

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 23.11.2016
Judgment pronounced on: 16.01.2017

CO.PET. 434/2016

IN THE MATTER OF:-

AD2C HOLDINGS PRIVATE LIMITED

...Transferor Company No.1/Petitioner No.1

AND

APPSTUDIOZ TECHNOLOGIES PRIVATE LIMITED

...Transferor Company No.2/Petitioner No.2

AND

AD2C (INDIA) PRIVATE LIMITED

...Transferor Company No.3/Non-Petitioner

AND

AFFLE (INDIA) PRIVATE LIMITED

...Transferee Company/Non-Petitioner

Through: Mr. P. Nagesh, Advocate
with Ms. Suruchi Sejwar,
Advocate

Mr. Rajiv Bahl, Advocate
for OL

Ms. Aparna Mudium,
Assistant Registrar of
Companies for Regional
Director

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, 392 and 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') by AD2C Holdings Private Limited (hereinafter referred as 'Transferor Company No.1/Petitioner No.1') and Appstudioz Technologies Private Limited (hereinafter referred as 'Transferor Company No.2/Petitioner No.2') seeking sanction to the Scheme of Amalgamation (hereinafter referred to as 'proposed scheme') of the Transferor Company No.1/Petitioner No.1, Transferor Company No.2/Petitioner No.2, AD2C (India) Private Limited (hereinafter referred to as 'Transferor Company No.3') with Affle (India) Private Limited (hereinafter referred to as 'Transferee Company').

2. Transferor Company No.1/Petitioner No.1 and Transferor Company No.2/Petitioner No.2 are hereinafter collectively referred to as 'Petitioners'.

3. The registered offices of the Petitioners are situated at New Delhi, within the jurisdiction of this Court. The registered office of Transferor Company No.3 is at Gurgaon, Haryana, outside the jurisdiction of this

Court. The registered office of the Transferee Company is at Mumbai, Maharashtra, outside the jurisdiction of this Court.

4. Transferor Company No.1/Petitioner No.1 was originally incorporated under the Act on 18.11.2009, under the name of AV Mobimasta Marketing Private Limited with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi. Subsequently, its name was changed to its present name and a fresh certificate was issued in this behalf on 04.12.2012.

5. Transferor Company No.2/Petitioner No.2 was incorporated under the Act on 13.06.2011 with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

6. Transferor Company No.3 was incorporated under the Act on 24.08.2011 with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

7. Transferee Company was incorporated under the Act on 18.08.1994 with the Registrar of Companies, Maharashtra under the name of Tejus Securities Private Limited. Thereafter, its name was changed to its present name and a certificate in this behalf was issued on 29.09.2006, by the Registrar of Companies, Maharashtra.

8. The authorized share capital of the Transferor Company No.1/Petitioner No.1, as on 31.03.2015, is Rs.5,00,000/-, divided into

50,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferor Company No.1/Petitioner No.1, as on 31.03.2015, is Rs.2,50,000/-, divided into 25,000 Equity Shares of Rs.10/- each.

9. The authorized share capital of the Transferor Company No.2/Petitioner No.2, as on 31.03.2015, is Rs.1,00,000/-, divided into 10,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferor Company No.2/Petitioner No.2, as on 31.03.2015, is Rs.1,00,000/-, divided into 10,000 Equity Shares of Rs.10/- each.

10. The authorized share capital of the Transferor Company No.3, as on 31.03.2015, is Rs.3,00,00,000/-, divided into 30,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferor Company No.3, as on 31.03.2015, is Rs.2,55,15,000/-, divided into 25,51,500 Equity Shares of Rs.10/- each.

11. The authorized share capital of the Transferee Company, as on 31.03.2015, is Rs.16,00,00,000/-, divided into 1,60,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferee Company, as on 31.03.2015, is Rs.15,82,39,840/-, divided into 1,58,23,984 Equity Shares of Rs.10/- each.

12. Copies of the Memorandum of Association and Articles of Association of the Transferor Companies and the Transferee Company have been filed on record. The Audited Balance Sheets as on 31.03.2014; and the provisional accounts as on 31.03.2015 and 30.09.2015, of the Transferor Companies and the Transferee Company along with the Auditors' Reports have also been filed and the same are on record.

13. A copy of the proposed scheme has been filed on record and the salient features thereof have been incorporated and set out in detail in the present petition. It has been stated on behalf of the Petitioners that the proposed amalgamation shall result in greater managerial efficiency and integration, leading to greater financial strength and unfettered cash flow. It has been further stated that, *inter alia*, the proposed scheme will result in operational synergies and cost savings.

14. So far as share exchange ratio is concerned, the proposed scheme provides that upon coming into effect of the proposed scheme, the following shall be done:

74 fully paid up equity shares of Rs.10/- each, of the Transferee Company shall be issued in lieu of 21 fully paid up equity shares of Rs.10/- each of the Transferor Company No.1.

