

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on:19.10.2016

CO.PET. 854/2015

IN THE MATTER OF:-

LETTUCE ENTERTAIN YOU LIMITED

....Petitioner No. 1/Transferor Company

AND

PVR LEISURE LIMITED

...Petitioner No. 2/Transferor Company

AND

PVR LIMITED

....Transferee/Non-petitioner Company

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Through: Mr. Deepak Diwan, Mr. Vinod Kumar and Ms.
Himanshi Taneja, Advocates for the Petitioners

Ms. Aparna Mudiam, Deputy 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. This Joint Petition has been filed under sections 391(2) & 394 of the Companies Act, 1956 by the Petitioner / Transferor Company No.1& 2 respectively seeking sanction of the Scheme of Amalgamation of Lettuce Entertain You Limited (Transferor / Petitioner Company No. 1) and PVR Leisure Limited (Transferor /Petitioner Company No. 2) with PVR Limited (Transferee / Non-Petitioner Company).
2. The registered office of the Petitioner / Transferor Companies and the Transferee Company is situated at New Delhi, within the jurisdiction of this Court.
3. Details with regard to the date of incorporation of Transferor Companies, their Authorized, Issued, Subscribed and Paid up capital have been given in the Petition.
4. Copies of the Memorandum and Articles of Association as well as the latest Audited Annual Accounts for the year ended 31st March, 2015 of the Petitioner companies respectively and the Transferee Company have also been enclosed with the Company Application (Main) No. 161/2015.

5. Copies of the Resolutions passed by the Board of Directors of the Transferor / Petitioner Company Nos. 1 & 2 respectively and Transferee approving the Scheme of Amalgamation have also been placed on record.

6. It has been submitted that no proceedings under 210, 214, 215, 216(1), 216(3), 216(4), 217, 219, 220, 223, 224(1), 224 (3), 224(4) and 225 of the Companies Act, 2013 (Section 237, 243, 250, 250(A), 251 of the Companies Act, 1956) is pending against either of the Petitioner Companies.

7. So far as the share exchange ratio is concerned Clause 5.1 of the Scheme mentions that the entire paid-up equity and non-cumulative convertible preference share capital of Transferor / Petitioner Company No. 2 is held by the Transferee Company, directly and the entire paid-up equity share capital of Transferor / Petitioner Company No. 1 is held by Transferee Company through its wholly owned subsidiary PVR Leisure, Transferor / Petitioner Company No. 2. Therefore, upon this Scheme being effective, the entire Issued, Subscribed and Paid up share capital of Transferor / Petitioner Company No. 1 & 2 respectively shall, *ipso facto*, without any further application, act or deed stand cancelled on the Effective Date and no shares of Transferee Company will be issued or allotted with respect to the equity and preference shares held by Transferee Company in the Transferor / Petitioner Company No. 2 and to Transferor / Petitioner

Company No. 2 with respect to the equity shares held by PVR Leisure in Lettuce in consideration for amalgamation.

8. The Petitioner Company had earlier filed CA (M) No. 161 of 2015 seeking directions of this Court for dispensation of the convening of meetings of the Equity & Preference shareholders, Secured and Unsecured Creditors of the Transferor Company Nos. 1 & 2 respectively and also, for dispensing with the requirement of filing the separate or joint Application by the Transferee Company under sections 391 to 394 of the Companies Act, 1956 on the ground that the scheme does not entail or involve any arrangement between the Transferee / Non-Petitioner Company and its shareholders since both the Transferor / Petitioner Companies are wholly owned subsidiaries of the Transferee / Non- Petitioner Company. Further, no new shares will be issued by the Transferee / Non-Petitioner Company in lieu of the shares of the Transferor /Petitioner Companies and hence, there will be no change in the control and management of the Transferee / Non-Petitioner Company, therefore, the rights of the shareholders of the Transferee / Non-Petitioner Company will not be affected in any manner whatsoever by the scheme. This Court vide order dated 6th November, 2015, allowed the application and dispensed with the requirement of convening meetings of Equity Shareholders and Unsecured Creditors of Transferor

Company No. 1, there being no secured creditors of Transferor Company No. 1. Further, the court dispensed with the requirement of convening meetings of Equity & Preference Shareholders of Transferor Company No. 2, there being no Secured and Un-secured Creditors of the Transferor Company No. 2 and granted exemption to the Transferee Company from taking out separate proceedings under Section 391(2) of the Companies Act, 1956.

