(2017) 01 DEL CK 0445

In the Delhi High Court

Case No : 325 of 2016

PINNACLE TEXTILES PRIVATE LIMITED APPELLANT

Vs

nil RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Companies Act, 1956, Section 391, Section 251, Section 394, Section 235 - Power to compromise or make arrangements with creditors and members. - Savin

Citation : (2017) 01 DEL CK 0445

Hon'ble Judges : Siddharth Mridul

Bench : SINGLE BENCH

Advocate : Praveen K. Mittal, Aparna Mudiam, Rajiv Bahl

Judgement

1. This joint Petition has been filed under Sections 391 and 394 of the Companies Act, 1956 (hereinafter referred to as ''the Act'') by Pinnacle Textiles Private Limited (hereinafter referred to as ''Transferor Company No.1''), Maya Clothing Private Limited (hereinafter referred to as ''Transferor Company No.2''), Saga Textiles Private Limited (hereinafter referred to as ''Transferor Company No.3''), Zenith Clothing Company Private Limited (hereinafter referred to as ''Transferor Company No.4''), D & S Hosiery & Wollen Mills Private Limited (hereinafter referred to as ''Transferor Company No.5'') and Indus Garments Private Limited (hereinafter referred to as ''Transferee Company'') seeking sanction of this Court to the proposed scheme of Amalgamation (hereinafter referred to as ''proposed scheme'') of Transferor Company Nos.1 to 5 with the Transferee Company.

2. The Transferor Company Nos. 1 to 5 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 No.1 was incorporated under the Act, on 13.03.2000,

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

5. The Transferor Company No.2 was incorporated under the Act, on 09.08.2005, with the Assistant Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

6. The Transferor Company No.3 was incorporated under the Act, on 18.12.1996, with the Assistant Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

7. The Transferor Company No.4 was incorporated under the Act, on 26.04.2000, with the Assistant Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

8. The Transferor Company No.5 was incorporated under the Act, on 20.05.1999, with the Assistant Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

9. The Transferee Company was incorporated under the Act, on 12.07.2000, with the Assistant Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

10. The authorized share capital of Transferor Company No.1, as on 31.03.2015, is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up capital of the Transferor Company No.1, as on 31.03.2015, is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each fully paid-up.

11. The authorized share capital of Transferor Company No.2, as on 31.03.2015, is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up capital of Transferor Company No.2, as on 31.03.2015, is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each fully paid-up.

12. The authorized share capital of Transferor Company No.3, as on 31.03.2015, is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up capital of Transferor Company No.3, as on 31.03.2015, is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each fully paid-up. CO.PET.325/2016 Page 5 of 12

13. The authorized share capital of Transferor Company No.4, as on 31.03.2015, is 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up capital of Transferor Company No.4, as on 31.03.2015, is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each fully paid-up.

14. The authorized share capital of Transferor Company No.5, as on 31.03.2015, is Rs.80,00,000/- divided into 8,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up capital of Transferor Company No.5, as on 31.03.2015, is Rs.80,00,000/- divided into 8,00,000 equity shares of Rs.10/- each fully paid-up.

15. The authorized share capital of the Transferee Company, as on 31.03.2015, is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up capital of Transferee Company, as on 31.03.2015, is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each fully paid-up.

16. Copies of the Memorandum and Articles of Association of the Petitioner Companies have been filed on record. The audited balance sheets, as on 31.03.2015, of the Petitioner Companies, along with the report of the auditors, have also been filed.

17. 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. It is stated on behalf of the Petitioner Companies that the circumstances that justify and/or necessitate the proposed scheme are, inter alia, as follows: a) The shareholders of all the Petitioner Companies are almost common.

b) The proposed scheme will result in pooling of their financial, commercial and other resources, economies of scale and reduction of overheads.

c) 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.

d) The proposed scheme would be advantageous to combine the activities of Transferor Company Nos.1 to 5 and the Transferee Company into a single Company for the benefit for all the companies, their shareholders, creditors and all concerned.

