IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CP No. 134 of 2015 (O&M)

Date of decision : 14.12.2015

Max India Limited

.... Petitioner / Transferor Company

And

Taures Ventures Limited

.... Petitioner / Transferee Company 1

And

Capricorn Ventures Limited

.... Petitioner / Transferee Company 2

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. R. S. Cheema and Mr. Sanjeev Sharma, Senior Advocates with Mr. Arshdeep Singh Cheema, for the petitioners.

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

Mr. Animesh Sharma, Advocate, for SEBI.

Rajesh Bindal, J.

In this petition, the Petitioner Companies seek sanctioning of Scheme of Arrangement (Annexure P-1), between Max India Limited (Petitioner / Transferor Company/ **Demerged Company**), Taures Ventures Limited (Petitioner / Transferee Company 1/ **Resulting Company 1**) and Capricorn Ventures Limited (Petitioner / Transferee Company 2/ **Resulting Company 2**), vide which "**De-Merged Undertaking**" (as defined in the Scheme) of the Petitioner-Transferor Company shall vest into the Petitioner-Transferee Company 1 and "**MSF Demerged Undertaking**" (as defined in the Scheme) of the Petitioner- Transferor Company shall vest into the Petitioner-Transferee Company 2.

Upon the Scheme becoming effective Resulting company 1 (Taures Ventures Limited) shall be re-named as 'Max India Limited', Resulting Company 2 (Capricorn Ventures Limited) shall be re-named as 'Max Ventures and Industries Limited' and the Demerged Company (Max India Limited) shall be re-named as 'Max Financial Services Limited'.

The registered office of the petitioner- companies is situated at Bhai Mohan Singh Nagar, Railmajra, Tehsil Balachaur, District Nawanshahar (Punjab).

The Memorandum and Articles of Association of the Petitioner Transferor Company, Petitioner-Transferee Company 1 and Petitioner Transferee Company 2 have been annexed with the petition at Annexures P-2, P-8 and P-14 (colly) respectively.

The Board of Directors of the Petitioner Transferor Company in their meeting held on 27.1.2015 and Board of Directors of Petitioner Transferee Company 1 and Petitioner-Transferee Company 2, in their meetings held on 7.2.2015 have approved the Scheme of Arrangement. Copies of the same have been annexed as Annexures P-20, P-21, and P-22, respectively.

Learned counsel for the petitioner companies submitted that the Equity Shares of the Petitioner Transferor Company are listed on the Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE). The Securities and Exchange Board of India (for short, 'SEBI'), vide its letter dated 6.4.2015, has given no objection to the Scheme. Vide letter dated 7.4.2015, BSE has also given its no objection to the filing of the Scheme. The NSE vide letter dated 7.4.2015 has also given no objection to the filing of the Scheme.

Learned counsel for the petitioner companies further submitted that the Competition Commission of India has also approved the proposed scheme vide its order dated 26.3.2015 (Annexure P-26).

Earlier vide order dated 28.4.2015 passed in CP No. 57 of 2015, this Court dispensed with convening of meetings of the Equity Shareholders of the Petitioner-Transferee Companies. It was further directed to convene the meeting of the Equity Shareholders of the Petitioner Transferor Company on 4.7.2015 for seeking approval of Scheme of Arrangement. Notice of the meeting was also directed to be published in the newspapers and official gazette.

Vide order dated 31.7.2015, report of the Chairman appointed for conducting the meeting of Equity Shareholders of the Petitioner Transferor 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 and the Official Liquidator. Notice was also directed to be published in 'Indian Express' (English), 'Financial Express' (English), Jagbani (Punjabi) and 'Dainik Bhaskar' (Hindi), and in the official Gazette of Government of Punjab. The aforesaid order has been complied with and affidavit to this effect has been placed on record. As the comments sent by SEBI to the Scheme vide letter dated 6.4.2015 were not specific, notice was directed to be issued to SEBI.

