In Re: Zenta P. Ltd.

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Court : Mumbai

Decided On : Apr-28-2006

Reported in : [2009]149CompCas413(Bom)

Judge : S.C. Dharmadhikari, J.

Acts : Companies Act, 1956 - Sections 2(7), 3, 390, 391, 391(1), 391(4), 393, 394, 394(1), and 394(4); Mauritius Companies Act, 2001; Reserve Bank of India Regulations; Foreign Exchange Management Act, 1992

Appeal No. : Company Petition No. 229 of 2006

Appellant : In Re: Zenta P. Ltd.

Advocate for Def. : C.J. Joy,; R.C. Master and; N.D. Sharma, Advs., i/b., T.C. Kaushik, Adv. for Regional Director

Advocate for Pet/Ap. : Virag Tulzapurkar and; Birendra Saraf Advs., i/b., Amarchand Mangaldas and; S.A. Shroff, Advs.

Judgement :

S.C. Dharmadhikari, J.

1. The petitioner before me is a transferee company.

2. The scheme of amalgamation is between petitioner and one Zenta International, ICP Ltd., Alpha Ventura Ltd. and Zenta P. Ltd.

3. The petitioner has set out that it is the transferee company. The amalgamating companies are the abovementioned transferor companies. The petitioner is an Indian company registered and incorporated under the Companies Act, 1956, having its registered office in India. The objects of petitioner are to carry on business in India and abroad and the main objects are set out in paragraph 4 of this petition. The share capital structure is mentioned in paragraph 5 with a copy of the latest balance-sheet annexed to the petition.

4. It is not in dispute that the first amalgamating company, the first transferor company and second transferor company are carrying on business and registered as companies outside India and more particularly under the laws of Mauritius. Their capital structure is also referred to. It is proposed to amalgamate these companies into the petitioner by transfer and vesting of the undertaking and entire business of each amalgamating company as a going concern. It is pointed out in paragraph 18 of the petition that the first amalgamating company is the wholly owned subsidiary of the petitioner whereas the second and third amalgamating companies hold nearly 50 per cent, of the issued and paid-up share capital of the petitioner. The scheme claims at eliminating redundant companies. The salient features are also set out and it is the transferee company which is seeking sanction. In paragraph 25 of this petition, this is what is stated:

25. In terms of paragraph 4(2)(a) of Part II of the Fourteenth Schedule to the Mauritius Act, the amalgamating companies have to comply with the laws of India regarding the amalgamation of the amalgamating companies with the petitioner-company. Thus, the petitioner-company entering into an agreement and giving the irrevocable appointment to the Registrar of Companies of Mauritius as its agent to accept service of process in proceedings and the passing of the order by the Hon'ble Bombay High Court sanctioning the scheme, shall be sufficient for the Registrar in Mauritius to take cognisance of the merger and thereupon the Registrar of Companies of Mauritius shall strike off in his register, the amalgamating companies without the need for winding up. The scheme shall take

effect in Mauritius on such date as is stated in the scheme and upon fulfilling the aforesaid requirements under the Mauritius Companies Act, 2001.

5. The Regional Director has filed an affidavit and Mr. Joy appearing for him canvasses before me three submissions. The first contention is that the three transferor companies are registered outside India and no Indian court has jurisdiction over them; sections in the Indian Companies Act are silent about involvement of a foreign company; the second and third transferor companies have no authority to merge and as far as provisions in the Mauritius laws, it is not known whether the same envisages amalgamation and vesting of companies properties and assets, more so, with companies outside Mauritius.

6. He places reliance upon Section 390 of the Companies Act and the definition of the term ''company' appearing therein.

7. Mr. Tulzapurkar, learned senior counsel appearing for petitioner has invited my attention to Section 2(7) of the Companies Act which defines 'body corporate' or 'corporation' and reads thus:

2(7). 'body corporate' or 'corporation' includes a company incorporated outside India but does not include:

(a) a corporation sole;

(b) a co-operative society registered under law relating to co-operative societies; and

(c) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;

8. In his submission, this provision together with Sub-section (4) of Section 394 as also the earlier portion of Section 394 is a complete answer to the first contention of Mr. Joy inasmuch as there is no embargo. The moment transferee company is an Indian company, it is not necessary that the transferor company must be an Indian company because inclusive definition of the term 'transferor' company

appearing in Section 394(4)(b) would mean that the transferor company need not be such, over which this Court should have jurisdiction.

9. As far as compliance with relevant provisions of the Reserve Bank of India Regulations and the Foreign Exchange Management Act, 1992, etc. Mr. Tulzapurkar makes a statement that the same is duly made. As far as the contention that the second and third transferor companies have no provision to amalgamate, he invites my attention to the scheme and more particularly parts V and VI thereof. In his submission, the scheme is conditional upon the first amalgamating company, the second and third amalgamating companies obtaining necessary permissions and sanctions from the authority/court under the laws prevailing in Mauritius. Therefore, according to him, it is not as if this Court sanctions the scheme, it takes effect immediately. It must necessarily take effect upon compliance of the conditions in parts V and VI.

10. In my view, there is considerable substance in these contentions. The term 'body corporate' and the term 'company' appearing in Section 390(a) of the Companies Act present no situation of conflict. It is not as if a company which can be wound up under the Companies Act alone that is contemplated in the chapter pertaining to amalgamation and reconstruction. In any event, it is in so far as Sections 391 and 393. Both provisions are invoked in the present case. The term 'body corporate' appearing in Section 2(7) includes a company incorporated outside India. As far as the term 'company' it means a company as defined in Section 3. As far as that is concerned, even that definition does not mean that the scheme of amalgamation presented by the transferee company which is registered in India cannot be entertained or sanctioned merely because the transferor companies are not situate within the jurisdiction of this Court or not registered and incorporated under the Indian Companies Act. If the intention of Parliament is to permit and facilitate sanction of a compromise or arrangement proposed with a company, expressly referred in Section 394(1), then, one cannot ignore Sub-section (4) thereof. Thus, Section 391(1) and (4) read together with other sub-sections would mean that this Court has jurisdiction to entertain petition seeking sanction to a scheme of amalgamation provided the transferee company is a company within the meaning of the Companies Act. It is not necessary that the

transferor company should be so, provided of course, it must answer the definition of the term 'body corporate'.

11. In these circumstances, the first objection does not survive and is overruled.

12. The scheme postulates compliance of several conditions and conditions include applications to be made under the laws prevalent in Mauritius to appropriate authorities/court, seeking their sanction and permission. Therefore, this petition can be granted and the scheme could be sanctioned as presented by the transferee company to this Court subject to compliance with parts V and VI of the scheme annexed to this petition. In other words, the scheme would come into effect and operative upon compliance with these conditions alone.

13. In the light of the undertaking and statement that all compliance with the Indian laws, including the Reserve Bank of India Regulations would be made, the third objection also does not survive. It is not the case of the Regional Director that by seeking this court's sanction to the present scheme, interest of shareholders and creditors of petitioner-company is being prejudicially affected. In these circumstances, petition deserves to be granted and it is accordingly made absolute in terms of prayer Clauses (a) to (i).

14. Costs of the Regional Director quantified at Rs. 2,500.