(2016) 12 DEL CK 0128

In the Delhi High Court

Case No : Co.Pet. No. 634 of 2016

In the Matter of : Air Factory Energy Limited

Date of Decision : 19-12-2016

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

Citation : (2017) 2 ADDelhi 518 : (2017) 2 CompLJ 124

Hon'ble Judges : Mr. Siddharth Mridul, J.

Bench : Single Bench

Advocate : Mr. Manoj Kumar Garg and Mr. Prem Mardi, Advocates, for the Petitioner; Ms. Aparna Mudiam, Asst. ROC, for the Respondent/RD; Ms. Ruchi Sindhwani, Advocate, for the Respondent/OL

Final Decision : Allowed

Judgement

Siddharth Mridul, J.—The present petition has been filed jointly, under sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as ''the Act'') by Air Factory Energy Limited (hereinafter referred as ''Transferor Company'') and Anest Iwata Motherson Private Limited (hereinafter referred as ''Transferee Company'') seeking sanction of the Scheme of Amalgamation (hereinafter referred to as ''the Scheme'') of the Transferor Company with the Transferee Company.

2. The Transferor Company and the Transferee Company are hereinafter collectively, referred to as ''Petitioners''.

3. The registered offices of the Transferor Company and the Transferee Company are situated at New Delhi, within the jurisdiction of this Court.

4. The Transferor Company was originally incorporated under the Act on 12.11.2007, with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The Transferee Company was incorporated under the Act on 05.12.2000 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of ''Anest Iwata Motherson Private Limited''. Subsequently, the

Transferee Company changed its name from ''Anest Iwata Motherson Private Limited'' to ''Anest Iwata Motherson Limited'' and a fresh certificate of incorporation dated 01.06.2001 was issued in this behalf. Thereafter, the Transferee Company changed its name from ''Anest Iwata Motherson Limited'' to ''Anest Iwata Motherson Private Limited'' and a fresh certificate of incorporation dated 31.03.2015 was issued.

6. The authorised share capital of the Transferor Company as on 31.03.2015 is Rs.1,00,00,000/- divided into 10,00,000 Equity Shares of Rs.10/-. The issued, subscribed and paid up share capital of the Transferor Company as on 31.03.2015 is Rs.80,00,000/-, divided into 8,00,000 Equity Shares of Rs.10/- each.

7. The authorised share capital of the Transferee Company as on 31.03.2015 is Rs.45,00,00,000/-, divided into 4,20,00,000 Equity Shares of Rs.10/- each and 30,00,000 Preference Shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferee Company as on 31.03.2015 is Rs.43,50,00,000/-, divided into 4,05,00,000 Equity Shares of Rs.10/- each and 30,00,000 Preference Shares of Rs.10/- each.

8. Copies of Memorandum of Association and Articles of Association of the Transferor Company and the Transferee Company have been filed on record. The Audited Balance Sheets, as on 31.03.2015, of the Transferor Company and the Transferee Company along with the Auditors'' Reports, have also been filed and the same are on record.

9. A copy of the Scheme of Amalgamation has been filed on record and the salient features of the Scheme have been incorporated and set out in detail in the application and the accompanying affidavits. It has been stated by the petitioners that the Transferor Company is a wholly owned subsidiary of the Transferee and the proposed amalgamation shall result in pooling of resources, creating better synergies across the group, optimal utilisation of resources and greater economies of scale. It has been further been stated that inter alia, the proposed scheme will result in faster and effective decision making, better administration and cost reduction.

10. So far as Share Exchange Ratio is concerned, the scheme provides that upon coming into effect of this scheme, no consideration shall be payable by the Transferee Company since the Transferor Company is the wholly owned subsidiary of the Transferee Company.

11. It has been submitted that no proceedings under Sections 235 to 251 of the Act (or under the corresponding provisions of the Companies Act, 2013) are pending against either of the Petitioners.

12. The Board of Directors of the Petitioners in their separate meetings held on 07.12.2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the

Petitioners have been placed on record.

13. The Petitioners had earlier filed a an application being Company Application (Main) No. 67 of 2016, seeking directions of this Court to dispense the requirement of convening the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Transferor Company and; Equity Shareholders, Preference Shareholders, Secured and Unsecured Creditors of the Transferee Company, to consider, and if thought fit, approve, with or without modifications, the Scheme. By way of order dated 19.07.2016 this Court allowed the Application and dispensed with the requirement of convening and holding the meetings of Equity Shareholders, Preference Shareholders, Secured and Unsecured Creditors of the Transferor and Transferee Companies, to consider and, if thought fit, approve, with or without modification, the proposed scheme of amalgamation.

14. The Petitioners have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 01.08.2016, notice in the Petition was issued to the Regional Director, Northern Region and the Official Liquidator. Citations were directed to be published in the Delhi Editions of newspapers, ''Business Standard'' (English & Hindi). An affidavit dated 31.08.2016 has been filed by the petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 17.08.2016.

15. Pursuant to the notices issued in the Petition, the Official Liquidator has filed a report dated 10.11.2016 wherein it has been 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 Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per second proviso of Section 394(1) of the Companies Act, 1956.

16. Therefore, no objection has been raised on behalf of the Official Liquidator to the grant of sanction to the Scheme.

17. In response to the notices issued in the Petition, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi has filed an affidavit dated 11.11.2016 stating that the Regional Director has no objection to the proposed Scheme.

18. No objection has been received to the Scheme of Amalgamation from any other party. By way of affidavit dated 08.11.2016 of Mr. P. Srinivasan, authorised signatory of the Transferor Company and affidavit dated 09.11.2016 of the counsel for the petitioners, it has been averred that neither the petitioners nor their counsel have received any objection pursuant to the citations published in the newspapers on 17.08.2016.

19. In view of the approval accorded by the shareholders and creditors of the petitioners to the proposed Scheme and the report and affidavit filed by the

Official Liquidator and the Regional Director, Northern Region, respectively, 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. Hence, sanction is hereby granted to the Scheme of Amalgamation under sections 391 and 394 of the Companies Act, 1956. The petitioners will comply with the statutory requirements in accordance with law.

20. A certified copy of this order, sanctioning the Scheme, be filed with the ROC, within thirty (30) days of its receipt.

21. Resultantly, it is hereby directed that the Petitioners will comply with all provisions of the Scheme and, in particular, those which are referred to herein above.

22. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Court to the Scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the Petitioners.

23. The Transferor Company shall stand dissolved without being wound up.

24. It is made clear, that this order shall not be construed as an order granting exemption, inter alia, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

25. The Petitioners shall deposit a sum of Rs.1,00,000/-, by way of costs, in the Delhi High Court Bar Association Lawyers'' Social and Welfare Fund, New Delhi, within a period of two weeks from today.

26. The Petition is allowed in the aforesaid terms and is disposed of accordingly.

