

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On:18.11.2016
Judgment Pronounced On:19.12.2016

CO.PET. 316/2015

IN THE MATTER OF:-

NARMADA ASBESTOS PIPES PRIVATE LIMITED

Transferor Company/ Petitioner Company-I

AND

CARNATION DEVELOPERS PRIVATE LIMITED

Transferee Company / Petitioner Company-II

Through: Mr. Sumit Roy and Mr. Vishal Dutt,
Advocates for Petitioners
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 to 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') read with Rules 6 and 9 of the Companies (Court) Rules, 1959, by Narmada Asbestos Pipes

Private Limited (hereinafter referred to as 'Transferor Company/Petitioner No.1') and Carnation Developers Private Limited (hereinafter referred to as 'Transferee Company/Petitioner No.2') for approval of the Scheme of Amalgamation (hereinafter referred to as 'the Scheme') between the Transferor Company and Transferee Company.

2. The Transferor Company and the Transferee Company, have been hereinafter, jointly referred to as 'the Petitioners'.

3. The registered offices of the Petitioners 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 incorporated on 24.03.2006 under the provisions of the Act and a certificate of incorporation was issued by the Registrar of Companies, Rajasthan. Thereafter, the registered office of the Transferor Company was shifted to Delhi on 07.09.2013 and a certificate in this behalf was issued by the Registrar of Companies, Delhi and Haryana.

5. The Transferee Company was incorporated on 02.08.2010 under the provisions of the Act and a certificate of incorporation was issued by the Registrar of Companies, Rajasthan. Thereafter, the registered office of the Transferee Company was shifted to Delhi on 12.06.2013 and a certificate in this behalf was issued by the Registrar of Companies, Delhi and Haryana.

6. The authorized share capital of Transferor Company, as on 31.02.2014, is Rs.36,00,000/-, divided into 3,60,000 equity shares of Rs.10/- each. The issued, subscribed and fully paid-up share capital of Transferor Company, as on 31.02.2014, is Rs.35,72,670/-, divided into 3,57,267/- equity shares of Rs.10/- each.

7. The authorized share capital of the Transferee Company, as on 31.02.2014, is Rs.1,00,00,000/-, divided into 10,00,000/- equity shares of Rs.10/- each. The issued, subscribed and fully paid-up share capital of the Transferee Company, as on 31.02.2014, is Rs.3,03,030/-, divided into 30,303 equity shares of Rs.10/- each.

8. It has been averred on behalf of the Petitioners that there are no proceedings pending against them, under Sections 235 to 251 of the Act (including their corresponding sections of the Companies Act, 2013).

9. It has been further submitted on behalf of the Petitioners that the Scheme has been approved by the respective Board of Directors (BOD) of the Petitioners on 22.12.2014. The copies of the BOD resolutions dated 22.12.2014, have been filed by the Petitioners and the same are on record.

10. The Copies of the Memorandum of Association and Articles of Association, of each of the Petitioners, have been duly filed as Annexures to Company Application (Main) No. 31 of 2015 (Application for First Motion), which earlier came to be filed by the Petitioners. The same are on record. The

audited financial statements, as on 31.03.2014, pertaining to each of the Petitioners, have also been duly filed by all the Petitioners and the same are on record.

11. A copy of the Scheme has been duly 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 urged on behalf of the Petitioners that the proposed amalgamation of the Transferor Company, with and into the Transferee Company would, *inter alia*, entail the following benefits:

- (i) The Transferor Company involved in the amalgamation is a subsidiary of the Transferee Company with a majority shareholding of 99.97% of its paid up share capital and is also jointly developing a residential group housing project on the consolidated Project Land with the Transferee Company as detailed out in the application bearing Company Application (M) No. 31 of 2015 as well as in the present petition. Apart from the aforesaid project, no other business is undertaken by the Transferor Company;
- (ii) The Scheme will result in consolidation of the business for holding investments in the shares of the Companies in a single entity and would result in reduction of overheads, administrative, managerial

and other expenditure and bring about operational rationalization, organizational efficiency and optimal utilization of various resources;

- (iii) The Scheme will lead to efficient administration and operation of the Petitioners and also prevent cost duplication thus resulting in higher profits and increased value of shares of the shareholders;
- (iv) The Scheme will enable maximum utilization of resources of the Petitioners as it will significantly reduce the maintenance and operation cost of the Companies ;
- (v) The Scheme will increase the bargaining power of the resulting company for the purpose of obtaining loan/ finances and to undertake big construction projects (including the ongoing consolidated project) as increase in total value of the net assets of resulting company will enable the resulting Company to qualify for undertaking bigger projects;
- (vi) The Scheme will provide an opportunity to the resulting company to manage efficiently the skilled and experienced manpower available with the Petitioners to optimum potential;
- (vii) The Scheme will result in the optimum utilization of the business contacts, supplier base, expertise in sourcing building materials and existing project lands, of the Transferor Company by the merged entity resulting in better brand values of the resulting company; and

(viii) The Scheme will result in overall enhancement of shareholder's value and integration of capabilities for better handling of projects. The amalgamation of the Transferor Company and the Transferee Company shall enable the said companies to be able to have business access and market with customers for better and efficient utilization of resources of the companies and greater synergy of operation and economies. The Scheme would also benefit all stake holders including shareholders, employees etc.

