

(2012) 07 DEL CK 0495

In the Delhi High Court

Case No : Company Petition No. 137 of 2012

Sony India Private Limited

APPELLANT

Vs

Sony India Software Centre Private Limited

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2012) 191 DLT 266

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Abhisehk Seth and Mr. Rajeev Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (the Act) by Sony India Private Limited (hereinafter referred to as petitioner/transferor company), in respect of a scheme of arrangement (scheme for short) between the said petitioner company and Sony India Software Centre Private Limited (resulting/transferee company). As per the scheme, the "Software Undertaking" of the transferor company is proposed to be demerged in the transferee company. The registered office of the petitioner company is situated in New Delhi, within the jurisdiction of this Court. The registered office of the transferee company is situated in Karnataka High Court of Karnataka at Bangalore has allowed the petition bearing No. 26 of 2012 filed by the transferee company vide order dated 16.04.2012 approving the above Scheme.

2. Details with regard to the date of incorporation of transferee company and transferor company, their authorized, issued, subscribed and paid up capital have been given in the petition.

3. Copies of the Memorandum of Articles of Association of the transferee company and transferor company as well as their latest audited annual accounts

have also been placed on record.

4. Copies of the Resolutions passed by the Board of Directors of the transferee company and transferor company approving the Scheme have also been placed on record.

5. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the transferee company and transferor company.

6. So far as the share exchange ratio is concerned, the scheme provides that upon the scheme finally coming into effect, the transferee company shall issue shares in the following manner:-

1,000 fully paid up equity shares of Rs. 10/- each of the transferee company shall be issued and allotted for every one equity share of Rs. 10/- each held in the transferor company.

7. The transferor company had earlier filed CA (M) 16/2012 seeking directions of this Court for dispensation of the meetings of its shareholders and convening the meeting of its unsecured creditors. The transferor company had no secured creditors. Vide order dated, January 25, 2012 this Court allowed the application and dispensed with the requirement of convening meetings of shareholders and secured creditors and directed the convening of the separate meeting of the unsecured creditors of the transferor company.

8. The meeting of the unsecured creditors of the transferor company was held on March 10, 2012. As per the affidavit of Mr. Gautum Avasthi, Chairperson appointed for the meeting of the unsecured creditors, showing the publication and dispatch of the notices convening the said meeting. It is apparent that the scheme of arrangement was unanimously approved at the meeting of the unsecured creditors.

9. The transferor company thereafter filed the present petition seeking sanction of the scheme. Vide order dated March 27, 2012 notice in the petition was directed to be issued to the Regional Director, Northern Region and a copy of the petition was directed to be served upon the Registrar of Companies. Citations were also directed to be published in Indian Express? (English, Delhi edition) and Dainik Jagaran (Hindi, Delhi edition). Affidavit of service and publication has been filed showing compliance regarding service of the petition on the Regional Director, Northern Region and the Registrar of Companies and also regarding publication of citations in the aforesaid newspapers on April 23, 2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the affidavit of service.

10. In response to the notices issued in the petition, Mr. B.K. Bansal, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit dated 12.06.2012. Relying on clause 11.1 of Part-III of Section-I of the scheme of arrangement he has stated that all the permanent staff/employees of

the transferor company engaged with its "Software Undertaking" shall become the employees of the transferee company without any break or interruption in their service upon sanctioning of the scheme of arrangements by the Court.

11. In para No. 4 of the affidavit dated 12.06.2012, Mr. B.K. Bansal has observed that "the petitioner company has confirmed vide its letter that no charges are proposed to be transferred from the demerged company/ petitioner company to the resulting company i.e. Sony India Software Centre Pvt. Ltd.

12 In response to the aforesaid observation, it is submitted and clarified by the petitioner that currently there are no charges registered against the demerged company/ petitioner company with the ROC/any authority or person and therefore the question of the transfer does not arise at all in favour of the resulting company.

13. In para No. 5 of the affidavit dated 12.06.2012, Mr. B.K. Bansal has observed that "para 8.3 of part II of the scheme provides that" any excess in the value of net assets of software undertaking transferred to the resulting company shall be applicable for distribution to the shareholders of the resulting company. In this regard it has been submitted by the learned Regional Director that excess, if any, in the value of the net assets of the software undertaking should be adjusted to the capital reserve as prescribed in AS-14 (i.e. accounting standards) and not to the general reserve as proposed in the scheme of arrangements."

14. In response to the aforesaid observation it is clarified that AS-14 (i.e. accounting standards issued by the Institute of Chartered Accountants) is applicable only to amalgamations and not to demerger. On a plain reading of the accounting standard under reference, it is clear that the same is applicable only in case of an amalgamation and not in case of demergers. This has also been held lby the Gujarat High Court in the case of 2010 1 CLJ 351 tiled Gallops Realty (P) Ltd. Copy of the order has been placed on record.

15. In view of the above said clarifications, the observations made by the Regional Director no longer survive.

16. No objection has been received to the scheme from any other party. Mr. Sanjay Bhargava, authorized signatory of the petitioner company, has filed an affidavit dated July 3, 2012 confirming that the petitioner company has not received any objection pursuant to citations published in the newspaper.

17. In view of the approval accorded by the shareholders and creditors of the petitioner company, representation/reports filed by the Regional Director, and no objections received to the proposed scheme, there appears to be no impediment to grant of sanction to the scheme. Consequently, sanction is hereby granted to the scheme under sections 391 and 394 of the Companies Act, 1956. The petitioner company will comply with the statutory requirements in accordance with law. Certified copy of the order will be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of

Sections 391 and 394 of the Companies Act and in terms of the scheme, the "software undertaking" of the transferor company and the property, rights and powers concerning the same will be transferred to and vest in the transferee company without any further act or deed. Similarly in terms of the scheme, all the liabilities and duties pertaining to the "software undertaking" of the transferor company be transferred to the transferee company without any act or deed. It is, however, clarified that this order will be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other department which may be specifically required under any law.

18. Learned counsel for the petitioner states that the petitioner company would voluntarily deposit a sum of Rs. 1 lac in the common pool fund of the Official Liquidator within three weeks from today. The statement is accepted. The petition is allowed in the above terms.