(2017) 01 DEL CK 0211

In the Delhi High Court

Case No : 621 of 2016

SAMSUNG DATA SYSTEMS INDIA PRIVATE LIMITED — APPELLANT

Vs

SAMSUNG SDS INDIA PRIVATE LIMITED — RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

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

Citation : (2017) 01 DEL CK 0211

Hon'ble Judges : Siddharth Mridul

Bench : SINGLE BENCH

Advocate : Hemant Sharma, Palash? Agarwal, Saurabh Kalia, Aparna Mudiam

Final Decision : Allowed

Judgement

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as the ''Act'') by the Petitioners, seeking sanction to the proposed Scheme of Arrangement (hereinafter referred to as the ''proposed scheme'') between Samsung Data Systems India Private Limited (hereinafter referred to as the ''Demerged Company'') and Samsung SDS India Private Limited (hereinafter referred to as the ''Resulting Company'').

2. The registered offices of the Petitioners are situated at New Delhi, within the jurisdiction of this court.

3. The Demerged Company was incorporated under the Act, on 31.03.2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The Resulting Company was incorporated under the Companies Act, 2013,

on 25.02.2016 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the Demerged Company 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 Demerged company is Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the Resulting Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Resulting Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the Petitioners have been filed alongwith the joint application, being Company Application (Main) No.65 of 2016, earlier filed by the Petitioners. The audited balance sheet as on 31.03.2015 of the Demerged Company alongwith the report of the auditor has also been filed. The same are on record. It has been submitted on behalf of the Resulting Company that since it has been incorporated only recently, therefore, no accounts have been prepared thereof.

8. A copy of the proposed 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 submitted on behalf of the Petitioners that the proposed scheme, inter alia, provides for the demerger of the IT Business of the Demerged Company and its merger into the Resulting Company. It has been further submitted that the demerger by way of proposed scheme would result in enhancement of operational efficiencies and greater focus and would enable the management of each company to vigorously pursue revenue growth and expansion opportunities of their respective business.

9. So far as the share exchange ratio is concerned, the proposed scheme provides that upon the Scheme coming into effect, the Resulting Company shall issue and allot equity shares to the shareholders of the Demerged Company in the

following ratio:

"01 equity share of Rs.10/- each of the Resulting Company, credited as fully paid up, for every 01 equity share of Rs.10/- each held in the Demerged Company."

10. It has been submitted by the Petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 206 to 229 of the Companies Act, 2013 are pending against the Petitioners, as on the date of filing of the present petition.

11. The Board of Directors of the Demerged Company and the Resulting Company in their separate meetings held on 10.03.2016, have unanimously approved the proposed scheme. Copies of the resolutions passed at the meetings of the Board of Directors of the Demerged Company and the Resulting Company have been placed on record.

12. To recapitulate, the Petitioners had earlier filed Company Application (M) no.65 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. This Court, vide order dated 19.07.2016, allowed the said application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the Demerged company (there being no secured creditor of the Demerged Company); and the equity shareholders of the Resulting Company (there being no secured and unsecured creditor of the Resulting Company).

13. The Petitioners have thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 27.07.2016, notice in the present petition was directed to be issued to the Regional Director, Northern Region. Furthermore, citations were directed to be published in the newspapers, namely, "Business Standard" (English) and "Business Standard" (Hindi). Affidavit of service and publication dated 25.10.2016, showing compliance regarding service on the Regional Director, Northern Region; and publication of citations, has been filed by the Petitioners. Copies of the newspaper clippings, regarding publication

carried out on 05.09.2016 have also been filed alongwith the said affidavit.

14. Pursuant to the notices issued in the present petition, the Regional Director (RD), Northern Region, Ministry of Corporate Affairs has filed his report by way of affidavit dated 02.12.2016, not raising any objection to the proposed scheme.

15. No objection has been received to the proposed scheme from any other party. The Petitioners, vide affidavit dated 03.12.2016, have stated that neither the

Petitioners nor their counsel have received any objection to the proposed scheme, pursuant to the citations published in the newspapers on 05.09.2016.

16. Considering the approval accorded by the equity shareholders and creditors of the Petitioners to the proposed scheme; and the affidavit filed by the Regional Director, Northern Region 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 Petitioners will comply with the statutory requirements in accordance with law. Upon the sanction becoming effective from the appointed date of the proposed scheme, the Demerged Undertaking (as defined in the proposed scheme) of the Demerged Company shall stand merged in the Resulting Company.

17. A certified copy of the order, sanctioning the proposed scheme, be filed with the ROC within 30 days from the date of receipt of the same.

18. 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.

19. 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.

20. The Petitioners shall deposit a sum of Rs.2,00,000/- 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.

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