12. The Share Exchange Ratio for the Amalgamation has been provided for in the Scheme and the same is summarised hereinbelow:

“So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, no shares of the transferee company shall be allotted in lieu or exchange of its holding in the transferor company and the share capital including the authorized share capital, and issued, subscribed and paid-up share capital of the transferor company shall stand cancelled.”

13. To recapitulate, the Petitioners had, in the earlier round, filed an application (i.e. application for the First Motion), being Company Application (M) No. 31 of 2015, whereby a prayer was sought, seeking directions for dispensing with the requirement of convening meetings of the equity shareholders and unsecured creditors of the Transferor Company and direction

for dispensing with the requirement of convening meetings of the equity shareholders and secured creditors of the Transferee Company.

14. By way of order dated 16.04.2015, the said application was allowed and the requirement of convening meetings of the equity shareholders, secured and unsecured creditors of each of the Petitioners, to consider and approve, with or without modifications, the Scheme, was dispensed with.

15. Pursuant to the same, the Petitioners, have filed the instant petition (i.e. Petition for Second Motion). Notice in this petition was issued by this Court, by way of the order dated 10.07.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD), Northern Region.

16. Furthermore, vide order of this Court dated 10.07.2015, citations were directed to be published. It has been stated by way of affidavit dated 08.12.2016 filed by the Transferee Company that Citations were published, on 21.09.2015, in Delhi Editions of the newspapers, namely, 'Hindustan Times' (English) and 'Dainik Bhaskar' (Hindi), in compliance with the said order.

17. Pursuant to the notices issued, report of the Official Liquidator (OL) dated 02.12.2015 has been filed, wherein, *inter alia*, it has been stated that the OL has not received any complaint *qua* the Scheme of Amalgamation and/or from person/party interested in the scheme. Further, it has been stated in the said report dated 02.12.2015 that on the basis of information submitted by the Petitioners, it appears, that the affairs of the Transferor Company do not appear

to have been conducted in a manner prejudicial to either the interest of their members or the public at large.

18. In other words, it has been stated by the OL in the report dated 02.12.2015 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.

19. Further, in response to the notices issued in the Petition, the Regional Director, Northern Region, Ministry of Corporate Affairs, filed an affidavit dated 01.03.2016 wherein, *inter alia*, it has been stated that he has no objection to the sanction of the proposed Scheme, except the observations enumerated in paragraph 9 of the said affidavit dated 01.03.2016, stating that the Petitioners are required to comply with the terms and conditions relating to various leasehold lands allotted by the Urban Improvement Trust, Bhiwadi, Rajasthan, to the Petitioners, which are also subject matter of the Scheme.

20. In response to the aforesaid affidavit filed by RD, the Petitioners have filed Affidavits dated 27.07.2016 wherein, it has been stated that apart from the undertaking as provided in the Scheme of Amalgamation, the Petitioners have unequivocally undertaken to comply with the terms and conditions as contained in the respective lease deeds relating to the leasehold land allotted by the Urban

Improvement Trust, Bhiwadi, Rajasthan, in favour of the Petitioners which forms the subject matter of the present petition.

21. Ms. Aparna Mudiam, Assistant Registrar of Companies, appearing on behalf of the RD, Northern Region, states that in view of the undertaking made on behalf of the Petitioners, that the terms and conditions as contained in the respective lease deeds relating to the lease-hold land allotted by the Urban Improvement Trust, Bhiwadi, Rajasthan, shall be complied with by the Petitioners, the objection raised vide affidavit of the RD dated 01.03.2016, stands satisfied and that no further objections against the present Scheme remain.

22. It has been noted that no objections have been received to the Scheme from any other party. It has been stated by way of affidavit dated 08.12.2016 filed by the Transferee Company that neither the Petitioners nor their counsel have received any objection pursuant to the citations published in the newspapers dated 21.09.2015.

23. In view of the foregoing and upon considering the approval accorded by the members and creditors of the Petitioners to the proposed Scheme; the circumstance that the objections raised by the affidavit filed by the Regional Director, Northern Region, Ministry of Corporate Affairs stand satisfied; the report of the Official Liquidator attached to this High Court, whereby no objections have been raised to the proposed Scheme, 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 to 394 of the Companies Act, 1956. The Petitioners 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 petitioners 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 petitioners.

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 Petitioners shall deposit a sum of Rs.1,00,000/-, by way of costs, in the 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 disposed of accordingly.

SIDDHARTH MRIDUL, J.

DECEMBER 19, 2016

sb/dn

