmers, video and feature films, talkies (of every description), cinema slides and advertisement shorts in all their branches and to act as distributors to carry out, organise, participate and conduct the business of digital cinema system using digital media including but not limited to DVD, fibre optics, satellite transmission and to store, transmit, retrieve and replay the audio visuals all over India and abroad.

Apart from the above main objects, the objects in the memorandum of association of the transferee company provides as under (in clause 7 of the incidental objects).

To take over, amalgamate or merge with any other company with objects all or any of which are similar to the objects of the company or whose business is similar to the business or any part of the business of the company in any manner whatsoever, (whether with or without a liquidation of the company).

7. The board of directors of the transferor company and the transferee company in their separate meeting held on January 29, 2008, have considered the proposed scheme of amalgamation and have passed a resolution dated January 29, 2008, recommending the adoption of the said scheme. The principal factors for which the proposed scheme of amalgamation has been proposed and recommended by the board of directors of the transferor company and the transferee company are as under:

(a) UML and UIL will be able to derive benefits of economy of scale of operations by combining complementary businesses and eliminating overlapping of activities ;

(b) Reduction in cost of operations would be achieved by eliminating duplication as well as operational advantage achieved from single entry, thereby consolidating the value of stakeholders ;

(c) The scheme is expected to result in achieving the enhanced operational synergies and eliminate redundancy thereby resulting in profitability of operations by utilising and enhancing the financial resources, managerial resources, technical standards, competitiveness, marketing and services delivery capabilities for the amalgar mated entity ;

(d) The banks, creditors and funding institutions will not be affected by the proposed amalgamation as their security is maintained ;

(e) The amalgamation will result in the combination of manpower of UML and UIL and a single management structure for the companies ; and

(g) The resources of UML and UIL will be conveniently merged and pooled together leading to more effective and centralised management and reduction of administrative expenses and overheads.

8. The transferor company and the transferee company had earlier filed company applications being Co. A. (M) No. 26 of 2008 and Co. A. (M) No. 27 of 2008, respectively, which were allowed by this Court vide order passed on February 19, 2008. The meeting of the shareholders and the creditors of the transferor company and the transferee company was dispensed with by this Court vide order passed on February 19, 2008, because all the shareholders and the creditors had given their consent to the scheme of amalgamation by affidavit filed in the court in Co. A. (M) No. 26 of 2008 and Co. A. (M) No. 27 of 2008.

In the scheme of amalgamation, it is proposed that the transferor company shall merge with its undertaking with the transferee company in accordance with the proposed scheme of amalgamation with effect from the appointed date of April 1, 2007, mentioned in the scheme.

9. All the assets, liabilities, proceedings, interest of the transferor company subject to all charges, if any, existing on such assets or any part thereof on the

appointed date shall be deemed to vest in the transferee company. In accordance with the proposed scheme, the transferee company shall issue and allot to the shareholders of the transferor company as on the effective date of the scheme of amalgamation, shares in the transferee company in the ratio of 915 shares in the transferee company for every 100 shares in the transferor company. The share exchange ratio has been determined on the basis of valuation undertaken by M/s. Price Water House Coopers.

10. The proposed scheme of amalgamation provides protection to all the employees of the transferor company. As per the scheme, all the employees of the transferor company on the effective date shall become the employees of the transferee company without any break or interruption of service on the same terms and conditions on which they are engaged by the transferor company. Paragraph 4.12 of the proposed scheme deals with the protection to the employees of the transferor company.

11. This Court vide order dated March 11, 2008, issued notices of the second motion petition to the Regional Director (Northern Region), Company Law Affairs and also to the official liquidator. The citation of the present petition was got published in The Indian Express (English edition) and Veer Arjun (Hindi edition) on April 28, 2008. In response to notices served upon the official liquidator and the Regional Director (Northern Region), they have filed their separate reports.

Ms. Manisha Tyagi, learned Counsel appearing on behalf of the official liquidator has submitted that she has no objection in case the scheme proposed for the amalgamation of the transferor company with the transferee company is sanctioned by this Court.

12. In the proposed scheme of amalgamation, the name of the transferee company is proposed to be changed from M/s. UFO India Ltd., to M/s. UFO Moviez India Ltd., so that it may represent the companies by combined names of the existing transferor company and the transferee company, viz., M/s. UFO Moviez Ltd., and M/s. UFO India Ltd., respectively. Though the Regional Director (Northern Region) in paragraphs 4 and 5 of his affidavit filed on May 6, 2008, has made a plea that this Court may consider the consequences of change in the name of the transferee company while granting sanction to the proposed scheme of amalgamation, but during arguments Mr. R.D. Kashyap, Deputy Registrar of Companies, who appeared as a representative of the Regional Director (Northern Region) said that in view of judgments Jaypee Cement Ltd., In re In Re: Jaypee Cement Limited, and Search Chem Industries Ltd., In re In Re: Search Chem Industries Ltd., he has no objection to the sanction of the proposed scheme of amalgamation. Even otherwise, this Court has considered the consequences of change of name of the transferee company consequent upon sanction of the proposed scheme.

13. This Court is of the view that the scheme of proceedings under Sections 391 - 394 give "single window clearance" and there is no reason to insist for a

separate formality to be followed for change in the name or the objects clause of memorandum of association of the said company. However, the transferee company is required to file the necessary forms as prescribed under law in the office of the Registrar of Companies to place on record the change in its name. No other objection was raised on behalf of the Regional Director (Northern Region) to the sanction of the proposed scheme of amalgamation.

14. In view of the above, it is apparent that the scheme of amalgamation is aimed at to consolidate the transferor company and the transferee company into one large company with a strong assets base and the same would enable pooling of physical, financial and human resources of these companies for the most beneficial utilisation of these factors in the combined entity. The arrangement mentioned in the proposed scheme of amalgamation will unlock the operational efficiencies and derive synergies in the combined business. The amalgamation of the transferor company with the transferee company would further create economies in administrative and managerial costs by consolidating operations and is likely to reduce substantial duplication of administrative responsibility and multiplicity of records and legal and regulatory compliances and thereby provide effective management and unified control of operations.

15. The scheme of amalgamation also provides that on approval of the said scheme and its becoming effective, the transferor company shall stands dissolved without winding up.

In the facts and circumstances mentioned above, there does not appear to be any legal impediment in sanctioning the proposed scheme of amalgamation. Consequently, sanction is hereby granted to the proposed scheme of amalgamation under Sections 391 and 394 of the Companies Act, 1956, for amalgamation of the transferor company with the transferee company subject to the transferee company''s filing the necessary forms as prescribed under law in the office of the Registrar of Companies to place on record the change in its name. The certified copy of this order shall be filed with the Registrar of Companies within five weeks. It is clarified that this order should not be construed as an order granting exemption from payment of stamp duty if payable in accordance with law in regard to increase in the share capital of the transferee company. Upon sanction becoming effective and from the appointed date, the transferor company shall stands dissolved without its formal winding up.

16. The transferee company is directed to deposit Rs. 20,000 towards costs in the common pool fund of the official liquidator within a period of three weeks from today.

In view of the above, both these petitions stand disposed of.