IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.17 of 2016 (O&M)
Date of Decision: 18.10.2016

IN THE MATTER OF:

SCHEME OF ARRANGEMENT AND AMALGAMATION

MAGHAN PULP AND PAPER INDUSTRIES PRIVATE LIMITED

. . . . Transferor Company

And

MAGHAN PAPER MILLS PRIVATE LIMITED

. . . . Transferee Company

*****

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

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Present: - Mr.Alok Kumar Jain, Advocate,
for the Petitioner-Companies.

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RAKESH KUMAR JAIN, J.

CA No.528 of 2016

Application is allowed.

Affidavits/Undertakings of the Director and Authorised Signatory of Transferor and Transferee Companies are taken on record.

CP No.17 of 2016 (O&M)

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 Arrangement and Amalgamation (Annexure P-16) [for short 'the Scheme'] of Maghan Pulp and Paper Industries Private Limited/Transferor Company and Maghan Paper Mills Private Limited/Transferee Company.

Convening of meetings of the Equity Shareholders of the Transferor Company and Equity Shareholders and Secured and Unsecured Creditors of the Transferee Company were dispensed with vide order dated 16.05.2016. Since, there were no Secured and Unsecured Creditors of the Transferor Company, therefore there was nothing to convene their meeting.

By virtue of Order dated 16.05.2016, 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 'The Tribune' (English) and 'Ajit' (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 16.05.2016, affidavit of publication dated 17.08.2016 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 19.08.2016 in which he has observed no objection to the Scheme except the following averments made therein: -

> *"6. That in response to the office of the Deponent's letter dated 27.6.2016 issued to the Income Tax Department, no comments have been received by the office of the Deponent.*
>
> *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 16.09.2016. In his report, he has raised the following objections: -

> *"4. That Anand Sabharwal & Associates, Chartered Accountant, has verified the Accounts of Transferor Company and submitted his report to this office on 15.09.2016. The copy of report is enclosed and annexed as Annexure R-2. The learned Chartered Accountant has made following observations: -*
>
> *(1) During the examination of books of accounts of the transferor company, we observed that in the financial year 2010-11, the directors of the company had paid dividend of ₹4,35,000/- without taking any approval from the members in AGM of the Company. Further Directors had not followed the procedures defined in the Companies Act, 1956 (i.e. Conducting Board Meeting for recommendation of dividend, Deposit of dividend amount in separate bank account, Moving agenda of dividend in the notice of AGM,*

> *Disclosure of dividend in the Director's Report, Approval of said dividend from members in AGM of the company etc.)*
>
> *Moreover, the company has not paid dividend distribution tax within 14 days from the date of payment of dividend as per the provisions of section 115-O(2) of the Income Tax Act, 1961. The directors had paid dividend of ₹4,35,000/- on 15.01.2011 and deposited dividend tax of ₹65,250/- on 31.07.2011. Therefore the company is in default U/s 115-O of the "Act" and liable to pay interest Rs.26,100/- (interest @ 1% per month for delayed period of 6 months) and also liable for penalty of a sum equal to amount of tax which he has failed to pay as per the provisions of Section 271 C of the Income Tax, 1961.*

In response to this, the reply of the management in verbatim is reproduced below: -

> *"The Company paid interim dividend to the shareholders of the company on 15.01.2011 for the financial year 2010-2011 based on the approval of Board of Directors and also paid the Dividend Distribution Tax @ 15% on 31.07.2011 of ₹65,250/-. In this regards, it is also clarified that the powers to approve the*

payment of interim dividend vest with the Board of Directors."

In our opinion, the directors of the company misappropriated the funds of the company to the tune of ₹4,35,000/- without approval of shareholders in the AGM, without following the rules and procedures as defined in the Companies Act, 1956 and defaulted the provisions of section 115-O of the Income Tax act, 1961.

(2) The transferor company has given corporate guarantees of ₹9,43,33,000/- to HDFC Bank vide Board Meeting dated 01.02.2012 to grant credit facilities in favour of M/s Maghan Paper Mills Pvt. Ltd. Subsequently, the said corporate guarantee enhanced to ₹10,87,61,000/- on 18.12.2012 and further enhanced to ₹12,36,52,000/- on 17.08.2013 by hypothecation on immoveable property of the company. However, the directors of the company have not given the disclosure of aforesaid bank guarantees in the financial accounts and director report's prepared during the financial years 2011-12, 2012-13, 2013-14 and 2014-15. Similarly the auditors has also failed to report the same to the members of the company in their auditor reports for the aforesaid financial years vide para No. (xv) of the independent auditor report, which reads as under: -

"According to the information & explanation given to us, the company has not given guarantees for loan taken by others from the bank or financial institutions."

