
(2014) 04 SHI CK 0050
In the High Court Of Himachal Pradesh
Case No : Co. Pet No. 6/2014

Mount Everest Mineral Water Limited	Vs	APPELLANT
Tata Global Beverages Limited		RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Companies Act, 1956 — Section 391, 391(1), 393, 394

Citation : (2014) 04 SHI CK 0050

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Rahul Mahajan, Advocates for the Appellant

Judgement

Rajiv Sharma, J.—This petition has been instituted under Sections 391 and 394 of the Companies Act, 1956 (hereinafter referred to as the `Act') and Rule 9 of the Companies (Courts) Rules, 1959 (hereinafter referred to as the `Rules').

2. The averments made in the petition are that Mount Everest Mineral Water Limited, transferor/Petitioner Company was incorporated on 20.12.1991 as private limited company. Its registered office is situated at village Dhaulakaun, Sirmour, H.P. The authorized share capital of the Company is Rs. 35,00,00,000/- divided into 3,50,00,000 equity shares of Rs. 10/- each. The issued subscribed and paid up share capital of the transferor company is Rs. 33,99,59,710/- divided into 3,39,95,971 equity shares of Rs. 10/- each. The objects of the Company as incorporated in the Memorandum of Association filed and summarized in the petition are:-

To carry on business of manufacturer and trade of Mineral Water, import and export of Mineral and aerated water.

3. The annual accounts alongwith auditor report, Director report for the year 2012-2013, balance sheet and profit and loss account as on 31.3.2013 have been placed on record vide Annexure P-3. The statement of assets and liability as on 30.9.2013 has been placed on record vide Annexure P-4. Transferor

company has no secured creditors. Transferor company has 25 unsecured creditors. All unsecured creditors total 25 in number of the transferor company have given their "no objection" to the scheme of amalgamation and also consent to dispensation of the meeting under section 391(1) of the Company Act. The Board of the transferor company has approved the amalgamation between the transferor company/petitioner company with the transferee company, i.e. Tata Global Beverages Limited (hereinafter referred to as the "transferee company"). The copy of scheme of amalgamation is annexed as Annexure P-1. No objections/ letters from Bombay Stock Exchange, Kolkata Stock Exchange and National Stock Exchange of India Limited have been placed on record as Annexure P-12.

4. The Exchange has noted the confirmation given by the Company stating that the scheme does not in any way violate or override or circumscribe the provisions of the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996, the Companies Act, 1956, the rules, regulations and guidelines made under these Acts, and the provisions of the Listing Agreement or the requirements of BSE Limited (BSE). As required under SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 & SEBI Circular No. CIR/CFD/DIL/8/2013 dated May 21, 2013, SEBI vide its letter dated February 21, 2014 has given following comment(s) on the draft scheme of arrangement:

(a) "The company shall comply with the requirements of para 5.16 of SEBI circular regarding obtaining approval of public shareholders through postal ballot/ e-voting and the scheme shall be acted upon only if the same is approved by majority of public shareholders voting on the resolution. The company shall also ensure that the draft scheme submitted to Hon"ble High Courts shall contain a provision to that effect.

(b) The company shall duly comply with various provisions of the Circulars."

5. The transferee company was incorporated on 18.10.1962 under the name and style of Tata Finlay Private Limited. Subsequently, transferee company became a public company on 2.7.2010. The name of transferee company was changed to the present name. The registered office of the transferor company is at 1-Bishop Lefroy Road, Kolkata - 700020. The authorized share capital of the transferor company is Rs. 75,00,00,000/- divided into 75,00,00,000/- equity share of Rs. 1/-. Issued subscribed and paid up share capital is Rs. 61,83,98,570/- divided into 61,83,98,570/- equity share of Rs. 1/-. The object of the transferee company as set out in the Memorandum of Article of Association has been reproduced by the transferee company in para "D" of the petition. The latest annual accounts alongwith annual report and Director Report of the transferee company have been audited for the financial year ended on 31.3.2013. They have been placed on record vide Annexure P-7. Transferee company has maintained proper books of account as required under law. It is a listed company. It is also required to publish its financial results on quarterly basis in accordance with the listing agreements with the stock exchanges. Transferee company has published its financial results accordingly for the half year ended

30th September, 2013 alongwith the statement of assets and liabilities vide Annexure P-8. Debentures are redeemable at a premium of Rs. 2,23,205/- per debenture on 22.10.2016. Transferee company has also published its financial results for the quarter and nine months ended 31.12.2013 in accordance with the Listing Agreement with the Stock Exchanges vide Annexure P-9. The Board of Directors of the transferee company has passed resolution dated 12.11.2013 vide Annexure P-11.