9. The Petitioner Companies had thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated 20th November, 2016, notice of the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English, Delhi Edition) and 'Jansatta' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioner showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 4th December, 2015.

10. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator D. P. Ojha had filed his report dated 11th

March, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

11. In response to the notices issued in the Petition, the Learned Regional Director, Northern Region, Ministry of Corporate Affairs after receiving the report from the Registrar of Companies, issued the letter for clarifications from the Petitioner Companies and the Petitioner Company submitted their reply on 08th March, 2016 to the said letter. Thereafter the Learned Regional Director had filed his Affidavit/Report dated 21st March, 2016 wherein vide Para 6, the Regional Director had alleged that the Transferee Company had violated the various provisions of the Companies Act, 2013 and the reply dated 08.03.2016 submitted by the Petitioners is vague and unsatisfactory.

12. In response to the above observation of the Learned Regional Director, Learned Counsel for the Petitioner Companies vide their rejoinder dated 7th April, 2016 filed on 8th April, 2016 have submitted that the Regional Director has erred in describing PVR Ltd, Transferee / Non-Petitioner Company as Petitioner Company No. 3 whereas as per order dated 6th November, 2016, PVR Ltd, Transferee Company/ Non- Petitioner

Company was granted exemption from taking out a separate proceedings under Section 391(2) of the Companies Act, 1956. Further, the Learned Counsels submitted that observations made in Para 6(2) of RD's affidavit dated 21st March, 2016 do not relate to the Petitioner Companies and the alleged non-compliances have no bearing to the merits of the Scheme.

13. Pursuant to the rejoinder of the Petitioner Companies, the Learned Regional Director Mr. Narender Kumar Bhola vide additional affidavit dated 18th July, 2016 filed on 19th July, 2016 stating that vide para 4, the Registrar of Companies, Delhi & Haryana vide letter dated 18th April, 2016 furnished further report in the matter and submitted that the Transferee Company have not complied with the Provisions of the Companies Act, 2013. The relevant para of the Regional Report is reproduced hereunder:

“4(e). The petitioner company has not clearly explained why and how Section 185 of the Companies Act, 2013 should not apply in the matter. Nothing is stated clearly to refute the serious violation. The Petitioner company is merely struck its contention of non-applicability of the provisions of Section 185 of the Act without going into its entirety and nor commented upon the justification of extending short term loans, its utilization, booking huge losses and amalgamation of these entities in a short span of their incorporation;”

14. That subsequently, the Learned Regional Director again vide representation/ affidavit dated 29th July, 2016 filed on 1st August, 2016 wherein vide Para 3 submits that the Regional Director had again received the report dated 20th July, 2016 from the Registrar of Companies, Delhi & Haryana stating that the Transferee Company has made the necessary compliances of the Companies Act, 2013 and submitted that he has no objection to the sanctioning of the Scheme. The relevant para of the RD Report dated 29th July, 2016 is as under:

“2. Therefore the loan taken by Lettuce Entertain You Limited (Transferor Company No. 1) from PVR Leisure Limited(Transferor Company No. 2) is exempt from Section 185 according to Rule 10(!) of Chapter XII of the Companies Rule, 2014.”

15. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Pankaj Dhawan, Authorised Signatory of the Petitioner Companies, has filed an Affidavit dated 21st March, 2016 confirming that neither the Petitioner Company nor their Legal Counsel has received any objection pursuant to citations published in the newspapers.

16. The Petition was last fixed for hearing on 9th September, 2016 and the matter was adjourned to 10th March, 2017. The Petitioners therefore filed an

Application bearing CA No.3696 of 2016 for preponing the hearing on the ground that all parties entitled to file their report have given their no-objection to the approval of the Scheme and accordingly, the Order approving the Scheme will be in the nature of consensual order and nothing else survives in the way of the sanction of the Scheme.

17. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

18. A certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

19. Learned counsel appearing on behalf of the Official Liquidator prays that costs of at least Rs.50,000/- may be paid by the petitioners, keeping in view the fact, that the matter called for examination of extensive records and

prioritized hearings. Learned counsel appearing on behalf of the petitioners states that the same is acceptable to him.

20. In view of the foregoing, the petitioners shall deposit a sum of Rs.50,000/- by way of costs, with the Official Liquidator, Delhi.

21. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, and in terms of the Scheme , the whole or part of the undertaking, the property, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Companies be transferred to the Transferee Company without any further act or deed. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

22. The Petition is allowed in the above terms.

SIDDHARTH MRIDUL, J

OCTOBER 19, 2016

sd