

Cellnext Solutions Limited and ors. Vs.

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Court : Delhi

Decided On : Aug-11-2014

Judge : Sanjeev Sachdeva

Appellant : Cellnext Solutions Limited and ors.

Respondent :

Judgement :

\$~18 *IN THE HIGH COURT OF DELHI AT NEW DELHI + CO.PET. 305/2014 IN THE MATTER OF: CELLNEXT SOLUTIONS LIMITED & ORS . Through: PETITIONERS Mr. Rajeev Kumar, Advocate for the Petitioners. Mr. Atma Sah, and Assistant Registrar of Companies for the Regional Director. Mr. Rajiv Behl Advocate for the Official Liquidator. CORAM: HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

1108.2014 % SANJEEV SACHDEVA, J (ORAL) 1. This second motion joint Petition has been filed under sections 391 to 394 of the Companies Act, 1956 (Act) seeking Amalgamation sanction (Scheme) to of the Scheme Cellnext of Solutions Limited (hereinafter referred to as Transferor Company No.1) and Gingersoft Media Private Limited (hereinafter referred to as Transferor Company No.2), ===== CO.PET. 305 /2014 1 and Packet Shaper Technologies Private Limited (hereinafter referred to as Transferor Company No.3) with ValueFirst (hereinafter Digital referred to

Medial as Private Transferee Limited Company) (collectively referred to as Petitioner Companies) and their respective shareholders and Creditors . A copy of the Scheme has been enclosed with the petition.

2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The details of respective dates of incorporation of the Petitioner Companies, their authorised, issued, subscribed and paid up capital have been set out in the petition.

4. The copies of the Memorandum and Articles of Association as well as the latest Audited Annual Accounts of the Petitioner C ompanies for the year ended 31 st March 2013 have also been placed on record.

5. The copy of the Resolution passed by the Board of Directors of the Petitioner Companies approving the Scheme has also been placed on record along with the
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/2014 2 Petition.

6. Learned counsel for the Petitioner Companies submits that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed CO. APPL. (M). 53/2014 seeking directions of this C ourt for dispensation for convening of meetings of shareholders. This Court vide its Order dated 25 th March, 2014 allowed the Application and dispensed with the requirement shareholders of the of convening Transferor meetings and of Transferee Companies. Both Transferor and Transferee Companies have no Secured and Unsecured Creditors.

8. The Petitioner Companies has thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 9th May, 2014, notice of the Petition was directed to be issued to the Official Liquidator, Registrar of Companies and The Central Government through Regional Director. Citations were also directed to be published in Business Standard (English) and Jansatta (Hindi). Affidavit of

===== CO.PET. 305 /2014 3 has been filed by the Petitioner Companies showing compliance regarding service of the Petition and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

9. In response to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received the Official Liquidator has filed his report dated 18th July, 2014 wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public as per 2nd proviso of Section 394(1) of the Act.

10. In response to the notices issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit/report dated 17 th July, 2014. Relying on Clause 9.1 of Part II of the Scheme, he has stated that all the employees of the Transferor Companies shall become the employees ===== CO.PET. 305 /2014 4 of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court.

11. Further, the Regional Director, in Para No.4 of the said Affidavit has observed that M/s Cellnext Solutions Limited, M/s Gingersoft Media Private Limited (Transferor Company No.1 &

2) and M/s ValueFirst Digital Media Private Limited (Transferee Company) are registered as Telemarketer for Telemarketing activity with the Telecom Regulatory Authority of India (TRAI). It is submitted that the Transferee Company may be directed to obtain the necessary approvals from the Ministry of Telecommunications for the Scheme of Amalgamation pursuant to the Ministry of Telecommunications letter No.820-1/2003-LR dated 09.06.2003, in which the Ministry of Telecommunications has clarified that the licensee may transfer the

license with prior written approval of the licensor, even in the cases of Scheme of Amalgamation under section 391/394 of the Companies Act, 1956 .

