IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No. 228 of 2015 (O&M)
Date of decision : 01.08.2016

IN THE MATTER OF AMALGAMATION OF

Halwasiya Agro Industries Limited
.... Non Petitioner No.1/ Transferor Company No. 1

AND

M A K Sales Private Limited
.... Non Petitioner No.2/ Transferor Company No. 2

AND

Eldeco Housing and Industries Limited
.... Petitioner Company/ Transferee Company

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Yash Pal Gupta, Advocate, for the petitioner.

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

RAKESH KUMAR JAIN, J.

Following order was passed by this Court on 23.02.2016:-

"In this petition under section 391 (1) of the Companies Act, 1956 (for short, 'the Act'), duly supported by affidavit, the petitioner- Transferee Company seeks dispensation of convening of the meetings of its shareholders and creditors and also dispensing with filing of the IInd Motion petition for the sanctioning of Scheme of Amalgamation of Halwasiya Agro Industries Limited (Non Petitioner/ Transferor Company No. 1) and M A K Sales Private Limited (Non Petitioner/ Transferor Company No. 2) with the Eldeco Housing and Industries Limited (Petitioner Company/ Transferee Company).

The registered office of the Non Petitioner/ Transferor Company No. 1 and Non Petitioner/ Transferor Company No. 2 is situated at Lucknow (Uttar Pradesh) and registered office of Petitioner Company/ Transferee Company is situated at Faridabad (Haryana).

Main objects of Petitioner Company/ Transferee Company are detailed in Memorandum and Articles of Association annexed with the petition as ***Annexure P-2****.*

The Board of Directors of the Petitioner Company/ Transferee Company, the Non Petitioner/ Transferor Company No. 1 and Non Petitioner/ Transferor Company No. 2 have approved the Scheme of Amalgamation in their respective meetings held on 30.5.2015, 25.5.2015 and 29.5.2015, vide resolutions annexed as Annexures P-6, P-13 and P-14, respectively.

In para 6 of the affidavit of Ms. Rajani Sharma, Authorised Signatory of the Petitioner Transferee Company stated that the Authorised Share Capital of the Transferee Company is ₹10,00,00,000/- divided into 1,00,00,000 Equity Shares of ₹10/- each. Its issued, subscribed and paid-up share capital is ₹ 1,96,66,000/- divided into 19,66,600 Equity Shares of ₹ 10/- each.

Para 13 of the said affidavit reveals that as on 30.9.2015, the Petitioner Transferee Company had 2143 Equity shareholders (Annexure P-8). The consent of the shareholders is not required, as the proposed Scheme does not affect the rights of the members of the Transferee Company and also does not involve reorganization of the share capital of the Transferee Company.

The Petitioner Transferee Company has 3 Secured Creditors. The list of Secured Creditors and the certificate to this effect issued by BMGS & Associates, Chartered Accountants, as on 30.11.2015, are annexed as Annexures P-9 and P-10, respectively.

It has been further stated that as on 30.11.2015, the Petitioner Transferee Company had 142 Unsecured Creditors, including unsecured loans, trade creditors and other liabilities. The list of Unsecured Creditors and the certificate to this effect issued by BMGS & Associates, Chartered Accountants, as on 30.11.2015, are annexed as Annexures P-11 and P-12, respectively.

The prayer is for dispensation of the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Transferee Company on the ground that the proposed Scheme does not affect the rights of the members of the Transferee Company and also does not involve reorganization of the share capital of the Transferee Company. Further as both the Transferor Companies are wholly owned subsidiaries of the Transferee Company, upon sanctioning of the Scheme, the entire share capital of the Transferor Companies shall stand cancelled and no new shares shall be issued to the shareholders of the Transferor Companies. As no additional equity shareholders are going to be inducted, therefore, there will be no change in the voting rights of the shareholders of the Transferee Company. The Petitioner Transferee Company is a profit making company and having reserves of ₹72,62,31,189/- and cash reserves of ₹4,06,10,681/- on 31.3.2015. The Transferor Company No. 1 is having reserves of ₹2,20,84,689.87 and the Transferor

Company No. 2 is having reserves of ₹2,23,62,178.64 as on 31.3.2015.

It has further been prayed that the Petitioner Transferee Company be exempted from filing the 2nd motion petition under section 391 (2) and 394 of the Act, as the Transferor Companies No. 1 and 2 are wholly owned subsidiaries of the Petitioner Transferee Company and there is no arrangement or compromise with the secured creditors, un-secured creditors and trade creditors and their rights shall remain un-affected by the proposed Scheme of Amalgamation. It has further been undertaken in the affidavit filed by the Authorised Signatory of the Petitioner Transferee Company that upon sanctioning of the Scheme, the entire Share Capital of the Transferor Companies will stand cancelled and that the proposed Scheme will not affect the rights of the Members or Creditors of the Petitioner Transferee Company and also does not involve reorganization of the share capital of the Petitioner Transferee Company. Since, no additional Equity shares are to be issued, hence, no change in the voting rights of the shareholders of the Transferee Company shall be carried out and as such no action is required to be taken at the end of the Transferee Company.