While referring to the report dated 24.9.2015 filed by way of affidavit of A. K. Chaturvedi, Regional Director, Northren Region, Ministry of Corporate Affairs, learned counsel appearing for the Official Liquidator submitted that in para 11 the Regional Director has raised the objection that being a listed company, the petitioner Transferor Company has foreign share holding. As per letter dated 22.9.2015, received by the office of the Regional Director from the Transferor Company- Max India Limited that Resulting companies have filed applications on 27.5.2015 with the Foreign Investment Promotion Board (FIPB) seeking approval for issue and allotment of shares, which are stated to be pending. He further submitted that in para 11 of the report of Regional Director reference has been made to certain prosecution proceedings initiated by the Registrar of Companies, Chandigarh, against the Transferor Company, certain Directors and Company Secretary. The case is pending in this Court wherein the proceedings have been stayed.

Learned counsel for the petitioner companies submitted that in the affidavit dated 9.10.2015 filed by C.V.Raghu, Authorised Representative of the Petitioner-Transferor Company, has stated that petitioner transferee companies no.1 and 2 have sought approval of FIPB and the same is under process. The authorised representative of the petitioner Transferee companies has undertaken that the petitioner -Transferee companies shall comply with the all applicable laws, including the Foreign Exchange Management Act, 1999 and the rules framed thereunder and applicable circulars issued by the Reserve Bank of India, in relation to the issuance of equity shares by it to the shareholders of the Transferor Company as on the record date in the manner set out in the Scheme. He has also undertaken to comply with any conditions imposed by the FIPB while granting approval. In the additional affidavit, the authorised representative with regard to prosecution proceedings has stated that the petitioner-Transferor Company has filed quashing of the complaints filed by the Registrar of the Companies before this Court, in which notice of motion has been issued and further proceedings against the petitioners therein have been stayed. It was further stated that approval of the Scheme would not, in any way, hamper the prosecution which has been initiated against the petitioner Transferor company. He has also stated that pursuant to the approval of the Scheme, the Petitioner-Transferor Company will not get dissolved and will carry on functioning in the name and style of 'Max Financial Services Limited'.

Learned counsel for the Official Liquidator while referring to the objection raised by the Official Liquidator in para no.6 of his report dated 8.10.2015 submitted that according to the records of the Petitioner Transferor Company as on 31.3.2014, certain disputes regarding outstanding dues of Income-Tax, custom duty, excise duty, value added tax and cess, etc. are pending.

In reply to the aforementioned issue raised by learned counsel appearing for the Official Liquidator, learned counsel for the petitioners submitted that 'Treatment of Tax' Clauses 5.1.8 and 6.1.8 of the Scheme take care of the same.

Learned counsel for SEBI submitted that the SEBI issues comments on the draft scheme as per its circulars dated 4.2.2013 and 21.5.2013. These circulars lays down obligations of listed companies and stock exchanges, disclosures to be made, approval of shareholders of the scheme through postal ballot and e-voting and procedure to be followed after the approval of the Scheme by the Court. In terms of these circulars, SEBI examined the draft Scheme of Arrangement and offered its comments. SEBI does not approve/ disapprove/ reject/ issue any no objection certificate for any draft scheme filed with the stock exchange. It was further submitted that as the draft Scheme was found to be in accordance with the Clauses of the aforementioned circulars, vide letter dated 6.4.2005, it has issued general comments informing the stock exchanges that the company shall comply with other provisions of the circulars. These comments were issued as company was required to comply with various other provisions of these circulars like compliance with requirements of stock exchanges and SEBI's norms for relaxation under Securities Contract (Regulation) Rules, 1957, subsequent to approval of the Scheme by the Court. However, in principle, the SEBI has given no objection to the Scheme.

