(2017) 01 DEL CK 0262

In the Delhi High Court

Case No : 364 of 2016

MONA AUTO INDUSTRIES PRIVATE LIMITED APPELLANT

Vs

NIL RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Companies Act, 1956, Section 391, Section 394, Section 394(1) - Power to compromise or make arrangements with creditors and members. - Provisions for facilitating reconstr

Citation : (2017) 01 DEL CK 0262

Hon'ble Judges : Siddharth Mridul

Bench : SINGLE BENCH

Advocate : P.K. Mittal, Aparna Mudiam

Judgement

1. The present petition has been filed jointly by Mona Auto Industries Private Limited (hereinafter referred to as "Transferor Company") with R.P.L. (India) Pharmaceuticals Private Limited (hereinafter referred to as "Transferee Company") under Sections 391 and 394 of the Companies Act, 1956 (hereafter referred to as "the Act") for approval of the Scheme of Amalgamation (hereafter referred to as "the Scheme").

2. The Transferor Company and the Transferee Company are hereinafter collectively referred to as "Petitioner Companies".

3. The registered offices of the petitioner companies are situated at New Delhi, within the jurisdiction of this Court.

4. The Transferor Company was incorporated under the provisions of the Act, vide certificate of incorporation dated 13.12.1983, issued by the Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

5. The Transferee Company was incorporated under the provisions of the Act, vide certificate of incorporation dated 17.05.2002, issued by the Assistant

Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

6. The authorized share capital of the Transferor Company, as on 31.03.2015, is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company, as on 31.03.2015, is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each fully paid-up.

7. The authorized share capital of the Transferee Company, as on 31.03.2015, is Rs.5,00,000/- divided into 50,000 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.1,01,000/- divided into 10,100 equity shares of Rs.10/- each fully paid-up.

8. Copies of the Memorandum of Association and Articles of Association, of the Transferor Company and the Transferee Company, have been duly filed as Annexures to Company Application (M) no.53 of 2016, which earlier came to be filed by the Petitioner Companies. The same are on record. The audited financial statements and the audited balance sheets, as on 31.03.2015, along with the reports of the auditors, of the Petitioner Companies have also been filed as Annexures to Company Application (M) no.53 of 2016 and the same are on record.

9. A copy of the Scheme has been placed on record and the salient features thereof have been incorporated and set out in detail in the present petition. It has been stated in the present petition that the Scheme would have the following benefits: i. The Scheme will result in pooling of their financial, commercial and other resources, economies of scale and reduction of overheads.

ii. With enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility and strength to meet requirements for further growth of business activities.

iii. The Scheme would be advantageous to combine the activities of Transferor Company and the Transferee Company into a single Company for the benefit for all the Companies, their Shareholders, Creditors and all concerned.

10. It has been stated by the Petitioner Companies that 100% share capital of the Transferor Company is held by the Transferee Company and the same will stand automatically cancelled, extinguished and there will be no issue and allotment of shares of the Transferee Company upon the Scheme finally becoming effective.

11. It has also been stated 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 Petitioner Companies.

12. It has been further stated on behalf of the Petitioner Companies that the Scheme has been approved by the respective Board of Directors (BOD) of the

Petitioner Companies in their separate meetings held on 15.01.2016. Copies of the BOD resolutions dated 15.01.2016 have been filed and the same are on record.

13. The Petitioner Companies had earlier filed Company Application (M) no.53 of 2016 seeking directions of this Court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, to consider and if thought fit, approve, with or without modification, the Scheme. Vide order dated 06.04.2016, this Court allowed the said application and dispensed with the requirement of convening and holding the meeting of the equity shareholders of the Transferor Company; and the equity shareholders, secured and unsecured creditors of the Transferee Company (there being no secured and unsecured creditor of the Transferor Company), to consider and, if thought fit, approve, with or without modification, the Scheme.

14. The Petitioner Companies have thereafter filed the present petition seeking sanction to the Scheme. Vide order dated 03.05.2016, notice in the present petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Furthermore, citations were directed to be published in the Delhi Edition of the newspapers, namely, "The Statesman" (English) and "Veer Arjun" (Hindi). An affidavit dated 22.09.2016 has been filed by the Petitioner Companies showing compliance regarding publication of citations in the aforesaid newspapers on 09.06.2016.

15. Pursuant to the notices issued, the Official Liquidator has filed a report dated 26.09.2016, wherein it has been stated that no complaint has been received against the Scheme from any interested person/party 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 Act.

16. Thus, in effect, it has been stated that the OL would not have any objections in the event this Court were to sanction the Scheme.

17. In response to the notices issued in the present petition, the Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 03.10.2016 stating that the Regional Director has no objections to the grant of sanction to the Scheme.

18. The Petitioner Companies vide affidavit dated 22.09.2016 have also stated that neither the Petitioner Companies nor their counsel have received any objection pursuant to publication of citations in the newspapers on 09.06.2016.

19. Considering the approval accorded by the shareholders and creditors of the Petitioner Companies to the Scheme; and the report and affidavit filed by the Official Liquidator and the Regional Director, Northern Region, respectively, not raising any objection to the Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the

Scheme. The Petitioner Companies will comply with the statutory requirements in accordance with law. Upon the sanction becoming effective from the appointed date of Scheme, i.e. 1stApril, 2015 the Transferor Company shall stand dissolved without undergoing the process of winding up.

20. 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 Petitioner Companies.

21. 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.

22. A certified copy of the order, sanctioning the Scheme, be filed with the ROC within 30 days of its receipt.

23. Learned counsel for the Official Liquidator prays that costs of at least Rs.50,000/- should be paid by the Petitioner Companies keeping in view the fact that the matter has involved examination of extensive records. Learned counsel for the Petitioner Companies states that the same is acceptable to him. The Petitioner Companies shall deposit a sum of Rs.50,000/- 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.

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