

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 05.12.2016
Judgment Pronounced On: 17.02.2017

CO.PET. 377/2016

KANAV PAPERS PRIVATE LIMITED

.....Petitioner/Demerged Company

AND

STAR KRAFT PAPERS PRIVATE LIMITED

.....Petitioner/Resulting Company

Through: Mr. Subhiksh Vasudev,
Mr. Aman Gupta, Advocates for
the Petitioners.
Ms. Aparna Mudiam, Assistant
ROC.

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') by Kanav Papers Private Limited (hereinafter referred to as 'Demerged Company') and Star Kraft Papers Private Limited (hereinafter referred to as 'Resulting Company'), seeking sanction of the scheme of arrangement (hereinafter

referred to as 'the Scheme') between the Demerged Company and the Resulting Company.

2. The registered offices of each of the Petitioner Companies are situated at Delhi, within the jurisdiction of this Court.

3. The Demerged Company was incorporated and a certificate in this behalf was issued on 04.05.2005 by the Registrar of Companies, NCT of Delhi and Haryana at New Delhi, under the Act, in the name and style of 'Devpriya Fibres Private Limited'. Thereafter, the name of the Demerged Company was changed to its present name and a fresh certificate in this behalf was issued on 10.04.2015 by the Registrar of Companies, NCT of Delhi and Haryana.

4. The Resulting Company was incorporated under the Act vide certificate of incorporation dated 27.06.2012, issued by the Registrar of Companies, NCT of Delhi and Haryana under the name of 'Dev Star Papers Private Limited'. Thereafter the name of the Resulting Company was changed to its present name and a fresh certificate was issued in this behalf on 11.03.2015 by the Registrar of Companies, NCT of Delhi and Haryana.

5. The authorized share capital of the Demerged Company as on 31.03.2015 is Rs.3,50,00,000/- divided into 35,00,000 shares of Rs.10/- each, fully paid up. The issued, subscribed and paid up share capital of the

Demerged Company as on 31.03.2015 is Rs.3,10,88,880/- divided into 31,08,888 shares of Rs.10/- each, fully paid up.

6. The authorized share capital of the Resulting Company as on 31.03.2015 is Rs.3,00,00,000/- divided into 30,00,000 shares of Rs.10/- each, fully paid up. The issued, subscribed and paid up share capital of the Resulting Company as on 31.03.2015 is Rs.2,75,00,000/- divided into 27,50,000 shares of Rs.10/- each, fully paid up.

7. Copies of the Memorandum of Association and Articles of Association, the audited annual accounts for the year ended 31.03.2015, alongwith the reports of the Auditors, pertaining to the Demerged Company and the Resulting Company have been enclosed with the application that earlier came to be filed by the Petitioner Companies, being Company Application (Main) No.10 of 2016.

8. Learned Counsel appearing on behalf of the Petitioner Companies has stated that no proceedings under sections 235 to 251 of the Act (or corresponding provisions of the Companies Act, 2013) are pending against the latter as on the date of institution of the present petition.

9. It has further been stated on behalf of the Petitioner Companies that the scheme has been approved by their respective Board of Directors (BOD).

Copies of the resolutions dated 25.06.2015 of the Petitioner Companies, whereby the scheme has been approved have been filed with the present petition.

10. A copy of the Scheme has been enclosed with the petition and its salient features have been incorporated in the petition. It has been stated that the transfer and vesting of the Demerged Undertaking (as defined in the scheme) into the resulting company would aid in the following:

- a. Focused management orientation due to individual specialization and leadership vision;
- b. Opportunities for strategic partnership and growth of the business; and
- c. Flexibility for fund raising capability for future growth and expansion and create a structure geared to take advantage of growth opportunities

11. So far as the share exchange ratio is concerned, it has been stated on behalf of the Petitioner Companies that in consideration of the transfer of the Demerged Undertaking of the Demerged Company to the Resulting Company, in terms of the Scheme, the Resulting Company shall issue and allot (to the shareholders holding fully paid up equity shares and whose names appear in the Register of Members of the Demerged Company) 01 equity share of

Rs.10/- each, of the Resulting Company, credited as fully paid up, for every 4.1627 equity shares of Rs.10/- each held by them in the Demerged Company.

12. The Petitioner Companies by way of Company Application (Main) No. 10 of 2016 sought directions of this Court for dispensation of meetings of the equity shareholders, secured creditors and unsecured creditors of the Petitioner Companies. This Court vide order dated 25.01.2016 dispensed with the requirement of convening meetings of the equity shareholders & secured creditors of both the Petitioner Companies; and the unsecured creditors of the Resulting Company. Further, by way of the said order dated 25.01.2016 this Court directed the convening of meeting of unsecured creditors of the Demerged Company on 15.03.2016.

