

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 15.11.2016
Judgment pronounced on:19.12.2016

CO.PET. 459/2016

IN THE MATTER OF:-

KULLU VALLEY LEISURE RESORTS PRIVATE LIMITED

.....Petitioner no.1/Transferor Company

AND

B R BEE PRODUCTS PRIVATE LIMITED

.....Petitioner no.2/Transferee Company

Through: Mr.Sudhir K. Makkar,
Senior Advocate with
Ms. Meenakshi
Singh,Advocates for the
petitioners

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. This joint petition has been filed jointly under Sections 391(2) and 394 of the Companies Act, 1956 (hereafter referred to as the 'Act') seeking sanction to the proposed scheme of Amalgamation (hereafter referred to as the 'proposed scheme') of Kullu Valley Leisure Resorts Private Limited (hereinafter referred to as 'Petitioner no.1/Transferor Company') with B R

Bee Products Private Limited (hereinafter referred to as 'Petitioner no.2/Transferee Company').

2. The registered offices of the Petitioners are situated at NCT of Delhi, within the jurisdiction of this Court.

3. The Transferor Company was incorporated under the Act on 25.07.1990 with the Registrar of Companies, Himachal Pradesh at Jalandhar. Thereafter, the Transferor Company shifted its registered office from the state of Himachal Pradesh to NCT of Delhi and obtained a certificate, dated 25.01.2016, in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The authorised share capital of the Transferor Company 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 as on 31.03.2015 is Rs.20,37,100/- divided into 2,03,710 equity shares of Rs.10/- each.

5. The Transferee Company was incorporated under the Act, on 09.12.2004, with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

6. The authorised share capital of the Transferee Company as on 31.03.2015 is Rs.37,00,00,000/- divided into 37,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the

Transferee Company as on 31.03.2015 is Rs.33,32,50,000/- divided into 33,32,500 equity shares of Rs.100/- each.

7. Copies of the Memorandum and Articles of Association, of the Petitioners, have been duly filed as Annexures to the Company Application (M) no.41 of 2016, earlier filed by the Petitioners. The audited financial statements, as on 31.03.2015, of the Petitioners alongwith the report of the auditors have also been duly filed. The same are on record.

8. A copy of the proposed scheme has been duly placed on record and the salient features thereof have been incorporated and detailed in the present petition. The rationale for implementation of the proposed scheme, as detailed out in paragraph 3 of the present petition, is as follows:-

“3. xxxx xxxx xxxx xxxx xxxx

- a. The Transferor and Transferee Companies are wholly owned subsidiary and holding companies. The proposed Scheme of Amalgamation would result in business synergy, pooling of resources and consolidation of these companies.
- b. The proposed amalgamation would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity.
- c. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to

build a wider capital and financial base and to promote and secure overall growth of their businesses.

- d. The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.
- e. The said Scheme of Amalgamation will have beneficial impact on all the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.”

9. So far as the share exchange ratio is concerned, clause 9 of the proposed scheme provides that, the Transferor Company is a wholly owned subsidiary of the Transferee Company and, therefore, no new share will be issued by the Transferee Company pursuant to the proposed scheme getting sanctioned.

10. 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).

11. The Board of Directors of the Petitioners, in their separate meetings held on 03.02.2016, have unanimously approved the proposed scheme. Copies of the Resolutions passed at the meetings of the Board of Directors of the Petitioners have been placed on record.

12. To recapitulate, the Petitioners had in the earlier round filed Company Application (M) no.41 of 2016, whereby a prayer was sought to dispense with the requirement of convening the meeting of their shareholders and creditors. This Court vide order dated 23.03.2016 allowed the application and dispensed with the requirement of convening and holding the meetings of the shareholders and creditors of the Petitioners.

13. The Petitioners have thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 24.05.2016 notice in the present petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Furthermore, citations were directed to be published in two newspapers, namely, 'Statesman' (English) and 'Rashtriya Sahara' (Hindi). Affidavit of service and publication, dated 06.09.2016, has been filed by the Petitioners, showing compliance regarding service on the Regional Director and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper clippings, regarding publication carried out on 20.07.2016 have also been filed alongwith the said affidavit.

14. 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 02.09.2016, wherein, it has been stated that he has not received any complaint against the

proposed scheme from any interested person/party and that the affairs of the Petitioners do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest, as per second proviso of Section 394(1) of the Act.

15. Further, in response to the notices issued in the petition, Mr. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs, filed his affidavit dated 06.09.2016 wherein it has been stated that he has no objection to the sanction of the proposed scheme.

16. It has been noted that no objections have been received to the proposed scheme from any other party. The Petitioners, vide affidavit dated 04.11.2016, have submitted that neither the Petitioners nor their counsel have received any objection to the proposed scheme pursuant to the citations published in the newspapers on 20.07.2016.

17. Considering the approval accorded by the 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 raising 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 Petitioner Companies will comply with the statutory requirements in accordance with law. Upon the sanction becoming effective from the appointed date of the proposed

scheme, i.e. 1st April, 2015, the Transferor Company shall stand dissolved without undergoing the process of winding up.

18. A certified copy of the order, sanctioning the proposed scheme, be filed with the ROC, within 30 days of its receipt.

19. 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 Petitioners.

20. 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.

21. It has been stated by learned counsel appearing on behalf of the Petitioners that costs in the sum of Rs.25,000/- already stands deposited with the Common Pool Fund maintained by the Official Liquidator, Delhi, in compliance to the oral directions of this Court, on 27.09.2016, when the final arguments in this matter were initially heard. A copy of the acknowledgment, dated 19.10.2016, with respect to the said deposit of costs has been placed on record.

22. In view of the foregoing, no order as to costs is being made herein as costs in the sum of Rs.25,000/- already stands deposited by the Petitioners with the Common Pool Fund maintained by the Official Liquidator, Delhi.

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

DECEMBER 19, 2016
ap/mk/dn

SIDDHARTH MRIDUL, J