12. In reply to the aforesaid observation of the Learned Regional Director, the Petitioner Companies have filed a rejoinder affidavit dated 19 th July, 2014 by Mr. ===== CO.PET. 305 /2014 5 Vishwadeep Bajaj, Authorized Signatory of Petitioner Companies, stating that Transferor Company No.1, Transferor Company No.3 and Transferee Company are registered as Telemarketer with Telecom Regulatory Authority of India and Petitioner No.2 is not a Telemarketer registered with TRAI. The Telemarketer registration of Transferor Company No.1 and 3 is not proposed to be transferred to Transferee Company pursuant to the amalgamation. Further, post-facto intimation pursuant to approval of the Scheme by this Honble High Court shall also be provided to TRAI and since none of the Petitioner Companies are holding any license issued by TRAI, therefore the prior approval from the Ministry of Telecommunications pursuant to its letter No.820-1/2003-LR would not be required.

13. Further, the Regional Director, in Para No.5 has also observed that the Petitioner Transferor Company No.1 and 2 and Transferee Company may be asked to give an undertaking for all compliances from Reserve Bank of India as required under FEMA for above transaction involving Foreign Banks/entities, if deemed fit and proper by the Hon'ble Court.

14. In reply to the above said observation, Petitioner ===== CO.PET. 305 /2014 6 Companies have filed 19.07.2014 stating that a rejoinder affidavit pursuant to the dated proposed Scheme, no shares will be issued to any foreigner, foreign entity or any person, resident outside India, so there is no requirement of any compliances from the Reserve Bank of India under FEMA. However, it is clarified that the Petitioners shall comply with all the statutory requirements of FEMA and any permission/sanction, if required under FEMA shall be duly obtained.

15. Further, the Regional Director, has observed that vide letter dated 8th July, 2014 the Income Tax Department had sought further documents/information from

the Petitioner Companies and the Petitioner Companies may be asked to give an undertaking that they will furnish the desired information/ documents sought by the Income Tax Department in regard to pending investigation and comments from the Income Tax Department, if deemed fit and proper by this Honble High Court.

16. The learned Counsel for the Petitioner Companies states that requisite information was furnished by the Petitioner Companies to the Income Tax authorities on =====
CO.PET. 305 /2014 7 16.7.2014. Thereafter by order dated 22.7.2014 on the request of the Assistant Registrar of Companies, the matter was adjourned by 15 days to await the response, if any, of the Income Tax Department. Assistant Registrar of Companies submits that no further information has been received from the Income Tax Department objecting to the scheme.

17. The learned counsel for the P etitioner Companies on behalf of the Petitioner Companies undertakes that the Transferee Company shall continue to be liable for any income tax liability of any of the Transferor C ompany with respect to the sanction of the scheme.

18. Further, it has been duly submitted that there are no tax dues of Transferor Companies and in case any tax dues arise is future the Transferee Company shall be liable to discharge the same. Further, it has been specifically provided in the Scheme that all tax liabilities, legal proceedings (pending or arising), all debts, liabilities (including contingent liabilities), duties and obligations of every kind, nature and description of the Transferor Companies shall be transferred to and deemed to be that of the Transferee Company and shall continue and be payable, enforced by or against the Transferee
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/2014 8 Company.

19. Another concern raised by the Regional Director is that Transferee Company shall not claim any carr y forward losses of any of the Transferor C ompanies.

20. Learned counsel for the Petitioner Companies submits that Petitioner Companies also undertakes that the Transferee Company shall not claim any

benefit of carry forward losses of any of the Transferor Companies.

21. In view of aforesaid clarification and undertaking given by the petitioners, the concern of the Regional Director has been duly addressed.

22. No objection has been received to the Scheme from any other party. Mr. Vishwadeep Bajaj, Authorized Signatory of the Petitioner Companies, has filed an Affidavit dated 19 th July 2014, confirming that neither the Petitioner Companies nor its Counsel has received any objection pursuant to citations published in the newspapers.

23. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies;
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/2014 9 representation/reports filed by the Regional Director, Northern Region to the proposed Scheme of Amalgamation, 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 under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

24. Certified copy of the formal Order 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, 1956, all the property, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all the liabilities and duties of the Transferor Companies are transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Companies shall stand dissolved without winding up.

25. It is, however, clarified that this Order will not be construed as an Order granting exemption from
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/2014 10 payment of stamp duty or any other charges, if payable, in accordance with any law; or permission/compliance with any other requirement which may be

specifically required under any law.

26. The Learned Counsel for the Petitioner submits that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The Statement is accepted.

27. The Petition is allowed in the above terms. Order Dasti. SANJEEV SACHDEVA, J AUGUST 11 2014

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