

(2014) 12 DEL CK 0297
In the Delhi High Court
Case No : Co. Pet. 445/2014

In Re: Viom Infra Networks (Maharashtra) Limited

Date of Decision : 04-12-2014

Acts Referred:

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

Citation : (2014) 12 DEL CK 0297

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Anirudh Das, Rajneesh Kumar Singh, Assistant Registrar and Rajiv Behl, Advocate for the Appellant

Judgement

Sanjeev Sachdeva, J.

Co.Appl Nos. 2810/2014 (for condonation of delay in filing the report) and Co. Appl. No. 2811/2014 (for condonation of delay in re-filing the report)

These are the applications filed on behalf of the Regional Director for condonation of delay in filing and re-filing the report.

Learned counsel for the petitioner does not have any objection to the delay being condoned.

In view of the above, the delay in filing and re-filing the report is condoned and the report is taken on record.

The applications stand disposed.

Co. Appl Nos. 1591/2014

The Petitioner Company has filed this for a direction that in the facts of the present case, there is no requirement for filing of Company Petition by the Amalgamated Company for sanction to the Scheme. Learned Counsel for the applicant submits that The Petitioner Company is a wholly owned (100%) subsidiary of the Amalgamated Company. Further it is submitted by counsel for the Petitioner Company that pursuant to the Scheme becoming effective, no

shares of the Amalgamated Company shall be issued and allotted in respect of the holding of the Amalgamated Company in the Petitioner/Amalgamating Company.

It is further submitted that the Scheme also does not affect the rights of the members or creditors of the Amalgamated Company and does not involve a reorganization of the share capital of the Amalgamated Company.

Further Counsel for Petitioner submits that there is no requirement for filing of Company Petition by the Amalgamated Company for sanction of the Scheme. Further in this regard, Counsel for Petitioner relies upon the order dated 14 September, 2014 in Company Petition No. 195 of 2014 in the matter of Aradhana Foods & Juices Private Limited.

In view of the above, it is accordingly directed that no Company Petition is required to be filed by the Amalgamated Company for sanction of the Scheme.

In view of the above, the application is allowed.

CO.PET. 445/2014

1. This second motion petition has been filed under sections 391 & 394 of the Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of Viom Infra Networks (Maharashtra) Limited (hereinafter referred to as Transferor Company) (hereinafter referred to as Petitioner Company) with Viom Networks Limited (hereinafter referred to as the Transferee Company). A copy of the Scheme has been enclosed with the Petition.
2. The registered offices of the Transferor Company and Transferee Company are situated at New Delhi, within the jurisdiction of this Hon'ble Court.
3. Details with regard to the date of incorporation of the Transferor Company and Transferee Company, their authorized, issued, subscribed and paid up capital have been given in the Petition.
4. Copies of the Memorandum and Articles of Association as well as the latest audited Accounts for the year ending 31st March 2013 of Transferor Company and Transferee Company have also been enclosed with the Petition.
5. Copies of the Resolutions passed by the Board of Directors of the Transferor Company and Transferee Company approving the Scheme of Amalgamation have also been placed on record.
6. Learned Counsel for the Petitioner Company submits that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Company.
7. The Petitioner Company had earlier filed Company Application (Main) No. 86 of 2014, seeking dispensation from convening the meeting of the Equity Shareholders of the Petitioner/Transferor Company and for seeking directions to convene the meetings of the Secured Creditors and Unsecured Creditors of the

Petitioner/Transferor Company to consider the Scheme. By order dated 13 May 2014, this Court allowed the Company Application dispensing with the requirement of convening the meeting of the Equity Shareholders of the Petitioner/Transferor Company and further directed the convening of the meetings of the Secured Creditors and Unsecured Creditors of the Petitioner Company. The said meetings of the Secured Creditors and Unsecured Creditors of the Petitioner/Amalgamating Company were held on 05 July 2014. The Secured Creditors and the Unsecured Creditors of the Petitioner/Transferor Company duly approved the Scheme at their respective meetings.

8. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 22 July 2014 notice of the Petition was directed to be issued to the Official Liquidator, Registrar of Companies and the Central Government. Citation of the Petition was also directed to be published in the "The Indian Express" (English Edition) and "Jansatta" (Hindi Edition). Affidavit dated 09 October 2014 has been filed by the Petitioner Company, showing compliance regarding service of notice of the Petition on the Official Liquidator, Registrar of Companies and the Regional Director and also regarding publication of notice of the Petition in "The Indian Express" (English Edition) and "Jansatta" (Hindi Edition). Copies of the newspapers containing the citations have been filed along with the Affidavit dated 09 October 2014 of the authorized signatory of the Petitioner Company.

9. In response to the notice issued on the Petition, the Official Liquidator has filed Report dated 15 October 2014. It has been stated that the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation. It has further been stated in the Report that the affairs of the Petitioner/Amalgamating Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the 2nd proviso of Section 394(1) of the Act.

10. In response to the notice issued on the Petition, the Learned Regional Director has filed Representation Affidavit dated 17 October 2014. Relying upon Clause 3.2 (vii) of the Scheme, the Regional Director has stated that all employees of the Petitioner/Amalgamating Company shall become the employees of the Amalgamated Company. Further, learned Regional Director submits that despite notice, Income Tax Authorities has not raised any observation with respect to the Scheme.

11. No objection has been received to the Scheme from any other party. The Petitioner Company in the Affidavit dated 09 October 2014 have also confirmed that neither the Petitioner Companies nor their counsel have received any objection pursuant to the citations published in the newspapers.

12. In view of the approval accorded by the shareholders of the Petitioner Company, Representation/Report filed by the Official Liquidator and the Regional Director, Northern Region and the submissions of the Petitioner Company, 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 391-394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

13. Certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, and in terms of the Scheme, the whole or part of the undertaking, the property, rights and powers of the Transferor Company 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 be transferred to the Transferee Company without any further act or deed.

14. 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.

15. Learned Counsel for the Petitioner states that the Petitioner Company would voluntarily deposit a sum of Rs.1,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

16. The Petition is allowed in the above terms.