18. So far as the share exchange ratio is concerned, the proposed scheme provides that upon coming into effect thereof:- "The Transferee Company will issue (1) 4 (Four) equity shares of the Transferee Company of the face value of Rs.10/- each credited as fully paid-up in the capital of the Transferee Company to the shareholders of Transferor Company No.1 whose names are recorded in its Register of Members on a date (Record Date) to be fixed by the Board of Directors of the Transferee Company for every 1000 (One Thousand) equity share of Rs.10/- each held by the said shareholders in the Transferor Company No.1, (2) 12 (Twelve) equity shares of the Transferee Company of the face value of Rs.10/- each credited as fully paid-up in the capital of the Transferee Company to the shareholders of Transferor No. 2 Company whose names are recorded in its Register of Members on a date (Record Date) to be fixed by the Board of Directors of the Transferee Company for every 1000 (One Thousand) equity share of Rs.10/- each held by the said shareholders in the Transferor Company No.2, (3) Nil (Zero) equity shares of the Transferee Company of the face value of Rs.10/- each credited as fully paid-up in the capital of the Transferee Company to the shareholders of Transferor No. 3 Company whose names are recorded in its Register of Members on a date (Record Date) to be fixed by the Board of Directors of the Transferee Company for every 1000 (One Thousand) equity share of Rs.10/- each held by the said shareholders in the Transferor Company

No.3, (4) Nil (Zero) equity shares of the Transferee Company of the face value of Rs.10/- each credited as fully paid-up in the capital of the Transferee Company to the shareholders of Transferor No.4 Company whose names are recorded in its Register of Members on a date (Record Date) to be fixed by the Board of Directors of the Transferee Company for every 1000 (One Thousand) equity share of Rs.10/- each held by the said shareholders in the Transferor Company No.4, (5) 7(Seven) equity shares of the Transferee Company of the face value of Rs.10/- each credited as fully paid-up in the capital of the Transferee Company to the shareholders of Transferor Company No.5 whose names are recorded in its Register of Members on a date (Record Date) to be fixed by the Board of Directors of the Transferee Company for every 1000 (One Thousand) equity share of Rs.10/- each held by the said shareholders in the Transferor Company No.5.

19. Further, it is stated on behalf of the Petitioner Companies that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner Companies.

20. The Board of Directors of the Petitioner Companies in their separate meetings held on 11.01.2016 have unanimously approved the proposed scheme. Copies of the resolutions passed at the meetings of the Board of Directors of the Petitioner Companies have been placed on record.

21. To recapitulate, the Petitioner Companies had earlier filed a joint application, being Company Application (M) No.35 of 2016, seeking directions of this Court to dispense with the requirement of convening meetings of the equity shareholders and unsecured creditors of the Petitioner Companies, there being no secured creditors of the Petitioner Companies. Vide order dated 17.03.2016, this Court allowed the said application and dispensed with the requirement of convening and holding the meetings of the shareholders and unsecured creditors of the Petitioner Companies to consider and, if thought fit, approve, with or without modification the proposed scheme.

22. Pursuant to the same, the Petitioner Companies have filed the present petition seeking sanction of this Court to the proposed scheme. Notice in the present petition was issued by this Court vide order dated 19.04.2016. Furthermore, citations were directed to be published in the Delhi edition of the newspapers, namely, ''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 14.07.2016. Copies of the newspapers clippings containing the publications have been filed alongwith the said affidavit dated 22.09.2016.

23. Pursuant to the notices issued the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed a report dated 26.08.2016, wherein it has been stated that no complaint has been received against the proposed scheme from any

interested person/party and that the affairs of the Transferor Company Nos.1 to 5 do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or to public interest as per second proviso of Section 394(1) of the Act.

24. Further, in response to the notices issued in the present petition the Regional Director, Northern Region, Ministry of Corporate Affairs has filed its affidavit dated 09.12.2016 not raising any objection to the grant of sanction to the proposed scheme.

25. It has been noted that no objections have been received to the proposed scheme from any other party. The Petitioner Companies vide affidavit dated 22.09.2016, filed by their authorized representative, have submitted that neither the Petitioner Companies nor their counsel have received any objection pursuant to publication of citations in the newspapers on 14.07.2016.

26. Considering the approval accorded by the shareholders and creditors of the Petitioner Companies to the proposed scheme; the affidavit filed by the Regional Director, Northern Region and the report filed by the Official Liquidator, not raising any objection to the proposed scheme, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme. The Petitioner Companies will comply with all the statutory requirements in accordance with law. Upon the sanction becoming effective from the appointed date of the proposed scheme i.e. 1st April, 2015, the Transferor Company Nos.1 to 5 shall stand dissolved without undergoing the process of winding up.

27. A certified copy of the order, sanctioning the proposed scheme, be filed with the Registrar of Companies, within 30 days of its receipt.

28. 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 Petitioner Companies.

29. 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.

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

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