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

With regard to the objections raised by the Regional Director, learned counsel for the petitioner companies referred to the affidavit dated 9.10.2015 filed by C. V.Raghu, Authorised Representative of the Petitioner Transferor Company, vide which it has been stated that Petitioner-Transferee companies no.1 and 2 have sought approval of FIPB and the same is under process. It has been undertaken by the authorised representative that the Transferee companies will comply with the all applicable laws, including the Foreign Exchange Management Act, 1999 and the rules framed thereunder and applicable circulars issued by the Reserve Bank of India regarding the issuance of equity shares by it to the shareholders of the Transferor Company. It has undertaken to comply any condition imposed by the FIPB while granting approval. In the additional affidavit, he has stated that the Petitioner-Transferor Company has sought quashing of the complaints filed by the Registrar of the Companies for prosecution of the company and its Directors, Company Secretary before this Court, the matter is still pending. He has also stated that approval of the Scheme will not in any way effect the prosecution proceedings initiated, as pursuant to the approval of the Scheme, the Petitioner-Transferor Company will not get dissolved but will carry on business in the name and style of 'Max Financial Services Limited'.

The issue has been raised by the Official Liquidator in para no.6 of his report dated 8.10.2015 to the effect that as per records of the Petitioner Transferor Company as on 31.3.2014, certain disputes regarding outstanding dues of Income-Tax, custom duty, excise duty, value added tax and cess, etc. are pending. It has been provided in the Scheme and undertaken by learned counsel for the petitioners that 'Treatment of Tax' Clauses 5.1.8 and 6.1.8 of the Scheme take care of all liabilities, litigation, etc. of the transferor company.

In so far as the comments on the draft scheme given by the SEBI are concerned, learned counsel for SEBI submitted that in terms of circulars dated 4.2.2013 and 21.5.2013, SEBI examined the draft Scheme of Arrangement and offered its comments. It does not approve/ disapprove/ reject/ issue any no objection certificate for any draft scheme filed with the stock exchange. It has been stated the draft Scheme was found to be in accordance with the provisions of the circulars, referred to above. In principle, the SEBI has given no objection to the Scheme, subject to compliance of various provisions of the applicable circulars.

Thus, the issues raised by the Regional Director, Official Liquidator and the SEBI do not survive any longer in view of the steps taken by the Petitioner-Transferor Company and undertaken in the affidavit and additional affidavit filed by its authorised representative.

The Competition Commission of India has also approved the proposed scheme vide letter dated 26.3.2015 (Annexure P-26).

The Petitioner-Transferor Company has confirmed that there are no investigations or proceedings pending against them under Sections 235 to 251 of the Companies Act, 1956 or under any applicable provisions of Companies Act, 2013, except the mentioned above in which proceedings have been stayed by this Court.

For the reasons afore-stated and on consideration of all the relevant facts, compliance of procedural requirements contemplated under the Act and the relevant Rules, on due consideration of the reports of Regional Director, Ministry of Corporate Affairs, and the Official Liquidator, the Scheme of Arrangement is hereby sanctioned. The assets and liabilities of the 'Demerged Undertaking' of the Transferor Company shall stand vested in the Petitioner-Transferee Company 1 and the 'MSF Demerged Undertaking' of the Transferor Company shall stand vested into the Petitioner-Transferee Company 2. The Transferee Companies shall be required to comply with the procedural requirements with regard to all conditions stipulated, if required, under the Income Tax Act, Accounting

Standards issued by the Institute of Chartered Accountants of India or by provisions of any Act with regard to change of name of the Transferor and the Transferee Companies.

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 Arrangement 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 'Indian Express' (English), 'Financial Express' (English), Jagbani (Punjabi) and 'Dainik Bhaskar' (Hindi), and in the official Gazette of Government of Punjab. The same be also uploaded on the website of the office of Official Liquidator. Learned counsel for the petitioners to supply a copy of the notice in the office of the Official Liquidators.

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 Companies 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.

14.12.2015 (Rajesh Bindal)
vs/*sharmila* Judge