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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 266/2009

IN THE MATTER OF

M/S.DIGIFLEX INDIA LTD. Petitioner

Through

Mr. Arun Kathpalia with Mr. Vivek Malik, Advocates
Mr. Sonal Kumar Singh, Advocate for UPFC with Mr. Lalit Srivastava, Deputy Sr. Manager (Law).
Mr. Rajiv Bahl, Administrator
Ms. Richa Kukreja, Deputy Registrar of Companies for RD(NR).
Mr. S.P. Singh, Inspector for Official Liquidator.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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27.05.2011

1. The present petition has been filed under Sections 391 and 394 of the Companies Act, 1956 (in short 'Act') by the petitioners/Propounders namely, Shri Arun Khanna and Smt. Suman Khanna (the promoters and the management) seeking approval/sanction of the Scheme of Revival (in short 'Scheme') of the Petitioner Company, i.e., M/S. DIGIFLEX INDIA LIMITED.

2. The petitioner-company was incorporated on 25th August, 1988 with the objective of, *inter alia*, establishing a state of the art plant to manufacture Latex Surgical and Examination Gloves with a capacity of 60 million gloves per annum. The petitioners namely, Shri Arun Khanna and Smt. Suman Khanna were the promoter and first Directors of the petitioner-company.

3. The registered office of the petitioner-company is situated at New Delhi, within the jurisdiction of this Court. In the year, 1993, the petitioner-company came out with its maiden public issue and expanded its capacity to produce a total of 240 million gloves per annum.

4. The present authorized share capital of the petitioner-company is Rs.20,00,00,000/- (Rupees Twenty Crores) divided into 02(Two) crores equity shares of Rs.10/- each. The present issued, subscribed and paid up capital of the petitioner-company is Rs.6,11,00,000/- (Rupees Six Crores Eleven Lakhs) divided into 61,10,000 equity shares of Rs.10/- each fully paid up.

5. The petitioner-company suffered severe losses, pursuant to which a reference was made to BIFR under Section of SICA. In the

said proceedings before BIFR, on a consideration of the matter, an order recommending winding up of the petitioner-company was passed which was forward to this Court on 30th September, 1998.

6. In the year, 1998, M/s. Singapore Tong Teik (Pte) Ltd., a creditor of M/s. Digiflex India Ltd. had filed C.P. No. 381 of 1998 under Section 433(e) of the Act on 22nd July, 1998. The petition was admitted on 30th April, 1999 and citations were ordered to be published. Apart from the said petition another C.P. No. 8/1999 was also filed by another creditor namely, M/s. Sunny Exports under Sections 433 and 434 of the Act on the ground of its inability to pay its admitted debts.

7. On 12th December, 2002, after hearing the counsel for the petitioner-company in C.P. No.381 of 1998, the Official Liquidator attached to this Court was appointed as the Provisional Liquidator to take over all the assets of the petitioner-company herein, including the books of accounts and other records and to prepare an inventory in respect thereof. During the pendency of the liquidation proceedings the plant and machinery of the petitioner-company was auctioned on 15th July, 2004.

8. During the pendency of the liquidation proceedings, the promoters of the petitioner-company preferred the present Scheme for Revival, being C.A.(M) No. 43 of 2008 in C.P. No. 381 of 1998. The salient features of the Scheme have been incorporated and detailed in the present petition and the accompanying affidavit of the petitioner.

9. The promoters of the petitioner-company have found an investor namely, M/s. AKM Systems Pvt. Ltd., an investment company owned by a relative, which is willing to invest Rs.12 crores into the petitioner-company through issue of equity and loan. The promoters of petitioner-company have also approached all the secured creditors of the petitioner-company and have entered into a One Time Settlement (OTS) with all the secured creditors. With regard to the unsecured creditors, it is submitted that no claim was received by the Official Liquidator from any of the unsecured creditors despite advertisement in newspapers published in July, 2004 inviting claims. Therefore, the claims of the unsecured creditor were barred by time. However, the promoters of petitioner-company have under the Scheme made a provision of 20% payment towards the amount claimed by the unsecured creditors. They have further undertaken to

bring in additional funds as and when the funds are required towards any unforeseen liabilities.

10. In terms of the Scheme, it is proposed to reduce the capital of the petitioner-company by 50%, i.e., to Rs.3.05 crores by making the equity share of Rs.10/- each at a face value of Rs.5/- each paid up.

11. Against the investment of Rs.12 crores, M/s. AKM Systems Pvt. Ltd. shall be issued 20,00,000 equity shares of Rs.5/- each to the investor. Further, 30,00,000 convertible debentures of Rs.10/- each would be issued convertible after one year in 30,00,000 equity shares of Rs.5/- each, a premium of Rs.5/= each. The balance Rs.8 crores will be received by the petitioner-company as a loan against the security of the petitioner-company's property at Village Thirumalayampalayam, Kerala and against the personal guarantees of the promoters.