13. The report of the Chairperson came to be filed on 22.03.2016 whereby it has been stated that the Scheme has been unanimously approved by the unsecured creditors of the Demerged Company, in their meeting held on 15.03.2016.

14. Thereafter, the present petition came to be filed by the Petitioner Companies. Notice in the present petition was issued to the Regional Director and the Registrar of Companies vide order dated 09.05.2016. Further, this Court by way of the said order dated 09.05.2016 directed that the citations be

published in the Delhi editions of 'Business Standard' (English Edition) and 'Business Standard' (Hindi Edition).

15. An affidavit dated 31.08.2016 has been filed by the Petitioner Companies showing service of notice upon the Regional Director & the Registrar of Companies and showing that citations were published in the newspapers on 24.06.2016, in compliance to order of this Court dated 09.05.2016. The said affidavit is on record.

16. Pursuant to notice being issued in the Petition, the Regional Director has filed its representation/affidavit dated 17.10.2016, raising the following observations:

- a) Qualification/reservation/adverse remarks have been made *qua* accounting for the retirement benefits of the employees of the Demerged Company in the Auditor's Report, under section 227 of the Companies Act, 1956 and/or under section 383A of the Act. In this behalf, it has been prayed that the Court may direct the Petitioner Companies to comply with the applicable accounting standards.
- b) The report of the Chairperson *qua* the meeting of the unsecured creditors of the Demerged Company directed to be convened by this Court on 15.03.2016, by way of order dated 25.01.2016 has not been supplied to

the Regional Director and therefore the Regional Director has been unable to comment upon the same.

- c) It has been prayed that the Court may direct the Resulting Company to comply with the provisions under section 61 read with section 64 of the Companies Act, 2013 with respect to the increase in the authorised share capital of the Resulting Company, as per clause 15 of the Scheme, upon the same coming into effect.

17. In reply to the observations made by the Regional Director, the Demerged Company has filed a reply-affidavit dated 18.11.2016, wherein *inter alia* it has been averred as follows:

- a) The Demerged Company has undertaken to comply with the applicable accounting standards with respect to the retirement benefits of the employees of the Demerged Company.
- b) A copy of the Chairperson's report dated 22.03.2016, *qua* the meeting of the unsecured creditors held on 15.03.2016 has been served upon the office of the Regional Director on 16.11.2016.

18. In reply to the observations made by the Regional Director, the Resulting Company has also a reply-affidavit dated 18.11.2016, wherein *inter alia* it has been averred as follows:

a) With respect to the increase of the share capital of the Resulting Company from 45,00,000 shares to 55,00,000 shares, the revision in the share capital has been done with prior intimation to the Registrar of Companies in Form No. SH-7 dated 03.10.2016. Further, this revision has been done in accordance with the provisions of sections 61 and 64 of Companies Act, 2013 and the same has been recorded in the Notice of the Extraordinary General Meeting held on 03.10.2016, the Resolution passed in the Extraordinary General Meeting held on 03.10.2016 and the Explanatory Statement issued in furtherance thereof. The said documents alongwith the Minutes of the Extraordinary General Meeting have been filed before the Registrar of Companies on 04.10.2016.

19. In view of the foregoing, Ms. Aparna Mudiam, Assistant ROC appearing on behalf of the Regional Director, has stated that all the observations made by the Regional Director stand satisfied and that they would have no objection in the event this Court were to grant sanction to the Scheme.

20. It is noted that no objections to the proposed Scheme have been received from any person/party. Affidavits dated 04.02.2017 have been filed on behalf each of the Petitioner Companies, stating that no objections from any person/party, to the proposed Scheme have been received pursuant to the publication of citations in newspapers.

21. In view of the foregoing and in view of the approval accorded by the shareholders & creditors of the Petitioner Companies and the circumstance that all the observations raised by way of the representation/affidavit filed by the Regional Director have been satisfied, there appears to be no impediment to grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme the provisions of sections 391 to 394 of the Act.

22. The Petitioner Companies shall comply with all the statutory requirements in accordance with law.

23. 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 Petitioner Companies.

24. 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.

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

26. The Petitioner Companies shall deposit a sum of Rs.50,000/- by way of costs, in the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi, within a period of two weeks from today.

27. The Petition is allowed in the above terms and is accordingly disposed of.

FEBRUARY 17, 2017
sb/mk

SIDDHARTH MRIDUL, J

