

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

% Judgement reserved on: 15.03.2016
Judgement delivered on: 21.03.2016

+ **CO.PET. 745/2015**

IN THE MATTER OF

INDIABULLS FINANCE COMPANY PRIVATE LIMITED

.....Petitioner / Transferor Company

WITH

INDIABULLS COMMERCIAL CREDIT LIMITED

..... Petitioner / Transferee Company

Through:

Mr. Amar Gupta & Mr. Divyam Aggarwal,
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 Indiabulls Finance Company Private Limited (i.e. petitioner/transferor company) with Indiabulls Commercial Credit Limited (i.e petitioner / transferee company), under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of arrangement (hereafter referred to as the scheme).

2. The transferor company and the transferee company, will hereafter 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 paragraphs 13 and 15 of 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 31.03.2015 have been filed by the petitioners.
6. Copies of Board of Director's (BOD) resolution dated 16.04.2015, 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 20 of the scheme, the share exchange ratio as provided therein is as follows:
 - 8.1 03 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 01 equity share of Rs.10/- each fully paid up 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.123/2015, whereby a prayer had been made, for dispensing with the requirement of convening the meetings of the shareholders of the petitioners and secured creditors of the transferor company. The court further directed to lay down the procedure for convening, holding and conducting the meetings of the unsecured creditors of the transferor company and secured and unsecured creditors of the transferee company.

10.1 This court, vide order dated 27.07.2015 having regard to the fact that all shareholders of the petitioners and secured creditors of transferor company, had given their consent to the scheme, dispensed with, the requirement of convening the meetings qua the aforementioned class of persons/ entities, even while issuing directions for convening the meetings of unsecured creditors of transferor company and secured and unsecured creditors of the transferee company.

11. The meeting of the unsecured creditors of the transferor company was held on 28.08.2015. Pertinently, the transferor company has only 03 unsecured creditors. The chairperson of the meeting submitted his report wherein, it is stated, that said two (2) unsecured creditors were present and had voted in favour of the scheme, though the debt owed to them was 50% of the total debt owed by the transferor company to its unsecured creditors. In terms of Section 391(2) of the Act, the requirement is to obtain consent of 3/4th in value of those who are present and vote at the convened meeting.

That requirement to my mind is met, though it could impel the court, in my opinion, in certain circumstances to examine the scheme more closely. In this case, given the fact that the RD and the O.L. have not put forth any objections, as would be apparent from the discussion noted hereafter, the consents of the unsecured creditors of the transferor company obtained to, my mind, would be in order.

11.1 Similarly, the meetings of the creditors (i.e secured and unsecured) of the transferee company was, also, held on 28.08.2015. In this context, it is important to, note that the transferee company has only 4 secured creditors. The chairperson of the meeting submitted his report on the same date (i.e. 28.08.2015), wherein, it is stated that the said 04 secured creditors were present and had voted in favour of the scheme. The said secured creditors, thus gave their consent to the scheme. Likewise, the total number of unsecured creditors of the transferee company which are 04 in number out of which 03 were present and voted at the meeting convened on 28.08.2015. The Chairperson appointed qua the said meeting reported that 03 unsecured creditors were present and had voted in favour of the scheme. Thus consent of 81.25% (in value) of the unsecured creditors of the transferee company was obtained. The Chairpersons' report specifying the aforesaid has been appended along with the petition.

12. The copy of the resolutions passed at the respective meetings of creditors of the petitioners have been placed on record along with the petition.

13. The petitioner, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 29.09.2015. Notice was

accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD).

13.1. Furthermore, citations were ordered to be published.

14. Citations were published in Delhi edition of newspapers: Business Standard (English) and Jansatta (Hindi) on 22.10.2015. An affidavit dated 03.11.2015 demonstrating service of the petition on the RD and establishing publication of citation along with the newspaper extracts, was filed by the petitioner.

14.1 Further, an affidavit dated 18.02.2016 was filed by the petitioners that subsequent to the publication of the notice in the petition they have not received any objection or complaint qua the scheme.

15. 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.

15.1 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.

15.2. However, no response by the I.T. Department, on this matter, has apparently been received, till date.

16. The RD, though, received information from the ROC vide communication dated 29.12.2015 which, inter alia, is indicative of the fact

that the said authority has not received any complaint or objection from the shareholders or any of the stakeholders of the petitioners.

17. Therefore, in so far as the RD is concerned, there are no objections taken by him qua the scheme.

18. 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 its 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.

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

19. 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.

20. In terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 5 of 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.

20.1 Furthermore, as per clause 26 of the scheme, the transferor company shall stand dissolved without being wound up.

21. 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.

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

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

23. 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.

24. 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.

25. 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.

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

RAJIV SHAKDHER, J

MARCH 21, 2016