12. In CA(M) No. 43 of 2008, this Court after considering the aforesaid facts, vide its order dated 20th February, 2009 was pleased to grant stay of the winding up order. This Court vide its order also directed the Official Liquidator to draw up the inventory of all the immovable and movable assets of the Company and the possession of

the properties was handed over to the promoters. Mr. S.K. Luthra, was appointed as the administrator to supervise the affairs of the Company at a remuneration of Rs.50,000/- per month and was directed to file monthly reports about the functioning of the Company. It is necessary to point out that due to the death of Mr. S.K. Luthra, Mr. Rajiv Bahl was appointed as the administrator.

13. This Court vide its order dated 20th February, 2009 was pleased to dispense with the meeting of the secured creditors in view of the fact that all the secured creditors had entered into an OTS with the petitioner-company. Significantly, the petitioner-company has made all payments with regard to the OTS. However, directions were issued to call for the meetings of the unsecured creditors and equity shareholders of the petitioner-company.

14. In terms of order dated 20th February, 2009 passed by this Court, the notices of the said meetings were sent individually to all the unsecured creditors and equity shareholders of the petitioner-company by UPC together with a copy of the Scheme. A notice of the meetings was also published in newspapers 'Statesman' (English Daily) and 'Jansatta' (Regional Language Daily) in 20th April, 2009 edition. An

affidavit of the Chairpersons placing the UPC receipts and a copy of the newspaper publications were also filed along with an affidavit on 11th May, 2009.

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15. In accordance with the order dated 20th February, 2009, meeting of unsecured creditors were held under the Chairmanship of Ms. Anju Khurana, Deputy Registrar, Delhi High Court on 16th May, 2009, wherein all the unsecured creditors of the petitioner-company who were present and voting, voted in favour of the Scheme, which was unanimously approved by the unsecured creditors.

16. The meeting of equity shareholders was held under the Chairmanship of Mr. Lorren Bamniyal, Deputy Registrar, Delhi High Court on 16th May, 2009, wherein all the equity shareholders of the Applicant Company who were present and voting, voted in favour of the Scheme, which was unanimously approved by the equity shareholders. The respective Chairpersons filed their reports which are part of the Court record.

17. Upon the present second motion petition being filed, this Court had issued notices to the Regional Director, Northern Regional and the Official Liquidator attached to this Court. Citations were also

directed to be published in the 'The Statesman' (English) and 'Jansatta' (Hindi) in terms of the Company (Court) Rules, 1959.

18. Affidavit has been filed on behalf of the petitioner-company for the publication of citations in the above said newspapers on 24th August, 2009. The copies of the newspaper clippings containing the publications have also been filed along with the affidavit. The affidavit also states that in pursuance to the publication carried out in the newspapers, neither the petitioner-company nor the counsel has received any objection from any person to the Scheme for which sanction has been sought from this Court.

19. The Regional Director in its report filed with this Court has confirmed that no complaints have been received against the proposed Scheme from any person/party interest in the Scheme in any manner.

20. The Official Liquidator in its report filed with this Court has also confirmed that no complaints have been received against the proposed Scheme from any person/party interested in the Scheme in any manner. However, the Official Liquidator raised some objections to the approval of the Scheme namely, that no project report has been filed by the Promoters. No MOU with the investor M/s. AKM System

has been placed on record, no funds were infused by the promoters in terms of the Scheme, no list of shareholders has been provided, since the Scheme envisions reduction of share capital, the petitioner-company must comply with Sections 100-103 of the Act and objection pertaining to difference in amounts in respect of the unsecured creditors in the balance sheet, statement of affairs and the Scheme.

21. In response to the objections raised by the Official Liquidator, the petitioner-company filed an affidavit on 4th June, 2009 clarifying all the objections raised by the Official Liquidator. In respect of the first two objections regarding non-filing of the project report and MOU with the investors, the petitioner-company has placed on record the project report as well as the MOU entered with the investor M/s. AKM Systems Pvt. Ltd. along with its affidavit. Insofar as the objection regarding no funds being infused by the promoters, it is clarified that the investor M/s. AKM Systems Pvt. Ltd. which has invested 12 Crores in the present Scheme, is an investment company owned by relatives of the promoters. Further, amounts of Rs.69,10,181.10/- outstanding towards promoters and/or promoter related companies have been waived by the promoters. In addition,

Rs.32,820/- and Rs.9,125/- towards Directors remuneration and conveyance was also waived by the promoters. As far as list of shareholders is concerned, the same was available and was provided to the Official Liquidator and also was the basis on which meeting of shareholders was held. This fact is further substantiated by the report filed by the Chairperson of the meeting of equity shareholders, Mr. Lorren Bamniyal, Deputy Registrar, Delhi High Court.