6. Prima facie from the averments made and the documents attached, I find that it is a fit case where the petitioner is granted permission to hold the meeting of its equity shareholders for the purposes of considering the Scheme Annexure P-1. It is, therefore, directed:-

a) The meetings of the equity shareholders of the Company will be held on 14.6.2014 at 12.00 P.M. in the registered office of the Transferor Company at village Dhaulakuan, Sirmaur District, H.P.

b) For the purpose of conducting the meeting, Shri Jagdish Thakur, Advocate is appointed as the Chairman and his remuneration is fixed at Rs. 1,50,000/- (Rs. . one lac fifty thousand only). Shri Surinder Sharma, Advocate will be the alternate Chairman. His remuneration is fixed at Rs. 1,00,000/- (Rs. . one lakh only). Since the number of shareholders is large, S/Shri Vishal Panwar, Pankaj Negi, Prashant Sharma and Kiran Thakur, Advocates, are also appointed to assist in the conduct of this meeting. Their individual remuneration is fixed at Rs. 50,000/- (Rs. fifty thousand only) each.

c) The petitioner shall provide them free transportation from Shimla to the venue of the meeting and back. For this purpose, the petitioner is directed to make adequate arrangements including boarding and lodging. The petitioner shall also provide them all the records required as also secretarial services. In addition, pocket expenses incurred by them shall be reimbursed by the petitioner.

d) Advertisement informing the date, time and place of aforesaid meeting of all the Shareholders of Transferee Company will be published separately by the petitioner in accordance with the Companies (Court) Rules, 1959 in the news papers, namely, "Economic Times" having its circulation throughout India, "The Tribune" English Edition published from Chandigarh and "Amar Ujala" Hindi Edition, published from Chandigarh. The notices be also published in the H.P. Gazette. Notices of this meeting will also be affixed on the notice board of the Transferee Company at its Registered Office as also Corporate Office. The notices/ advertisements shall state in clear and in unequivocal terms the date, time and venue of the meeting and that the copy of the proposed Scheme of Amalgamation and that of the explanatory statement required to be furnished under Section 393 of the Act, can be obtained free of cost or charge from the registered office of the petitioner Company. The Registry of this Court is directed to get the notices published in the e-gazette by completing all the formalities.

e) A notice of 21 clear days will also be sent to each Shareholder of Transferee

Company by post at their respective last known addresses.

f) The Quorum for the meeting of Equity shareholders shall be determined by the Chairman/Alternate Chairman of the meeting in accordance with the Article of Association of the Company. The method of voting shall also be determined by them, including the procedure for voting by proxy as provided in the articles or otherwise.

g) On the conclusion of the meeting, Chairman/Alternate Chairman shall submit their report to the Court along with result of the meeting within seven days of the conclusion of the meeting. The report shall be duly supported by respective affidavits of the Chairman/Alternate chairman.

h) The Scheme shall be open for inspection by the shareholders of any category as also the creditors at the Registered and Corporate Office of the Company on all working days between 10.00 A.M. to 5.00 P.M.

7. The Chairman and Alternate chairman of the meeting have been appointed as desired by the petitioner through his application.

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8. Since all the 25 unsecured creditors have given their 'No Objection' to dispense with the requirement of holding of meeting of unsecured creditors, application is allowed. The convening and conducting of meeting of unsecured creditors of the transferor company is dispensed with. The issuance of individual notice and publication in the news paper is also dispensed with. The application stands disposed of.

9. List the matter on 23.6.2014. In the meantime the affidavits of the Chairman/Alternate Chairman be filed.