

Novell Software Development (India) Private Ltd. Vs.

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Court : Karnataka

Decided On : Mar-14-2012

Judge : A.S. Bopanna, J.

Acts : Companies Act - Section 391

Appeal No. : COMPANY PETITION NO. 129 OF 2011

Appellant : Novell Software Development (India) Private Ltd.

Advocate for Pet/Ap. : Ms. King And Partridge; Sri. T. Suryanarayana. Advs

Judgement :

1. Petitioner is the Transferee Company, which was incorporated on 10.05.1994. The Transferor Company was incorporated in the name of 'Onward Novell Software (India) Private Limited' on 29.09.1992 and thereafter the name was changed as 'Novell India Private Limited' on 11.10.2006. Tire Board of Directors of the Transferor and Transferee Company have resolved to adopt die scheme of arrangement as at Annexure-E to the petition in their respective Board meetings which were held on 30.03.2011 and 31.03.2011 respectively. Thereafter, the Transferee Company had approached this Court in CA No.562/2011 filed under Section 391 of the Companies Act praying that the meeting of two equity shareholders and 22 unsecured creditors be dispensed with. This Court by order dated 14.07.201 1 allowed the application. Pursuant thereto, the instant petition has been filed by the Transferee Company. Notice of the petition was ordered to

the Registrar of Companies, which is represented by a counsel and the affidavit on behalf of the Registrar of Companies has been filed in this Court.

2. Heard the learned counsel and perused the petition papers.

3. As per the scheme of arrangement as at Annexure-E to the petition, the Telecom support division and the Sales Division of the Transferor Company is arranged for demerger into the petitioner-Company. The scheme has taken into consideration the relevant aspects with regard to the contracts, deeds, bonds and other instruments insofar as the demerged undertakings being binding on the Transferee Company and also that the workmen and employees of the demerged undertakings would continue to remain on the roles of the Transferee Company.

4. The Registrar of Companies in the affidavit filed before this Court, after having perused the scheme has not found anything contrary to the provisions of law nor has it been said that the scheme is contrary to public interest. However, two observations have been made by the Registrar of Companies in the affidavit which read as hereunder:

"(A) Since 25,00,000 equity shares (i.e. 50% of paid up share capital) in Transferor Company are held by Novell Inc. a foreign body corporate, the transferee company is required to comply with applicable provisions of FEMA and FEM Regulations while issuing 8,00,000 equity share to Novell Inc. in terms of scheme in the ratio of 8:23.

(B) As the 'Transferor Company' or 'Demerged Company' has its registered office in the State of Maharashtra, the scheme is subject to approval of Hon'ble High Court at Bombay also."

5. Insofar as that aspect of the matter, the petitioner has filed the affidavit indicating that insofar as the first observation of the Registrar of Companies, the requirement under the FEMA and FEM Regulations would be adhered to when the need arises. Insofar as the approval of the scheme of the Transferor Company, it is pointed out that a Company Petition has been filed before the High Court of Judicature at Bombay. The petitioner therefore has undertaken that the approval

to be granted by this Court would no doubt be subject to compliance of the requirements and also the approval to be granted by the High Court of Judicature at Bombay, in solar as the scheme placed before the said Court.

6. In the light of the above, having perused the scheme and also having taken note of the fact that the Board of Directors of the Transferor Company as well as the Transferee Company having approved the scheme and further, since neither the equity shareholders nor any of the unsecured creditors have objected to the scheme and in that context, since the Registrar of Companies having perused the scheme having not found anything contrary to law or public interest and also taking note of the fact that the scheme has not been opposed by any person by responding to the advertisement, which was made in the paper, I am of the opinion that the prayer made in the instant petition requires to be granted.

7. In the result, the following:

ORDER

(i) The petition is allowed.

(ii) The scheme as at Annexure-E for demerger of the said units of the Transferor Company with the Transferee Company is approved which will remain subject to the petition of the Transferor Company being allowed by the Jurisdictional Court.

(iii) The approval is also subject to compliance of FEMA and FEM Regulations in the circumstances stated above.

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