IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.105 of 2016 (O&M)
Date of Decision: 30.08.2016

IN THE MATTER OF:

SCHEME OF AMALGAMATION/MERGER

ISABELLE TRADERS LIMITED

. . . . Transferor Company/Petitioner Company-I

And

AARTI INTERNATIONAL LIMITED

. . . . Transferee Company/Petitioner Company-II

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN.

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Present: - Mr.Puneet Kansal, Advocate,
for the Petitioner-Companies.

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

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RAKESH KUMAR JAIN, J.

This petition is jointly filed by the petitioners-companies for first and second motion under Sections 391 to 394 of the Companies Act, 1956 [for short 'the Act'] and for sanctioning of the Scheme of Amalgamation/merger (Annexure P-1) [for short 'the Scheme'] of the Isabelle Traders Limited (Transferor Company/Petitioner Company-I) and Aarti International Limited (Transferor Company/Petitioner Company-II).

Convening of meetings of the Equity Shareholders of Both the Transferor and Transferee Companies and Secured and Unsecured Creditors of the Transferee Company were dispensed with vide order dated 03.06.2016.

Since, there were no Secured Creditors of the Transferor Company/Petitioner Company-I, therefore there was nothing to convene their meeting.

By virtue of Order dated 3.6.2016, notice was issued to the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and the Official Liquidator. Notice was also ordered to be published in 'Indian Express' (English) and 'Jagbani' (Punjabi), both Punjab Editions and in the official Gazette of the Government of Punjab. It was also ordered to be uploaded on the website of the Official Liquidator.

Pursuant to the aforesaid order dated 03.06.2016, affidavit of publication dated 04.07.2016 has been filed.

The Official Liquidator has filed the representation/affidavit of Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi dated 27.07.2016 in which he has observed no objection to the Scheme except the following averments made therein: -

> *"13. That the Deponent is to say that the applicability of Accounting Standard-14 issued by the Institute of Chartered Accountants of India to the instant scheme has not been clearly mentioned in the scheme."*

Learned counsel for the petitioner-Companies has undertaken that the Transferee Company shall comply with the provisions of Accounting Standard-14 issued by the Institute of Chartered Accountants of India.

The Official Liquidator has submitted his report dated 05.08.2016. In his report he has raised the objections including the objection in respect of income tax liability also, which read as under: -

> *"4. That M/s Rajinder Kumar & Co., Chartered Accountant, has verified the Accounts of Transferor Company and submitted his report to this office on 02.08.2016. The copy of report is enclosed and annexed as Annexure R-2. The learned Chartered Accountant has made following observations: -*
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> (a) During the investigation of books of accounts, we have observed that the Company had shown General Reserve amounting ₹28025440/- (Two Crore Eighty Lakhs Twenty Five Thousand Four Hundred Forty) in Balance Sheet year ended 31.3.2011. Same was shown as Capital Reserve in the Balance Sheet year ended 31.03.2012 and 31.03.2013. The amount of General Reserve amounting ₹28025440/- (Two Crore Eighty Lakhs Twenty Five Thousand Four Hundred Forty), which was shown as Capital Reserve in Balance Sheet year

ended 31.02.2002 & 31.03.2013 along with Statutory Reserve amounting ₹40655/- (Forty Thousand Six Hundred Fifty Five) was shown as Share Premium Account in Balance Sheet Dated 31.03.2014 and 31.03.2015.

(b) The Income Tax case for the Transferor Company for Assessment Year 2014-15 was selected u/s 143(3) of the Income Tax Act, 1961. The same was not decided till 30th July, 2016.

(c) The Income Tax case regarding tax set aside Assessment case for Assessment year 2006-07 as per direction of Hon'ble ITAT., Mumbai was pending. As per explanation & information given to us the case is not decided yet."

