

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CP No. 130 of 2015 (O&M)
Connected with CP No. 59 of 2015**

Date of decision : 20.10.2015

Fun Multiplex Private Limited

.... Transferor Company

And

Cinepolis India Private Limited

.... Transferee Company / Petitioner Company

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Atul V. Sood, Advocate, for the petitioner.

Mr. Deepak Aggarwal, Advocate, with
Mr. D. K. Singh, Official Liquidator.

Rajesh Bindal, J.

In this petition, the Petitioner- Transferee Company seeks sanctioning of Scheme of Amalgamation (Annexure P-1), vide which Fun Multiplex Private Limited will merge into Cinepolis India Private Limited (Petitioner- Transferee Company).

The registered office of the petitioner- Transferee company is situated at Gurgaon, Haryana. The registered office of the Transferor Company is situated at Mumbai.

The Memorandum and Articles of Association of the Transferor Company and Petitioner - Transferee Company have been annexed with the petition at Annexures P-2 (colly) and P-4 respectively.

The Board of Directors of both the Transferor and Transferee Companies in their respective meetings held on 27.2.2015 and 3.3.2015 have approved the Scheme of Amalgamation. Copies of the same have been annexed as Annexures P-6 and P-7, respectively.

Earlier vide order dated 4.5.2015 passed in CP No. 59 of 2015, this Court dispensed with convening of meetings of the Equity Shareholders, Compulsorily Convertible Debentures (CCDS) holders of the Petitioner Transferee Company and further directed to convene the meeting

of the Unsecured Creditors of the Petitioner Company on 11.7.2015 for seeking approval of Scheme of Amalgamation. Notice of the meeting was also directed to be published in the newspapers and official gazette.

Vide order dated 24.7.2015, report of the Chairman appointed for conducting the meeting of unsecured creditors of the Transferee Company was taken on record and the first motion petition was disposed of accordingly.

This is the second motion petition. Notice of the petition was directed to be issued to Regional Director, Ministry of Corporate Affairs. Notice was also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi), both Delhi/ NCR Edition, and in the official Gazette of Government of Haryana. The aforesaid order has been complied with and affidavit to this effect has been placed on record.

While referring to the report dated 9.10.2015 filed by way of affidavit of A. K. Chaturvedi, Regional Director, Northren Region, Ministry of Corporate Affairs, today in Court, learned counsel appearing for the Official Liquidator submitted that in terms of provisions of Section 166(1) of the Companies Act, 1956 (for short, 'the Act'), every company shall in each year hold, in addition to any other meeting, a general meeting as its annual general meeting and shall specify the meeting as such in the notice calling it and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next. He submitted that the Regional Director has raised the issue that as per e-records maintained under MCA-21, the AGM of the Transferee Company for the financial year ended 31.3.2012 was held on 29.10.2012 and it has not yet filed its due Annual Return and Balance Sheet for subsequent year 2012-13. In this way, it has violated the provisions of Section 166(1) read with Section 159(1)/210(1)/220(1) of the Act.

Learned counsel for the Official Liquidator while referring to the objection raised by the Regional Director submitted that the Board of Directors of the Transferee Company had approved the proposed Scheme of Amalgamation in their Board meeting held on 3.3.2015. In terms of provisions of Section 117(3) read with Section 179(3) of the Act, the company is required to file such resolution (e-Form MGT-14) in the office of Regional Director within thirty days of the passing of resolution,

however, the company by not filing the same, has violated the aforesaid provisions.

In reply to the aforementioned issues raised by learned counsel appearing for the Official Liquidator, learned counsel for the petitioner company referred to the affidavit of Javier Sotomayor De Zaveleta, authorised signatory of the petitioner company stating that the Annual General Meeting indeed was held beyond the stipulated time and the Petitioner Company undertakes to avail of its remedies under the Companies Act including, but not limited to compounding of the same. He further submitted that the Annual Return and Balance Sheet for the year 2012-2013 has already been filed on 15.10.2015 and 30.09.2015 respectively, along with the additional fees. As regards, objection raised regarding filing of Resolution, it was submitted that copy of the Resolution dated 3.3.2015 has been filed with e-form MGT-14 on 05.10.2015, along with the additional fees.

Heard learned counsel for the parties and perused the paper book.

The Regional Director has raised the issues regarding non-holding of AGM of the Transferee company and also non-filing of due Annual Return and Balance Sheet for the year 2012-13, hence, violation of the provisions of the Act. This issue has been taken care of by the petitioner company by filing reply by way of affidavit dated 16.10.2015 of Javier Sotomayor De Zaveleta, authorised signatory, the relevant extract of which are reproduced hereunder:-

- “4. That with regard to paragraph 9(a) of the Report, it is submitted that the Annual General Meeting indeed was held beyond the stipulated time and the Petitioner Company undertakes to avail of its remedies under the Companies Act including, but not limited to compounding of the same.
5. That with regard to another observation in paragraph 9(a) of the Report, it is submitted that the Annual Return and Balance Sheet for the year 2012-2013 has already been filed on 15.10.2015 and 30.09.2015 respectively along with the

additional filing fees as prescribed under the law. A copy of the proof of filing of the same, being Form 20B and Form 23AC (along with Challan) is annexed hereto as Annexure A-1.

6. That with regard to paragraph 9(b) of the Report, it is submitted that the copy of the Board Resolution dated 3.3.2015 has been filed with e-form MGT-14 on 05.10.2015, along with the additional filing fees. A copy of the proof of filing of the same, being Form No. MGT-14 (along with Challan) is annexed hereto as Annexure A-2.”

Thus, the issues raised by the Regional Director do not survive any longer in view of the steps taken by the Transferee Company and undertaken in the affidavit.

The petitioner-company has confirmed that there are no investigations or proceedings pending against them under Sections 235 to 251, 397 and 398 of the Act or under any provisions of Companies Act, 2013.

For the reasons afore-stated and on consideration of all the relevant facts and the procedural requirements contemplated under the Act and the relevant Rules and on due consideration of the report of Regional Director, Northern Region, Ministry of Corporate Affairs, subject to sanctioning of the Scheme by Hon'ble High Court, Mumabi in the petition filed by the Transferor Company and as a result thereto, the assets and liabilities of the Petitioner Transferor company shall stand vested in the Transferee Company.

The Scheme shall be binding on the Transferor and Transferee Companies, their respective Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme of Amalgamation be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt thereof.

A notice of the order be published in the 'Indian Express' (English) and 'Punjab Kesari' (Vernacular), both Punjab Editions, and in the official Gazette of Government of Punjab.

Any person interested shall be at liberty to apply to the Court

for any direction(s) as per law.

Learned counsel for the petitioner company states that the petitioner company would voluntarily deposit a sum of ₹ 1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks.

The statement is accepted.

Disposed of accordingly.

20.10.2015

vs

(Rajesh Bindal)
Judge