

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 18.11.2016

Judgment Delivered On: 23.12.2016

COMPANY PETITION NO. 70 OF 2016

IN THE MATTER OF

UTTAM SUCROTECH INTERNATIONAL PRIVATE LIMITED

Petitioner /Transferor Company

AND

**UTTAM SUCROTECH INTERNATIONAL HOLDINGS
PRIVATE LIMITED**

Petitioner /Transferee Company

Through – Mr. P. Nagesh with Mr.
Ashutosh Gupta Advocates for the
Petitioner Company Ms. Aparna
Mudiam, Assistant Registrar of
Companies for the Regional Director
Mr. Rajiv Bahl, Advocate for the
Official Liquidator

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present petition has been filed jointly, under Sections 391 and 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act'), by Uttam

Sucrotech International Private Limited (hereinafter referred to as 'Transferor Company') and Uttam Sucrotech International Holdings Private Limited (hereinafter referred to as 'Transferee Company'), for approval of the Scheme of Arrangement (hereinafter referred to as 'the Scheme') between the Transferor and Transferee Company.

2. The Transferor Company and the Transferee Company are hereinafter, collectively, referred to as 'Petitioner Companies'.

3. The registered offices of the Petitioner Companies are situated in the National Capital Territory of Delhi, and therefore, this Court has the necessary jurisdiction to adjudicate the present petition.

4. The Transferor Company was originally incorporated under the Act on 21.04.2005, with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

5. The Transferee Company was incorporated under the Act on 14.12.2011, with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The authorised share capital of the Transferor Company as on 30.06.2014 is Rs.30,00,00,000/-, divided into 3,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the

Transferor Company as on 30.06.2014 is Rs.25,00,00,000/-, divided into 2,50,00,000 equity shares of Rs.10/- each.

7. The authorised share capital of the Transferee Company as on 31.03.2014 is Rs.50,00,000/-, divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferee Company as on 31.03.2014 is Rs.3,30,000/-, divided into 33,000 equity shares of Rs.10/- each.

8. The Copies of the Memorandum of Association and Articles of Association, of the Petitioner Companies, have been annexed with Company Application (Main) No. 157 of 2015, which earlier came to be filed by the Petitioner Companies. The same are on record. The audited balance sheets, as on 30.06.2014 along with the auditor's reports, pertaining to the Transferor Company have been filed alongwith Company Application (Main) No. 157 of 2015; and the audited balance sheets, as on 31.03.2014 along with the auditor's reports, pertaining to the Transferee Company have also been duly filed alongwith Company Application (Main) No. 157 of 2015. The same are on record.

9. A copy of the Scheme has been placed on record and the salient features of the Scheme have been incorporated and set out in detail in the present petition. It has been stated on behalf of the Petitioner Companies that

the majority of equity shares of the Petitioner Companies are held by common group of shareholders and that the Petitioner Companies are managed by common groups of shareholders. It has been stated that the Scheme would, *inter alia*, result in reduction of various administrative overheads and increase the operating efficiencies of the Petitioner Companies. It has further been stated that the Scheme will lead to optimum and efficient utilization of capital, resources, assets and facilities; consolidation of businesses and enhancement of economic value addition and shareholder value; obtaining synergy benefits and better management and enhanced focus on growing the businesses.

10. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the Transferee Company shall issue and allot equity shares to the shareholders of the Transferor Company in the following ratio:-

01 Compulsory convertible preference share of face value of Rs.10/- each, in the Transferee Company for every 01 equity share of face value Rs.10/- each, held by them in the Transferor Company.

11. It has been stated on behalf of the Petitioner Companies that no proceedings under Sections 235 to 251 of the Act (or under corresponding

provisions of the Companies Act, 2013) are pending against the Petitioner Companies as on the date of filing of the present petition.

12. The Board of Directors (BOD) of the Transferor Company and Transferee Company, on 17.03.2015 and 18.03.2015, respectively, have unanimously approved the proposed Scheme. Copies of the said Resolutions approving the Scheme of the Petitioner Companies have been placed on record.

13. The Petitioner Companies had, in the earlier round, filed an application, being Company Application (Main) No. 157 of 2015, seeking directions of this Court to dispense with the requirement of convening the meetings of the equity shareholders of the Petitioner Companies; to dispense with the requirement of convening meetings of the secured and unsecured creditors of the Transferee Company. Further, a prayer was also made in the said Application to convene meetings of secured and unsecured creditors of the Transferor Company. By way of order dated 06.11.2015, this Court allowed the application and dispensed with the requirement of convening meeting of the equity shareholders of both the Petitioner Companies and the single unsecured creditor of the Transferee Company. The Transferee Company has no secured creditors. Further, by way of the said order, this Court directed convening of the meetings of the secured and unsecured

creditors of the Transferor Company to consider and, if thought fit, approve with or without modification, the proposed Scheme.

14. The meetings of the secured and unsecured creditors of the Transferor Company were duly convened and the Scheme was approved without any modifications, by the requisite majority of the secured and unsecured creditors, present and voting at the respective meetings, in terms of Section 391(2) of the Companies Act, 1956. The Chairpersons of the said meetings have duly filed their reports dated 07.01.2016 and 08.01.2016, which reflect the results of the said meetings held on 26.12.2015. The same are on record.

15. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme. Vide order dated 01.02.2016, notice in the present petition was issued by this Court and was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD), Northern Region. Citations were directed to be published in the Delhi Editions of 'Business Standard' (English) and 'Jansatta' (Hindi). It has been noted that an affidavit dated 23.05.2016, demonstrating service of the petition on the Official Liquidator, Registrar of Companies and the Regional Director, Northern Region, and further demonstrating that citations were published in compliance with order dated 01.02.2016, has been filed and the same is on record. It has been noted that Citations were published, on 12.04.2016, in

Delhi Editions of the newspapers, namely, 'Business Standard' (English) and 'Jansatta' (Hindi), in compliance with the said order dated 01.02.2016.

16. Pursuant to the issuance of notices in the present petition, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator (OL) has filed a report dated 25.05.2016, wherein it has been stated that the OL has not received any complaint qua the Scheme from any interested person or party. Further, it has been stated in the said report that on the basis of information supplied by the Petitioner Companies, it appears, that the affairs of the transferor company have been conducted in a manner which could not be construed as being prejudicial to either the interest of their members or the public at large.

17. In other words, it has been stated by the OL in the report that the affairs of the transferor company, do not fall foul of the provisions of the Second Proviso to Section 394(1) of the Act. Thus, it has been averred on behalf of the OL, in effect, that he would have no objections, if this Court were to sanction the Scheme.

18. In response to the notices issued in the Petition, the Regional Director, Northern Region, Ministry of Corporate Affairs, filed a report dated 25.05.2016 wherein, *inter alia*, it has been stated that:

- i. There has been transfer of 100% shareholding of the Transferee Company to IU International Holdings Pvt. Ltd. i.e. non-resident entity from the Appointed date;
- ii. The Income Tax department has initiated proceedings under Sections 276 C (1) and 278 B of the Income Tax Act, 1961, against two directors of the company, pending before the Special Chief Judicial Magistrate, Meerut, Uttar Pradesh;
- iii. Transferor Company is a core investment company (CIC);
- iv. Transferee Company shall separately comply with the provisions under the Companies Act, 2013 and the Guidelines issued by the Ministry of Corporate Affairs from time to time, *qua* the change of name of the Transferee Company and file relevant e-Forms, accordingly; and
- v. Transferee Company shall also separately comply with the procedure as contemplated under Companies Act, 2013 and the guidelines issued by the Ministry of Corporate Affairs, *qua* the change in the Main Objects in the Memorandum of Association of the Transferee Company.

19. In reply to the aforesaid observations of the RD, the petitioner companies have filed a rejoinder affidavit dated 27.05.2016 wherein it has been averred as follows:

- i. That the said transfer was made in accordance with law and there is no legal bar to the said transfer of shares. Hence such transfer of shares has no bearing of the present scheme;
- ii. That the Income Tax department has initiated proceedings against the Directors of the Petitioner Companies in their personal capacity. Thus the same cannot be taken as an impediment for the sanction of the Scheme;
- iii. As per the Core Investment Companies (Reserve Bank) Directions, 2011, CICs which are not covered under the definition of 'systematically important CIC', are not required to be registered with RBI. In the present case, the Transferee Company is not a systematically important core investment company under clause 3(h) of the CIC Directions, 2011 hence no NOC/registration/intimation from RBI was/is required to be taken from the RBI.

20. In response to the observations made on behalf of the RD, an undertaking by way of an affidavit dated 15.11.2016 has also been filed and the same is on record. It has been averred in the said affidavit that the Transferee Company shall comply with the provisions of the Companies Act, 2013 and the rules made thereunder with regard to the change of name of the Transferee Company and change in the Main Objects in the Memorandum of Association of the Transferee Company.

21. In view of the above, it has been stated on behalf of the Regional Director that the observations of the Regional Director stand satisfied.

22. It has been noted that no other objections have been received to the Scheme from any other party. The Petitioner Companies, vide affidavit dated 23.05.2016, have submitted that neither the Petitioner Companies nor their counsel have received any objection to the Scheme pursuant to the citations published in the newspapers on 12.04.2016.

23. In view of the foregoing, and upon considering the approval accorded by the members and creditors of the Petitioner Companies to the Scheme; the circumstance that the objections raised by way of the affidavit filed by the Regional Director, Northern Region, Ministry of Corporate Affairs have been satisfied; and the report Official Liquidator attached to this High Court whereby no objections have been raised, there appears to be no impediment

to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will however, comply with the statutory requirements, in accordance with law.

24. A certified copy of the order, sanctioning the scheme, be filed with the ROC, within thirty (30) days of its receipt.

25. Resultantly, it is hereby directed that the Petitioner Companies will comply with all provisions of the scheme and, in particular, those which are referred to hereinabove.

26. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the Petitioner Companies.

27. The Transferor Company shall stand dissolved without being wound up.

28. It is made clear, that this order shall not be construed as an order granting exemption, inter alia, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any

applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

29. The Petitioner Companies shall deposit a sum of Rs.1,00,000/- with Delhi High Court Bar Association Lawyers' Social and Welfare Fund, New Delhi, within a period of two weeks from today.

30. Consequently, the petition is allowed in the aforesaid terms and is according disposed of.

DECEMBER 23, 2016

dn/sb

SIDDHARTH MRIDUL, J