The Official Liquidator has further observed in his report that that *"M/s Rajinder Kumar & Co., Chartered Accountant, has stated in his report that affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its Members, Creditors or to the Public Interest.*

In response to the objections raised by the Official Liquidator, learned counsel for the petitioner-Companies has referred to the reply by way of an additional affidavit dated 19.8.2016 of Mr.Krishan Kumar, Director of the Petitioner Company-I has stated in para 4(a) that *"It is stated that 2 companies namely M/s Lintas Investment & Trading Company Ltd. and M/s Beverly Investment Company Ltd. were merged in the petitioner company. As a result of the merger, reserve of ₹2,80,25,440/- was created after giving effect to cross holdings and in the balance sheet, it was shown as General Reserve in the balance sheet for the year ending 31.3.2011. However, later on it was preferred as Capital Reserve being effect of cross holdings during merger process and not created out of appropriation of profit and loss account and was reflected as such in the balance sheets for the year ending 31.3.2012 and 31.03.2013. However in the balance sheets for the year ending 31.03.2014 and 31.03.2015 due to clerical/typographical error it was typed as Share Premium Account instead of Capital Reserve. It is stated that the same may be treated and read as Capital Reserve only for the said years as well. It is mentioned that both are free reserves and it does not affect the true and fair nature of the balance sheets. It is undertaken that the same shall be treated and read as transferred to the Petitioner Company-II as Capital Reserve, upon the Scheme becoming effective upon its sanction by this Hon'ble Court. Copy of the certificate dated 03.08.2016 of the Auditor of the company in this regard is appended as Annexure A.*

Learned counsel for the petitioner-Compaies has also referred to the reply by way of an additional affidavit dated 19.8.2016 of Vinayak Mittal s/o Sh. Mahesh Mittal, whole time Director, on behalf of the petitioner Company-II, in which following averments have been made: -

> *"a) That contents of affidavit of Krishan Kumar s/o Sh. Som Nath Kukreja, Director, Isabelle*

Traders Limited be seen in reply to comments of OL contained in sub-para (a). However it is stated and undertaken that reserve of ₹2,80,25,440/- shall be taken and read as transferred to Petitioner Company-II as Capital Reserve and would be reflected as such in the books of accounts of the transferee company/Petitioner Company-II, upon the Scheme becoming effective upon its sanction by this Hon'ble Court.

(b) That it is stated that the Income Tax Liability, arising if any, of the transferor company for the assessment year 2014-15 (as referred to in this sub para) shall stand transferred to and payable by the transferee company upon the scheme becoming effective. Even otherwise clause 5(a) read with clause 7 of the Scheme of Amalgamation/Merger (Annexure P-1) provides for such an eventuality where all debts, liabilities including income tax liability shall stand transferred to and be deemed as debt, liability of the Transferee Company/Petitioner Company-II.

(c) *That it is stated that the Income Tax Liability, arising if any, of the transferor company for the assessment year 2006-07 (as referred to in this sub para) shall stand transferred to and payable by the transferee company upon the scheme becoming effective. Even otherwise clause 5(a) read with clause 7 of the Scheme of Amalgamation/Merger (Annexure P-1) provides for such an eventuality where all debts, liabilities including income tax liability shall stand transferred to and be deemed as debt, liability of the Transferee Company/Petitioner Company-II.*

The above stated explanations submitted by Krishan Kumar, Director of the Transferor Company and Vinayak Mittal, whole time Director of the Transferee Company by way of their affidavits dated 19.08.2016 meets with the queries raised by the Official Liquidator.

The Petitioner-Companies have confirmed that no proceedings have ever been instituted against the Petitioner-Companies under Sections 235 to 251, 397 and 398 of the Companies Act, 1956 and / or Sections 206 to 229 of the Companies Act, 2013.

For the reasons aforestated and on consideration of all the relevant facts and the procedural requirements in terms of Section 391-394 of the Act and the relevant Rules and on due consideration of the reports of the Regional Director, Ministry of Corporate Affairs, New Delhi and the Official Liquidator, the Scheme of Amalgamation is hereby sanctioned and as a result thereto, the Assets and Liabilities of the Isabelle Traders Limited (Transferor Company/Petitioner Company-I) shall stand vested in the Aarti International Limited (Transferee Company/Petitioner Company-II) and the Transferor Company shall be dissolved without being wound up. The Transferee Company shall comply with the provisions of Accounting Standard-14 of Institute of Chartered Accountant of India.

The Scheme of Amalgamation/Merger shall be binding on the Petitioner-Companies, their respective Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme of Amalgamation/Merger 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) and 'Jagbani' (Punjabi), 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-Companies stated that the Petitioner-Companies would voluntarily deposit a sum of ₹50,000/- in the

Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
JUDGE

30.08.2016
Vivek