

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 15.11.2016
Judgment Pronounced On: 19.12.2016

CO.PET. 330/2016

IN THE MATTER OF:-

SAMTECH INFORMATICS PRIVATE LIMITED

Petitioner/Transferor Company no.1

AND

VICTORIA TELECOM SOLUTIONS PRIVATE LIMITED

Petitioner/Transferor Company no.2

WITH

ASF INFRASTRUCTURE PRIVATE LIMITED

Petitioner/Transferee Company

Through: Mr.Ashish Middha, Advocate for the
Petitioners
Ms. Aparna Mudiam, Asst. 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.

CO.APPL. 4012/2016 (Condonation of delay in filing representation/affidavit on behalf of the Regional Director)

This application seeks condonation of delay, which is stated to be of 70 days on the part of the Regional Director in filing the representation/affidavit.

Issue notice. Learned counsel appearing on behalf of the petitioner accepts notice and fairly does not oppose this application.

In view of the foregoing and for the reasons stated in the application, the same is allowed. The delay is condoned. The representation/affidavit is taken on record.

The application is disposed of accordingly.

CO.PET. 330/2016

1. This joint petition has been filed under Sections 391(1) to 394 read with Section 100 of the Companies Act, 1956 (hereinafter referred to as the 'Act') by the Petitioners seeking sanction to the proposed scheme of Amalgamation (hereinafter referred to as the 'proposed scheme') of Samtech Informatics

Private Limited (hereinafter referred to as the 'Petitioner/Transferor Company no.1') and Victoria Telecom Solutions Private Limited (hereinafter referred to as the 'Petitioner/Transferor Company no.2') with ASF Infrastructure Private Limited (hereinafter referred to as the 'Petitioner/Transferee Company').

2. The registered offices of the Transferor Companies and the Transferee Company are situated at New Delhi, within the jurisdiction of this Court.

3. The Transferor Company no.1 was incorporated under the Act, on 11.04.2000, with the Registrar of Companies, N.C.T. of Delhi & Haryana.

4. The Transferor Company no.2 was incorporated under the Act, on 09.07.2003, with the Registrar of Companies, N.C.T. of Delhi & Haryana.

5. The Transferee Company was incorporated under the Act, on 16.01.1997, with the Registrar of Companies, N.C.T. of Delhi & Haryana under the name and style of Yamuna Apartments Private Limited. Thereafter, the Transferee Company changed its name to ASF Infrastructure Private Limited, its present name, and obtained a fresh certificate of incorporation, dated 05.07.2005, in this behalf.

6. The authorized share capital of the Transferor Company no.1 as on 31.03.2015 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor

Company no.1 as on 31.03.2015 is Rs.3,00,200/- divided into 30,020 equity shares of Rs.10/- each.

7. The authorized share capital of the Transferor Company no.2 as on 31.03.2015 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company no.2 as on 31.03.2015 is Rs.3,00,200/- divided into 30,020 equity shares of Rs.10/- each.

8. The authorized share capital of the Transferee Company as on 31.03.2015 is Rs.31,00,000/- divided into 3,10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferee Company as on 31.03.2015 is Rs.25,50,000/- divided into 2,55,000 equity shares of Rs.10/- each.

9. Copies of the Memorandum and Articles of Association of the Transferor Companies and the Transferee Company have been filed on record with the joint application, being Company Application (M) no.43 of 2015, earlier filed by the Petitioners. The audited balance sheets, as on 31.03.2015, of the Transferor Companies and the Transferee Company, along with the report of the auditors, have also been filed. The same are on record.

10. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and detailed in the present

petition. The rationale behind the proposed scheme, as detailed out in para 25 of the present petition, is as hereunder: -

- “a) Transferor Company no.1 are in the computer software and Transferor Company no.2 are in the business of consultancy and the Transferee Company is infrastructure etc.
- b) The same group of promoters have promoted all the Transferor Companies and the Transferee Company and they are under the same management and control. Lists of the directors of the Transferor and Transferee Companies are enclosed and collectively attached with the company application.
- c) The proposed scheme will result in reduction in overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity.
- d) The proposed scheme will result in formation of a larger company enabling further growth and development of the businesses of the said company. The said Scheme will enable the undertakings and business of the said company to obtain greater facilities possessed and enjoyed by one large Company compared to a small company for raising capital, securing and conducting trade and business on favorable terms and other related benefits.
- e) The Scheme will enable the Company concerned to rationalize and streamline their management, businesses and finances and lead to a better and more economic control, over the running and management of the businesses and undertakings of the said Company.

- f) The businesses of the Transferor Companies and the Transferee Company can be combined conveniently and advantageously and in general, the said businesses will be carried on more economically and profitably after the proposed amalgamation, under the proposed Scheme.
- g) The proposed Scheme will contribute in furthering and fulfilling the objects of the company concerned and enabling the optimum growth and development of their combined business.
- h) The proposed Scheme will thus have beneficial results for both the Companies and all concerned.”

