

(2017) 01 DEL CK 0233

In the Delhi High Court

Case No : 174 of 2016

IN THE MATTER OF:- EROS FABRICATORS PRIVATE LIMITED

APPELLANT

Vs

NIL

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Companies Act, 1956, Section 394, Section 391(2) - Provisions for facilitating reconstruction and amalgamation of companies. - Power to compromise or make arrangements with creditors and membe

Citation : (2017) 01 DEL CK 0233

Hon'ble Judges : Siddharth Mridul

Bench : SINGLE BENCH

Advocate : Mukesh Sukhija, Rajiv Bahl, Aparna Mudiam

Judgement

1. The present petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 (hereinafter referred to as "Act") by Allengers Global Healthcare Private Limited (hereinafter referred to as "Transferee Company"), seeking sanction to the proposed scheme of Amalgamation (hereinafter referred to as "proposed scheme") of Eros Fabricators Private Limited (hereinafter referred to as "Transferor Company no.1") and Lakshya Research and Development Private Limited (hereinafter referred to as "Transferor Company no.2") with the Transferee Company.

2. The registered office of the Transferee Company is situated at New Delhi, within the jurisdiction of this Court.

3. The registered offices of the Transferor Company no.1 and Transferor Company no.2 is situated at Chandigarh and Ludhiana, Punjab, respectively. It is stated on behalf of the Transferor Companies that a similar petition, being Company Petition no. 04 of 2016 (O&M), seeking sanction to the proposed scheme has been filed by the Transferor Companies before the High Court of Punjab and Haryana at Chandigarh, being the competent Court exercising

territorial jurisdiction over the Transferor Companies.

4. The Transferee Company was incorporated under the Act, on 17.09.2004, with the Registrar of Companies, N.C.T. of Delhi & Haryana under the name and style of Allengers Global Medicare Private Limited. Thereafter, the Transferee Company changed its name to its present name and consequent upon change of name, a fresh certificate of incorporation, dated 20.10.2005, was issued by the Registrar of Companies, N.C.T. of Delhi and Haryana.

5. The authorized share capital of the Transferee Company, as on 31.03.2015, is Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferee Company, as on 31.03.2015, is Rs.2,52,30,000/- divided into 25,23,000 equity shares of Rs.10/- each.

6. Copies of the Memorandum of Association and Articles of Association of the Transferee Company have been filed on record as annexures to Company Application (M) no.15 of 2016, earlier filed by the Transferee Company. The audited balance sheets of the Transferee Company, as on 31.03.2015, along with the report of the auditors, have also been filed. The same are on record.

7. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and detailed in the present petition. The rationale behind the proposed scheme, as detailed out in para 5 of the present petition, is as hereunder: - "(a) All the Transferor Companies and the Transferee Company are closely held companies. The proposed Scheme of Amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base.

(b) The proposed amalgamation would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity.

(c) The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

(d) The said Scheme of Amalgamation will contribute in fulfilling and furthering the objects of the Transferor and the Transferee Companies. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario.

(e) The proposed amalgamation would enhance the shareholders' value of the

Transferor and the Transferee Companies.

(f) The scheme would ensure higher retained earnings leading to enhanced intrinsic value of shareholding to the investors.

(g) The corporate restructuring resulting from the scheme will integrate all the activities leading to increased opportunities in all areas of business.

(h) The amalgamated company would have stronger fundamentals which enhance its credit rating and resource raising ability in the financial markets.

(i) The said scheme will enable the establishment of a larger company with larger resources and a larger capital base facilitating further expansion and development of the business of all companies. The said scheme will enable the undertakings and business of the said companies to obtain greater facilities possessed and enjoyed by one large company as compared with a number of smaller companies, for raising capital, securing and conducting trade, on favourable terms and other benefits.

(j) The business of the said companies can be conveniently and advantageously combined together and in general the business of all the companies concerned will be carried on more economically and profitably if the scheme is implemented.

(k) The said scheme will strengthen, consolidate and stabilize the business of the said companies and the resulting amalgamated company will be able to participate more vigorously and profitably in a competitive market.

(l) The said scheme will enable the companies concerned to diversify and expand their activities without restricting their existing activities.