In our opinion, the Company's financial statements submitted to the members, Registrar of Companies for general public did not give the true & fair view of the affairs of the company as required by Accounting Standard-29 (Provisions, Contingent Liabilities and Contingent Assets) by skipping the material amount of contingent liabilities of ₹12.36 crores by way of non-disclosure of facts in the notes to accounts of the financial statements to the Statutory Auditors as well as to the members in the AGM's of the Company.

In view of the above, we are of the opinion that affairs of the Transferor Company has not been conducted in a manner prejudicial to the interest of the shareholders, public at large, creditors and income tax subject to our above observations on scrutiny of books & accounts at point XI of the report.

5. *That Anand Sabharwal & Associates, Chartered Accountant, has stated in his report that affairs of the Transferor Company has not been conducted in a manner prejudicial to the interest of its members, creditors or to the public interest subject to our observations on*

> *scrutiny of books & accounts mentioned at point XI of the report.*
>
> 6. *That in view of the observations of the Chartered Accountant the Official Liquidator most respectfully submits that affairs of the Transferor Company has not been conducted in a manner prejudicial to the interest of its members, creditors or to the public interest subject to our observations of chartered accountant on scrutiny of books & accounts mentioned at point XI of his report."*

In response to the objections raised by the Regional Director, learned counsel for the petitioner-Companies has referred to the undertaking of affidavits dated 27.8.2016 of Vinod Parkash Maghan, Director and the authorized signatory of the Transferor and Transferee Companies that the Company shall apply the relevant accounting standard, AS-14 or any other accounting standard as applicable to the companies, upon the Scheme being sanctioned.

In response to the observations made by the Official Liquidator in his report at Para No.4, Vinod Parkash Maghan, Director and the authorized signatory of the Transferor Company has made averments in para No.4 and 5 of his affidavit filed on behalf of the Transferor Company dated 27.9.2016, which read as under: -

> *"4. That with regard to the above two observations, it is humbly submitted that the interest on delay in payment of tax has to be calculated on the amount of tax payable but the Chartered Accountant and the Official*

Liquidator have wrongly calculated the amount payable under Section 115-O of the Income Tax Act, 1961 on the entire dividend paid. The amount of ₹26,100/- has been arrived at by charging interest @ 1% per month for delayed period of six months upon the dividend distributed of ₹4,35,000/- whereas it should have been calculated on the tax liability of ₹65,250/- and the interest liability would work out only to be ₹3915 (approx). However it is pertinent to mention here that although no such demand has been ever raised by the Income Tax Department, the deponent undertakes to comply with the statutory requirement in accordance with law.

5. That with regard to the second objection i.e. non-disclosure of the corporate guarantee extended to the Transferee Company, it is submitted that both the companies are closely held family companies and more so no objection has been raised by the Secured Creditors in this regard, the charge in favour of the bank is duly registered and is available on the website of the MCA. The non-disclosure in the Directors reports is inadvertent error but the same is also inconsequential. No prejudice has been caused to any member in any manner. The deponent undertakes to correct the mistake by incorporating a special note in the next submission of the financial of the company."

The above stated explanations submitted by Vinod Prakash Maghan, Director of the Transferor & Transferee Companies by way of affidavits/Undertakings dated 27.9.2016 meets with the queries raised by the Regional Director as well as the Official Liquidator.

The Petitioner-Companies have confirmed that no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 against either of the Transferor Company or against the Transferee Company.

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 Arrangement and Amalgamation is hereby sanctioned and as a result thereto, the Assets and Liabilities of the Maghan Pulp and Paper Industries Private Limited (Transferor Company) shall stand vested in Maghan Paper Mills Private Limited (Transferee Company) and the Transferor Company shall be dissolved without being wound up. The Transferor and Transferee Companies shall comply with the provisions of Accounting Standard-14 of Institute of Chartered Accountant of India as has been undertaken.

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

Let formal order of sanction of the Scheme of Arrangement and 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 Tribune' (English) and 'Ajit' (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-Transferor and Transferee Companies stated that the Petitioner-Transferor and Transferee 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.

(RAKESH KUMAR JAIN)
JUDGE

18.10.2016
Vivek