586 fully paid up equity shares of Rs.10/- each, of the Transferee Company shall be issued in lieu of 05 fully paid up equity shares of Rs.10/- each of the Transferor Company No.2.

48 fully paid up equity shares of Rs.10/- each, of the Transferee Company shall be issued in lieu of 05 fully paid up equity shares of Rs.10/- each of the Transferor Company No.1.

15. It has been submitted that no proceedings under Sections 235 to 251 of the Act (or under the corresponding provisions of the Companies Act, 2013)

are pending against any of the Petitioners.

16. The Board of Directors of the Transferor Companies and the Transferee Company in their separate meetings held on 13.05.2015 and 05.08.2015, have unanimously approved the proposed scheme. Copies of the Resolutions passed at the meetings of the Board of Directors of the Transferor Companies and the Transferee Company have been placed on record.

17. The Petitioners had earlier filed a first motion application being Company Application (Main) No. 176 of 2015, seeking directions of this Court to dispense the requirement of convening meetings of Equity Shareholders and Unsecured Creditors of Transferor Company No.1/Petitioner No.1; equity shareholders, secured creditors of Transferor

Company No.2/Petitioner No.2, to consider, and if thought fit, approve, with or without modifications, the proposed scheme and seeking directions of the Court to convene a meeting of the unsecured creditors of Transferor Company No.2/Petitioner No.2, to consider, and if thought fit, approve, with or without modifications, the proposed scheme. By way of order dated 23.05.2015, this Court allowed the said application and dispensed with the requirement of convening and holding the meetings of Equity Shareholders and Unsecured Creditors of Transferor Company No.1/Petitioner No.1; equity shareholders, secured creditors of Transferor Company No.2/Petitioner No.2, to consider and, if thought fit, approve, with or without modification, the proposed scheme. Meeting of unsecured creditors of Transferor Company No.2 was directed to be convened on 09.02.2016, to consider, and if thought fit, approve, with or without modifications, the proposed scheme.

18. As per the directions of this Court, by way of order dated 23.12.2015, meeting of unsecured creditors of Transferor Company No.2 was convened and the proposed scheme was duly approved and the report of the Chairperson, dated 19.02.2016, in this behalf has been placed on record.

19. The Petitioners have thereafter filed the present Petition seeking sanction to the proposed scheme. Vide order dated 18.05.2016, notice in the Petition was issued to the Regional Director, Northern Region and the

Official Liquidator. Citations were directed to be published in the Delhi Editions of the newspapers, 'Indian Express' (English) and 'Jansatta' (Hindi). An affidavit dated 01.10.2016 has been filed by the Petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 21.08.2016.

20. Pursuant to the notices issued in the present Petition, the Official Liquidator has filed a report dated 09.09.2016 wherein it has been stated that he has not received any complaint against the proposed scheme from any person/party interested in the proposed scheme and that the affairs of the Petitioners do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per second proviso of Section 394(1) of the Act.

21. Therefore, no objection has been raised on behalf of the Official Liquidator to the grant of sanction to the proposed scheme.

22. In response to the notices issued in the present Petition, Regional Director, Northern Region, Ministry of Corporate Affairs has filed an affidavit dated 14.09.2016 stating that the Regional Director has no objection to the proposed scheme. However it has been stated therein, in paragraph 11, that the Transferee Company may be advised to comply with the relevant provisions of the Companies Act, 2013 for alteration in objects clause of its Memorandum of Association.

23. In this behalf, learned counsel appearing on behalf of the Petitioners undertakes to comply with the relevant provisions of the Companies Act, 2013 for alteration in objects clause of its Memorandum of Association.

24. In view of the foregoing, it has been stated by Ms. Aparna Mudiam, Assistant Registrar of Companies appearing on behalf of the Regional Director, that no further objections remain.

25. It is observed that no objections have been forthcoming from any party pursuant to the publication of citations in newspapers on 21.08.2016.

26. In view of the approval accorded by the shareholders and creditors of the Petitioners to the proposed scheme; the report filed by the Official Liquidator not raising any objection to the proposed scheme and the affidavit filed by the Regional Director, Northern Region, wherein all observations raised stand satisfied, there appears to be no impediment to the grant of sanction to the proposed scheme. Hence, sanction is hereby granted to the proposed scheme under sections 391 and 394 of the Companies Act, 1956. The petitioners will comply with the statutory requirements in accordance with law.

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

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

29. 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 onto the Transferor Companies for the relevant period, and that, which may arise on account of the proposed scheme being sanctioned.

30. 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 Transferor Companies and the Transferee Company.

31. The Transferor Companies shall stand dissolved without being wound up.

32. 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.

33. Learned counsel for the Official Liquidator prays that costs of at least Rs.2,00,000/- should be paid by the Petitioners keeping in view the fact that the matter has involved examination of extensive records. Learned counsel for the Petitioners states that the same is acceptable to him. The Petitioners shall deposit a sum of Rs.2,00,000/- 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.

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

JANUARY 16, 2017

sb/mk

SIDDHARTH MRIDUL, J