(m) The scheme will have beneficial results for all the petitioner/applicant Companies concerned, their shareholders, employees and concerned.

(n) That the assets of the Petitioner Companies are sufficient to meet all their liabilities and the said scheme will not adversely affect the rights of any other party dealing with or related to the Petitioner/Applicant Companies in any manner whatsoever."

8. So far as the share exchange ratio is concerned, the proposed scheme provides that upon coming into effect thereof, the Transferee Company shall issue and allot equity shares to the shareholders of the Transferor Companies in the following ratio: "a. 18 (Eighteen) Equity Shares of Rs. 10/- (Rupees Ten) each of the Transferee Company for every 1 (One) Equity Share of Rs. 100/- (Rupees Hundred) each held in the Transferor Company No. I - EROS FABRICATORS PRIVATE LIMITED.

b. 1 (One) Equity Share of Rs. 10/- (Rupees Ten) each of Transferee Company for every 1 (One) Equity Share of Rs. 10/- (Rupees Ten) each held in the Transferor Company No. II - LAKSHYA RESEARCH & DEVELOPMENT PRIVATE LIMITED."

9. It has been averred on behalf of the Transferee Company that there are no

proceedings pending against it, as on the date of filing of the present petition, under Sections 235 to 251 of the Act (including their corresponding Sections of the Companies Act, 2013).

10. The Board of Directors of the Transferor Companies in their separate meetings held on 03.11.2015; and the Transferee Company in its meeting held on 05.11.2015, have approved the proposed scheme. Copies of the resolutions passed at the Board of Directors meeting of the Transferor Companies and the Transferee Company have been placed on record.

11. To recapitulate, the Transferee Company had earlier filed Company Application (M) no.15 of 2016, seeking directions of this Court to dispense with the requirement of convening the meetings of their equity shareholders and creditors, to consider and, if thought fit, approve, with or without modification, the proposed scheme. Vide order dated 29.01.2016, this Court allowed the said application of the Transferee Company and dispensed with the requirement of convening and holding the meetings of the equity shareholders and creditors of the Transferee Company.

12. The Transferee Company has thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 23.03.2016, notice in the present petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator alongwith a direction to the Transferee Company to supply a copy of the petition paper book to the Regional Director and the Official Liquidator in order to enable them to file their respective reply/report. Furthermore, notice of hearing was directed to be uploaded on the website of the Transferee Company, Official Liquidator and the Ministry of Corporate Affairs; and published in the Delhi edition of the newspapers, namely, "Business Standard" (English) and "Jansatta" (Hindi). Subsequently, vide order dated 22.07.2016 the said order dated 23.03.2016 was modified to the extent that, the Official Liquidator was not required to file its report and was not to be supplied with a copy of the petition paper book. Affidavit of service and publication, dated 28.07.2016, showing compliance regarding publication of citations in the aforesaid newspapers and service of petition paper book on the Regional Director and the Registrar of Companies, has been filed by the Transferee Company. Copies of the newspaper clippings, regarding publication carried out on 02.06.2016 have also been filed alongwith the said affidavit.

13. In response to the notices issued in the present petition the Regional Director, Northern Region, Ministry of Corporate Affairs has filed its affidavit dated 17.08.2016 not raising any objection to the proposed scheme.

14. No objection has been received to the proposed scheme from any other party. The Transferee Company by way of affidavit dated 19.08.2016 has stated that that neither the Transferee Company nor their counsel have received any objection to the proposed scheme, pursuant to the citations published in the newspapers on 02.06.2016.

15. Considering the approval accorded by the equity shareholders and creditors of the Transferee Company to the proposed scheme and the affidavit filed by the Regional Director, Northern Region having not raised any objection to the proposed scheme, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, subject to sanction of the proposed scheme from the Court of competent jurisdiction in respect of the Transferor Companies, sanction is hereby granted to the proposed scheme. The Transferee Company will comply with the statutory requirements in accordance with law. The sanction to the proposed scheme will be effective from the appointed date of the proposed scheme, i.e. 1st April, 2015.

16. 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 proposed 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 Transferor Companies and the Transferee Company.

17. 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.

18. A certified copy of this order shall be filed with the Registrar of Companies within 30 days from its receipt.

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

20. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.