

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement reserved on: 11.02.2016
Judgement delivered on: 29.02.2016

+ **CO.PET. 742/2015**

IN THE MATTER OF
BALAJI AGRIPEC PRIVATE LIMITED

....Petitioner No.1/ Transferor Company

WITH

BALAJI MUSHROOMS PRIVATE LIMITED

.... Petitioner no.2/ Transferee Company

Through:

Mr. P. Nagesh and Mr. Anand M. Mishra,
Advocates,

Ms. Aparna Mudiam, Asstt. ROC for the
RD.

Mr. Rajiv Behl, Adv. for the OL.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by Balaji Agripec Private Limited (i.e. petitioner no.1/ transferor company) with Balaji Mushrooms Private Limited (i.e petitioner no.2/ transferee company), under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of amalgamation (hereafter referred to as the scheme).

2. The transferor company and the transferee company, will hereafter

collectively be referred, to as the petitioners.

3. The registered office of the petitioners are located within the territorial jurisdiction of this court.

4. The details with respect to the petitioners' authorised, issued, subscribed and paid up capital are set out in paragraph 3 and paragraph 13 respectively in the petition.

5. The copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2014 have been filed by the petitioners.

6. Copies of Board of Directors' (BOD) resolution of even date i.e. 31.03.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

7. The petitioners have averred that the amalgamation of the transferor company with the transferee company would result in pooling of resources of the entities to their common advantage, resulting in more productive utilization of the resources, costs and operational efficiencies.

8. In terms of clause 12.1 of the scheme, the share exchange ratio as provided therein is as follows:

One (1) equity share of Rs.100/- each fully paid up, for every six (6) equity shares of Rs.1 00/- held in the Transferor Company.

9. The petitioners have averred that there are no proceedings pending against them, under Sections 235 to 251 of the Act.

10. To recapitulate, the petitioners had, in the earlier round filed an application (i.e. the first motion), being: CA(M) No.124/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of the equity shareholders , secured creditors and unsecured

creditors of the petitioners. This court vide order dated 03.08.2015, having regard to the fact that the transferor company had three (3) equity shareholders, all of whom had given their consent to the scheme, dispensed with the requirement of convening meeting, as prayed.

10.1 Furthermore, in so far as the transferee company is concerned, the court, upon noticing, that the transferee company had seven (7) equity shareholders, all of whom had given their consent to the scheme, dispensed with the requirement of convening meeting, as prayed.

11. The court, also noted, that since, the petitioners did not have any secured or unsecured creditors; therefore, obviously, there was no requirement to convene meetings with respect to those classes of persons/ entities.

12. The petitioners, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 28.09.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD).

14.1 Furthermore, citations were ordered to be published.

15. Citations were published in Delhi edition of newspapers: Business Standard (English) and Business Standard (Hindi) on 18.11.2015. An affidavit dated 11.02.2016 demonstrating service of the petition on the RD and establishing publication of citation along with the newspaper extracts, was filed by the petitioners.

15.1 Further, in the aforementioned affidavit it was stated that subsequent to the publication of the notice in the petition they have not received any objection or complaint qua the scheme.

16. Pursuant thereto, the RD filed its affidavit under Section 394 A of the Act. In the affidavit, the RD relied upon the general circular bearing no.

53/2011, dated 26.07.2011 and, circular bearing no. 1/2014 dated 15.01.2014.

16.1 Based on the aforementioned circulars, as per the affidavit of the RD, communication was sent to the Registrar of Companies, Delhi and Haryana (in short the ROC), and the Income Tax Department (I.T. Department), seeking their response to the scheme.

16.2 However, no comment or response of the I.T. Department has been, apparently received in the matter by the RD.

17. The RD, though, received information from the ROC vide communication dated 04.02.2016 which, inter alia, is indicative of the facts as follows:

- (a) The approval for the scheme , if not obtained on or before 31.12.2015; the scheme shall become null and void.
- b) The petitioners have to file Form MGT-14 with the ROC within 30 days of passing the BOD resolutions whereby the scheme was approved but the petitioners have not file the said form.

18. In response to the concerns raised by the RD, the petitioners filed an affidavit dated 05.02.2016, wherein it was averred that the petitioners have passed a BOD resolution on 28.12.2015 for extension of the validity of the scheme.

18.1 The petitioners further averred that that they have filed Form MGT-14 with the ROC vide SRN C44001196 and C44442580.

18.2 Therefore, having regard to the above, in my view, the concerns raised by the RD stand duly addressed.

19. The OL, in his report, inter alia, stated that he has not received any complaint qua the scheme from any interested person or party. The OL has

also averred that on the basis of information supplied by the petitioners, it appears, the affairs of the transferor company has 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. In other words, affairs of the transferor company, according to the OL, do not fall foul of the provisions of the second proviso to Section 394(1) of the Act.

19.1 Thus, the OL, in effect, has conveyed that he has no objections to the scheme being sanctioned.

20. To be noted, the scheme in clause 9 provides that all the employees of the transferor company in service on the effective date shall become the employees of the transferee company on such date without any break and interruption in service and on the terms and conditions not in any way less favourable to them than those subsisting with reference to the transferor company as the case may be on the said date.

21. In terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 5 the scheme the entire undertaking, properties, rights and powers of the transferor company will stand transferred to and / or vest in the transferee company without any further act or deed. Similarly, in terms of the scheme, all liabilities and duties of the transferor company shall stand transferred to the transferee company without any further act or deed.

21.1 Furthermore, as per clause 14 of the scheme, the transferor company shall stand dissolved without being wound up.

22. Accordingly, in view of the approval accorded to the scheme by the shareholders of the petitioners and, given the fact, that the RD and the OL have not articulated any objections, to the scheme, in my opinion, there appears to be no impediment in the grant of sanction to the scheme.

Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioners will, however, comply with all statutory requirements, as mandated in law.

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

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

24. In any event, notwithstanding what is stated by the petitioners, the transferee company will file an undertaking with this court, within two weeks from today, stating therein, that it will take over and defray all liabilities of the transferor company. It is also made clear, that the concerned statutory authority will be entitled to proceed against the transferee company qua any liability which it would have fastened on to the transferor company for the relevant period, and that, which may arise on account of the scheme being sanctioned.

25. 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.

26. It is made clear, that this order will 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.

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

RAJIV SHAKDHER, J

FEBRUARY 29, 2016