22. With regard to objection pertaining to reduction of share capital, it is stated that the provisions of Section 391 of the Act is a complete code, and since the present Scheme includes reduction of share capital, there is no requirement of complying with Sections 100-103 of the Act. The last objection pertaining to the alleged difference in amount against unsecured creditor is not correct as there is no variation in amounts mentioned in the Scheme and balance sheet. Further, since the Statement of Affairs were drawn up on 12th December, 2002 while the balance sheet was dated 31st March, 2002, variation in the amount is negligible.

23. The Official Liquidator on examining the clarifications has stated that their objections stand clarified and that they have no

objection to the Scheme being sanctioned. Even today, Ms. Richa Kukreja, Deputy Registrar of Companies appearing for Regional Director and Mr. S.P. Singh, Inspector appearing for Official Liquidator states that they have no objection to the present Scheme being sanctioned.

24. However, an objection to the Scheme was raised by UPFC, a secured creditor. It was contended by them that apart from the OTS amount of Rs.135 lakhs, which they had received, as per their OTS letter, they were entitled to a pro rata amount from the sale of some plant and machinery. According to them, their pro rata share was 26.78% of Rs.70 lakhs, which works out to Rs.18,75,000/-.

25. The learned counsel for UPFC on instructions of Mr. Lalit Shrivastava, Deputy Senior Manager (Law), UPFC who is personally present in Court stated that if they were paid this amount of Rs.18,75,000/-, they had no objection to the Scheme being allowed. While the Company and the promoters/propounders disputed the contentions of UPFC, as also their right to receive any further money, however, to put a quietus to the matter and in the interests of the Scheme and without prejudice to their contentions they agreed to pay

to UPFC the said amount of Rs.18,75,000/-, which amount was duly handed over to Mr. Lalit Shrivastava by way of Demand Draft No. 203150 dated 26th May, 2011 for Rs. 18,00,000/- drawn on ICICI Bank Ltd., NBCC Place Branch and Cheque No. 10008942 dated 26th May, 2011 for Rs. 75,000/- drawn on The Federal Bank Ltd., Connaught Place Branch, who accepted them in full satisfaction and discharge of UPFC's claims and objections with regard to the Scheme.

26. Upon perusal of the Scheme, this Court is of the opinion that the Scheme appears to be fair and reasonable. There are also no objections pending to the Scheme.

27. In view of the approval accorded by the Shareholders and Creditors of the petitioner-company, representation/reports filed by the Regional Director, Northern Region and the Official Liquidator attached with this Court to the proposed Scheme, there appears to be no impediment to the grant of sanction of the Scheme under Section 391 and 394 of the Act. Consequently, sanction is hereby granted to the Scheme of Revival under Section 391 and 394 of the Act. The petitioner-company shall comply with the statutory requirements in

accordance with the law. Certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. It is, however, clarified that this order will not be construed as an order granting exemption from payment of taxes and other charges, if payable in accordance with any law, or permission/compliance with any other requirement which may be specifically required under any law.

28. Mr. Vivek Malik, learned counsel for petitioner voluntarily states that Petitioner Company would deposit a sum of Rs. 25,000/- in the Official Liquidators' Common Pool Fund within three weeks from today. The said statement is accepted.

29. The petition is disposed of in the above terms.

Order dasti.


MANMOHAN, J

MAY 27, 2011

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*Fresh CR No 1631/2011 by
Petitioner to direct OL to provide
Audited Accounts of the Appellant Company
and balance funds from sale of Machinery*

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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 266/2009

IN THE MATTER OF DIGIFLEX INDIA LTD. Petitioner

Through: Mr. Angad Mehta, Advocate for
Mr. Arun Kathpalia, Advocate for
applicant company.

Mr. Kanwal Chaudhary, Advocate for
Official Liquidator.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

% ORDER
13.12.2011

Co. Appl. 1631/2011 in Co.Pet. 266/2009

Present application has been filed with the following prayers:-

"A. pass appropriate orders directing the Official Liquidator to provide the Applicant Company with the accounts/audited accounts of the Applicant Company prepared and/or filed periodically with this Hon'ble Court, along with the account of the machines sold and expenses incurred;

B. pass appropriate orders directing the Official Liquidator to transfer to the Applicant Company the balance funds from the sale proceeds of the plant and machinery in the account of the Applicant Company.

C. pass any other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

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Mr. Kanwal Chaudhary, learned counsel for Official Liquidator has drawn the attention of this Court to the reply filed by the Official Liquidator wherein the annual statement of the applicant company has been enclosed.

Mr. Chaudhary further states that as of today a balance of Rs.60,50,459.01/- is available in the account of the applicant company. He, however, clarifies that the aforesaid amount can be released to the applicant company only after deducting the Government commission.

Mr. Angad Mehta, learned counsel for applicant company states that he has no objection to the Government Commission being deducted from the above-mentioned amount.

Keeping in view the aforesaid, the Official Liquidator is directed to release the amount of Rs.60,50,459.01/- to the applicant company after deducting the Government Commission.

With the aforesaid consent, present application stands disposed of.


MANMOHAN, J

DECEMBER 13, 2011

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