Learned counsel for the Petitioner Transferee Company in this regard relies upon the decision of this Courts in <u>*Punjab Chemicals and Crop Protection Limited*</u> *[2008] 84 CLS 33 (P&H) held as follows:*

> *"………It was noted that all the shares of the Transferor Companies are presently held by the Transferee Company, either in*

its name or through its nominee and under the proposed Scheme of Amalgamation, no share of the Transferee Company was required to be issued or allotted to the members of the Transferor-companies, as upon sanctioning of the Scheme, the entire Share Capital of the Transferor Companies will stand cancelled. It was also noted that, the proposed Scheme was not going to affect the rights of the Members or Creditors of the Transferee Company and also does not involve reorganization of the share capital of the Transferee Company. Since, no additional equity shareholders are going to be inducted, therefore, there will be no change in the voting rights of the share holders of the Transferee Company. The creditors of the Transferee Company were also not likely to be affected by the scheme, as the Transferee Company was a consistent profit making Company having an excess of assets over the liabilities to the extent of Rs. 7409.74 Lakhs after adjusting the excess liabilities of the Transferor-Companies as shown in the details of assets and liabilities of the three companies. All the three companies were under the same management and there was no advantage in the Transferor Companies carrying on the business as separate legal entities from that the Transferee Company, rather the proposed amalgamation would

> *be advantageous for all the parties concerned and to the shareholders of all the companies.*
>
> *In view of the above, the requirements of summoning of the meeting of Equity Shareholders and secured and Unsecured Creditors of the Petitioner Company for the purpose of considering the 'scheme of Amalgamation' of the Transferor-companies with the Petitioner-Company and the procedure requiring the filing of separate Company Petition for sanction of Scheme of Amalgamation of the Transferor -Companies with the Petitioner- Company under sections 391-394 of the Act were dispensed with by this Court.*
>
> *Thus, this Hon'ble Court also does not requires the Transferee Company (which is being amalgamated with the wholly owned subsidiary) to do any further act."*

Further, learned counsel for the petitioner has also placed reliance upon judgments of this Court in C.P. No. 86 of 2012 in the matter of <u>Glen Appliances Private Limited</u>, dated 6.9.2012 and CP No. 153 of 2013 in the matter of <u>Liberty Retail Revolutions Limited</u> dated 22.11.2013.

Learned counsel for the Petitioner Transferee Company submitted that the since the registered office of the Transferor Company Nos. 1 and 2 is situated at Lucknow (Uttar Pradesh), separate petitions will be filed at Lucknow for the purpose.

It was urged by learned counsel for the Petitioner-Transferee Company that availing synergies from combined resources will enable the company concerned to rationalize and streamline their management, businesses and finances and the businesses will be carried on more economically and profitably after the proposed amalgamation.

Since, the Transferor Companies are wholly owned subsidiary of the Petitioner Transferee Company and no new shares are being issued & rights of shareholder(s) are not being diluted and there is no compromise being entered with the Secured and Unsecured Creditors; therefore, the consent of the Shareholders, Secured and un-Secured creditors is not required, as such convening of the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Transferee Company are ordered to be dispensed with.

As far as non-filing of 2nd motion petition is concerned, it would be appropriate to issue notice to the Regional Director, Ministry of Corporate Affairs, New Delhi. Notice be also published in the daily newspapers 'The Financial Express' (English) and 'Jansatta' (Vernacular) both Delhi/ NCR Editions and in the official Gazette of State of Haryana. Notice be also uploaded on the official website of the Official Liquidator. Learned counsel for the Petitioner Company is directed to supply a copy of the notice in the office of the Official Liquidator within ten days.

Adjourned to 22.4.2016."

Pursuant to the order dated 23.02.2016, counsel for the petitioner-Transferee company has filed affidavit dated 23.6.2016 regarding publication.

The Official Liquidator has filed the representation/affidavit of N.K. Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi dated 06.07.2016 in which it has been observed in para No.16 that the petitioner-Company may be directed to comply with the provisions of the Accounting Standard 14 related to "pooling of interests" Method as stated in Clause 15(a) of the Scheme of Amalgamation.

The Regional Director has also observed in para No.12 of his representation/affidavit that there are some income tax matters pending before various authorities of Income Tax Department.

In reply to the aforesaid observations made by the Regional Director, counsel for the petitioner-Transferee Company has submitted that the petitioner-Company shall comply with the provisions of the Accounting Standard 14 related to "pooling of interests" Method as stated in Clause 15(a) of the Scheme of Amalgamation. He further undertakes that as and when any tax liability, pending towards Income Tax, Sales Tax or any other government tax and liabilities for the benefit of employees and workers etc is raised by the authorities, after the final decision of the matter pending before them, mentioned in para No.12 of the representation/affidavit of the Regional Director, the Petitioner-Transferee Company will pay the same.

The Petitioner-Transferee Company has confirmed that there are no investigation proceedings pending against them under Sections 235 to 251 of the Act and Under Section 210 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 report of the Regional Director, Ministry of Corporate Affairs, New Delhi, the Scheme of Amalgamation is hereby sanctioned subject to the sanctioning of the Scheme by the Allahabad High Court and as a result thereto, the Assets and Liabilities of the Halwasiya Agro Industries Limited (Non Petitioner/Transferor Company No. 1) and M A K Sales Private Limited (Non Petitioner/Transferor Company No. 2) shall stand vested in the Eldeco Housing and Industries Limited (Petitioner Company/Transferee Company). The Petitioner-Company shall be required to comply with the procedural requirement with regard to Accounting Standard 14 as well as with regard to the tax liability as has been undertaken.

The Scheme of Amalgamation shall be binding on the Transferor and the 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 'Financial Express' (English) and 'Jansatta' (Vernacular), both Delhi/NCR Editions and in the Official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the Petitioner-Transferee Company stated that the Petitioner-Transferee 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.

(RAKESH KUMAR JAIN)
JUDGE

01.08.2016
Vivek

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No