

In the matter of the Companies Act, 1956 and the Companies Act, 2013 (to the extent applicable): and Petition under Section 391 to 394 of the Companies Act, 1956 and Others

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Court : Delhi

Decided On : Dec-10-2015

Judge : Sudershan Kumar Misra

Appeal No. : Company Petition No. 276 of 2015

Judgement :

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Sharp Capital Private Limited (hereinafter referred to as the transferor company) with Sharp Credits Limited (hereinafter referred to as the transferee company).
2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.
3. The transferor company was incorporated under the Companies Act, 1956 on 7th March, 1995 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 16th October, 1986 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.9,02,000/- divided into 90,200 equity shares of Rs.10/- each.

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

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. 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 affidavit. It is claimed that the amalgamation will consolidate the shareholding of both the transferor and transferee companies and improve the administrative control. It is further claimed that the proposed Scheme will result in formation of a large company enabling further growth and development of the businesses of the said companies and will also increase the efficiency by pooling of resources and their optimum utilization, thereby availing synergies from combined resources.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

01 equity share of Rs.10/- each in the transferee company, credited as fully paid up, for every 34 equity shares of Rs.10/- each held by them in the transferor company. ?

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 7th November, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 42/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 29th April, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor company and equity shareholders of the transferee company, there being no secured creditor of the transferor company and no secured or unsecured creditors of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 18th May, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Statesman' (English) and Jansatta(Hindi) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 27th June, 2015 and 26th June, 2015 respectively. Copies of the newspaper clippings containing the

publications have been filed along with the affidavit of service.

14. 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 13th August, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 16th September, 2015. Relying on Clause 7 of Part-IV of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He further submitted that in Clause 9 of Part-IV of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

16. Although no objection has been raised by the Regional Director to the proposed Scheme of Amalgamation, but in para 9 of his report he has submitted that from the Memorandum of Association of the transferee company, it has been observed that its main objects are to provide industrial finance by way of advance, or lend money, to or any company etc. but there is no mention whether it is registered with RBI as NBFC to carry on such business. He, therefore, prays that the company may be asked as to whether it is registered with RBI as NBFC, if so, whether it has obtained prior written permission from the RBI with regard to the proposed Scheme of Amalgamation. Further, in para 13 of his report, the Regional Director has submitted that the accounting treatment clause is not mentioned in the Scheme. He, therefore, prays that the petitioner company may be asked to comply with accounting treatment as prescribed under Accounting Standard-14.

17. In response to the aforesaid observations, the petitioner companies in the affidavit dated 14th October, 2015 of Mr. Subash Garg, Director of the transferee company have submitted that the petitioner companies are not carrying on any business as a Non Banking Finance Company and therefore it is not registered with the Reserve Bank of India. The petitioner companies have also undertaken that the transferee company shall comply with/adopt accounting treatment as prescribed under Accounting Standard-14 issued by the Institute of Chartered Accountants of India. The undertaking given by the petitioners is accepted and they shall remain bound by the same. In view of the aforesaid the observations raised by the Regional Director stand satisfied.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies in the affidavit dated 14th October, 2015 of Mr. Subash Garg, Director of the transferee company have submitted that they have not received any objection pursuant to the citations published in the newspapers on 26th and 27th June, 2015.

19. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection 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. Certified copy of this order be filed with the Registrar of Companies within 30 days. 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, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

20. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- should be paid by the petitioners keeping in view the fact that the

matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner companies states that the same is acceptable to him. As already directed vide order dated 19.11.2015, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

21. The petition is allowed in the above terms.

Dasti.

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