(2012) 07 DEL CK 0434

In the Delhi High Court

Case No : Company Petition No. 126 of 2012

Study Overseas India Private Limited — APPELLANT

Vs

Study Overseas Global Private Limited — RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:
Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2012) 07 DEL CK 0434

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Suman Jyoti Khaitan with Ms. Barsha Mishra and Ms. Sanika Mehra, for the Appellant; Rajiv Bahl, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This second motion petition has been filed by the Petitioner Companies under Sections 391 to 394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of Study Overseas India Private Limited (hereinafter referred to as "the Transferor Company") with Study Overseas Global Private Limited (hereinafter referred to as "Transferee Company"). The registered offices of the Transferor and Transferee Companies are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

2. The Transferor Company was incorporated on 29th day of June, 2007 under the provisions of the Companies Act, 1956 and was issued a Certificate of Incorporation by the Registrar of Companies, NCT of Delhi and Haryana.

3. The Transferee Company above named was incorporated on 30th day of July, 2007 under the provisions of the Companies Act, 1956 and was issued a Certificate of Incorporation by the Registrar of Companies, Mumbai.

4. The Authorized Share Capital of the Petitioner/Transferor Company is INR 2,80,00,000/-(Rupees Two Crore Eighty Lakh only), divided into 28,00,000 (Twenty Eight Lakh) Equity shares of INR 10/-(Rupees Ten) each. The Issued,

Subscribed and Paid-Up Share Capital of the Petitioner/Transferor Company is INR 2,74,72,210/-(Rupees Two Crore Seventy Four Lakh Seventy Two Thousand Two Hundred Ten Only) divided into 27,47,221(Twenty Seven Lakh Forty Seven Thousand Two Hundred Twenty One) Equity shares of INR 10/-(Rupees Ten) each fully paid up.

5. The Authorised Share Capital of the Petitioner/Transferee Company is INR 700,00,000/-(Rupees Seven Crore only) divided into 70,00,000 (Seventy Lakh) Equity Shares of INR 10/-(Rupees Ten) each. The Issued, Subscribed and Paid-Up Share Capital of the Petitioner/Transferee Company is INR 6,24,00,840/-(Rupees Six Crore Twenty Four Lakh Eight Hundred Forty only) divided into 62,40,084 (Sixty Two Lakh Forty Thousand Eighty Four) Equity Shares of INR10/-(Rupees Ten) each.

6. Copies of the Memorandum and Articles of Association of the Transferor Company and the Transferee Company have been filed on record. The audited balance sheets, as on 31st March, 2011, of the Transferor Company and the Transferee Company, along with the report of the auditors, have also been filed.

7. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavits. It is submitted that the Petitioner Companies have the object of transferring and vesting all the properties, rights and claims whatsoever of the Petitioner/Transferor Company and its entire undertakings together with all the rights and obligations relating thereto in the Petitioner/Transferee Company on the terms and conditions as stated in the Scheme of Amalgamation. The Scheme will enable these companies engaged in the similar businesses, to provide for education counseling and related services to Indian students aspiring to study in international universities. It is further claimed that the said Scheme will enable the pooling of the resources of the Transferor and the Transferee Companies to their common advantage. The Scheme will result in reduction in overheads and other expenses and better and more productive utilization of various resources. It is further claimed that the proposed Amalgamation will provide a stronger and consolidated financial structure to the businesses of the Petitioner Companies. The Scheme will have beneficial results for the two companies concerned, their shareholders, employees, creditors and all concerned. It is further claimed that in the circumstances, it is considered desirable and expedient to merge the Petitioner/ Transferor Company into the Transferee Company in the manner and on the terms and conditions stated in the said Scheme of Amalgamation.

8. So far as the exchange ratio is concerned, the Scheme provides that the Petitioner/Transferee Company without further application, on such date as may be determined as the Record Date for such purpose by the Board of Directors of the Transferee Company, issue and allot to the Equity Shareholders of the Transferor Company and/or their Nominees in the following ratio:

1.7 Equity shares of the nominal value of INR 10 each at par in the Transferee Company, credited as fully paid up, for every 1 Equity Shares of the nominal value of INR 10 each fully paid up held by them in the transferor Company.

9. It has been submitted by the Petitioner that no investigation proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the Transferor and Transferee Companies.

10. The Board of Directors of the Transferor Company and the Transferee Company in their meetings held on 16.01.2012 respectively has unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the Transferor Company and the Transferee Company have been placed on record.

11. The Petitioner Companies had earlier filed CA (M) No. 30 of 2012 seeking the directions of this Court to dispense with the requirement of convening the meetings of Equity Shareholders and the Unsecured Creditors of the Transferor Company and the Transferee Company. Vide order dated 15.03.2012, this court allowed the application and dispensed with the requirement of convening and holding the meetings of Equity shareholders and the Unsecured Creditors of the Transferor Company and the Transferee Company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

12. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 20.03.2012, it was directed to issue notice to the Regional Director, Northern Region, Ministry of Corporate Affairs and the Official Liquidator. It was further directed that a copy of the present petition to be served on the Registrar of Companies. Notice of hearing of the petition was directed to be published in '' Indian Express'' (English) and ''Veer Arjun'' (Hindi) in accordance with Rule 80 of the Companies (Court) Rules, 1959. An affidavit has been filed by the Petitioner showing compliance regarding publication of notice of hearing of the petition in the aforesaid newspapers on 10.04.2012. Copies of the newspaper clippings containing the publications have been filed along with the affidavit.

13. An affidavit has been filed by the Petitioner Companies on 27.06.2012 stating that pursuant to the filing of the notice of hearing of Petition in the newspapers, the Petitioners have not received any objection from any person with respect to the Scheme of Amalgamation between Study Overseas India Private Limited with Study Overseas Global Private Limited.

14. Pursuant to the notices issued, the Official Liquidator, Mr. S. B. Gautam has filed his report dated 22.05.2012 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation.

15 In response to the notices issued in the petition, Mr. B.K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report on 1st May, 2012. Relying on Clause 10.1 of Part III of the Scheme of Amalgamation, he

has stated that, upon sanction of the Scheme of Amalgamation, all the permanent employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services. Further, the Regional Director has mentioned that para 8.2 of Clause 3 of the Scheme provides for the accounting treatment in detail which is in accordance with Accounting Standard-14 issued by the Institute of Chartered Accountants of India and that the Central Government has no objection to the proposed Scheme of Amalgamation.

16. In view of the consent accorded by the Equity Shareholders and Unsecured creditors of the Transferor Company and the Transferee Company and the Regional Director, Northern Region, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation u/s 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st April, 2010 the Transferor Company shall stand dissolved without undergoing the process of winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with law; or permission/compliance with any other requirement which may be specifically required under any law.

17. The Petitioner Companies shall file the Schedule of Assets of the transferee company within one week from today.

18. The petition is allowed in the above terms.

19. At this stage, the petitioner company states that it shall voluntary deposit a sum of Rs. 1 lac with the common pool fund of the Official Liquidator within three weeks from today to enable the Liquidator to meet the necessary expenses including Government fee. This statement is accepted. Dasti.