11. So far as the share exchange ratio is concerned, it has been submitted on behalf of the Petitioners that upon the proposed scheme coming into effect, no shares shall be issued to the shareholders of the Transferor Companies as the entire equity share capital of the Transferor Companies is held by the Transferee Company and/or its subsidiaries and/or its nominees. It is further submitted that upon the proposed scheme coming into effect the entire equity capital of the Transferor Companies shall stand automatically cancelled and neither any shares will be issued or allotted nor any other consideration will be paid by the Transferee Company.

12. It has been averred on behalf of the Petitioners that there are no proceedings pending against them, as on the date of filing of the present

petition, under Sections 235 to 251 of the Act (including their corresponding Sections of the Companies Act, 2013).

13. It has been further averred on behalf of the Petitioners that the Board of Directors of the Transferor Companies and the Transferee Company in their separate meetings held on 30.01.2016 have unanimously approved the proposed scheme. Copies of the resolutions passed at the Board of Directors meeting of the Transferor Companies and the Transferee Company have been placed on record.

14. To recapitulate, the Petitioners had earlier filed Company Application (M) no.43 of 2015, seeking directions of this Court to dispense with the requirement of convening the meetings of their equity shareholders and creditors, to consider and, if thought fit, approve, with or without modification, the proposed scheme. Vide order dated 01.04.2016, this Court allowed the application of the Petitioners and dispensed with the requirement of convening and holding the meetings of their equity shareholders and creditors.

15. The Petitioners have thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 22.04.2016, notice in the present petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in the

newspapers, namely, 'Business Standard' (English& Hindi). Affidavit of publication, dated 09.09.2016, has been filed by the Petitioners, showing compliance regarding publication of citations in the newspapers. Copies of the newspaper clippings, regarding publication carried out on 11.06.2016 have also been filed alongwith the said affidavit.

16. Pursuant to the notices issued in the present petition, the Official Liquidator sought information from the Petitioners. Based on the information received, the Official Liquidator has filed a report dated 05.09.2016 wherein, *inter alia*, it has been stated that he has not received any complaint *qua* the proposed scheme from any interested person/party and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

17. It has been further stated by the Official Liquidator, in the said report dated 05.09.2016, that the tax assessment for the Financial Year 2014-15 is pending against the Transferor Company no.2.

18. In response to the notices issued in the present petition, Mr. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit dated 02.09.2016. An observation has been made therein that, vide letter dated 08.07.2016, the Income Tax Department

has, *inter alia*, stated that FBT demand of Rs.2,08,152/- for A.Y. 2007-2008 and 2008-2009 is pending against the Transferor Company no.2. However, it has been further observed in the said affidavit dated 02.09.2016 that, vide another letter dated 04.08.2016, the Income Tax Department has stated that no tax implications arises if the Transferee Company has joined at the expenses of its subsidiaries as conveyed by the Assessing officer in the case of Transferor Company no.2 vide its letter dated 22.07.2016.

19. However, in view of Clause 4 of Part III of the proposed scheme, the objection raised by the RD and the OL, as noted hereinabove, stands satisfied. Clause 4 of the proposed scheme, *inter alia*, provides for transfer of all the 'Undertakings' (as defined in the proposed scheme) of the Transferor Companies in the Transferee Company, in accordance with the provisions of the proposed scheme.

20. No objection has been received to the proposed scheme from any other party. Learned counsel for the Petitioners in its affidavit dated 09.09.2016 has submitted that that neither the Petitioners nor their counsel have received any objection pursuant to the citations published in the newspapers on 11.06.2016.

21. Considering the approval accorded by the equity shareholders and creditors of the Petitioners to the proposed scheme; affidavit filed by the Regional Director, Northern Region and the report of the Official Liquidator,

having not raised any objection to the proposed scheme, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme. The Petitioners will comply with the statutory requirements in accordance with law. Upon the sanction becoming effective from the appointed date of proposed scheme, i.e. 1st April, 2015 the Transferor Companies shall stand dissolved without undergoing the process of winding up.

22. 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 proposed 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 Transferor Companies.

23. 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.

24. A certified copy of this order shall be filed with the Registrar of Companies within 30 days from its receipt.

25. Learned counsel for the Official Liquidator prays that costs of at least Rs.2,00,000/- should be paid by the Petitioners keeping in view the fact that the matter has involved examination of extensive records. Learned counsel for the Petitioners states that the same is acceptable to him. The Petitioners shall deposit a sum of Rs.2,00,000/- by way of costs, in the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

26. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.

DECEMBER 19, 2016

dn/mk/ap

SIDDHARTH MRIDUL, J