

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 08.12.2016

Judgment Pronounced On: 30.01.2017

CO.PET.626/2016

MARVEL FARM PRODUCTS PRIVATE LIMITED

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

AND

DYNAMIC ORBITS MANAGEMENT SERVICES PRIVATE LIMITED

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

AND

KNOWLEDGEAGE TECHNOLOGIES PRIVATE LIMITED

.....Petitioner/Transferee Company

Through: Mr. Dhruv Gupta and Mr. Ashutosh Gupta, Advocates for the Petitioners.
Ms. Aparna Mudiam, Assistant ROC.
Mr. Ashish Makhija, Advocate for the OL.

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 and 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') by Marvel Farm

Products Private Limited (hereinafter referred to as 'Transferor Company No.1'), Dymanic Orbits Management Services Private Limited (hereinafter referred to as 'Transferor Company No.2') and Knowledgeage Technologies Private Limited (hereinafter referred to as 'Transferee Company') seeking sanction of the scheme of arrangement (hereinafter referred to as 'the Scheme') for the amalgamation of the Transferor Companies with the Transferee Company.

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

3. Transferor Company No.1 was incorporated under the Act and a certificate in this behalf was issued on 17.11.1994 by the Additional Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name of Marvel Corporate Services Private Limited. Thereafter, the name of Transferor Company No.1 was changed to its present name and a fresh certificate in this behalf was issued on 24.07.2013 by the Registrar of Companies, NCT of Delhi and Haryana.

4. Transferor Company No.2 was incorporated under the Act and a certificate in this behalf was issued on 17.05.2011 by the Deputy Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name of

REACHLaw Environmental Dynamic Private Limited. Thereafter, the name of Transferor Company No.2 was changed to its present name and a fresh certificate in this behalf was issued on 28.11.2015 by the Assistant Registrar of Companies, NCT of Delhi and Haryana.

5. The Transferee Company was incorporated under the Act vide certificate of incorporation dated 06.04.2000, issued by the Assistant Registrar of Companies, NCT of Delhi and Haryana.

6. The authorized share capital of Transferor Company No.1 as on 31.03.2015 is Rs.10,00,000/- divided into 1,00,000 shares of Rs.10/- each. The issued, subscribed and paid up share capital of Transferor Company No.1 as on 31.03.2015 is Rs.9,06,000/- divided into 90,600 shares of Rs.10/- each.

7. The authorized share capital of Transferor Company No.2 as on 31.03.2015 is Rs.5,00,000/- divided into 50,000 shares of Rs.10/- each. The issued, subscribed and paid up share capital of Transferor Company No.2 as on 31.03.2015 is Rs.5,00,000/- divided into 50,000 shares of Rs.10/- each.

8. The authorized share capital of the Transferee Company as on 31.03.2015 is Rs.20,00,000/- divided into 1,60,000 equity shares of Rs.10/- each and 40,000 preference shares of Rs.10/- each. The issued, subscribed and

paid up share capital of the Transferee Company as on 31.03.2015 is Rs.6,55,000/- divided into 65,500 equity shares of Rs.10/- each.

9. 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 Transferor Companies and the Transferee Company have been enclosed with the application that earlier came to be filed by the Petitioner Companies, being Company Application (Main) No.59 of 2015.

10. 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 them as on the date of institution of the present petition.

11. 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 25.02.2016 of the Petitioner Companies, whereby the scheme has been approved have been filed with the present petition.

12. A copy of the Scheme has been enclosed with the petition and its salient features have been incorporated in the petition. The factors that necessitate the proposed Scheme *inter alia* are as follows:

- a) The amalgamation of the Transferor Companies with the Transferee Company shall create a larger and financially stronger entity, which will have better resources for business growth and expansion.
- b) The scheme of arrangement would also infuse additional business to the Transferee Company which has growth potential and hence there is significant synergy for consolidation of the combined entities.
- c) Independent operations of Transferor Companies and Transferee Company leads to incurrence of significant costs and thus the amalgamation would enable economies of scale by attaining critical mass and achieving cost saving.
- d) The amalgamation would also provide the Transferee Company with sustain growth by increasing market share and gaining access to additional customers.
- e) The amalgamation would also enable consolidation and further expansion of the Transferee Company. The amalgamation will contribute in furthering and fulfilling the objectives and business strategies of all the

companies thereby accelerating growth, expansion and development of their business.

- f) The amalgamation would also provide the Transferee Company a strong and focused base to undertake the business more advantageously.
- g) The amalgamation would also provide the Transferee Company a strong and focused base to undertake the business more advantageously.

13. So far as the share exchange ratio is concerned, the same has been stated to be as follows:

- The Transferee Company shall issue and allot 10 Equity shares of face value of Rs.10/- each in the Transferee Company for every 100 Equity Shares of face value Rs.10/- each held by them in Transferor Company No.1.
- The Transferee Company shall issue and allot of 3 Equity shares of face value of Rs.10/- each in the Transferee Company for every 100 Equity Shares of face value Rs.10/- each held by them in Transferor Company No.2.

14. The Petitioner Companies by way of Company Application (Main) No. 59 of 2016 sought directions of this Court for dispensation of meetings of the shareholders, secured creditors and unsecured creditors of the Petitioner Companies. This Court vide order dated 30.05.2016 dispensed with the

requirement of convening meetings of the shareholders of each of the Petitioner Companies (there being no secured and unsecured creditors of any of the Petitioner Companies).

15. Thereafter, the present petition came to be filed by the Petitioner Companies. Notice in the present petition was issued to the Official Liquidator, Regional Director and the Registrar of Companies vide order dated 29.07.2016. Further, this Court by way of the said order directed that the citations be published in the Delhi editions of 'Business Standard' (English Edition) and 'Business Standard' (Hindi Edition).

16. An affidavit dated 05.12.2016 has been filed by the Petitioner Companies showing service of notice upon the OL, Regional Director & the Registrar of Companies and showing that citations were published in the said newspapers on 05.11.2016. The said affidavit is on record.

17. Pursuant to issuance of notice, the OL filed its report dated 06.12.2016 stating that no complaint has been received from any person/party to the proposed scheme and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interests of its members or public interest.

18. Therefore, the OL is stated to have no objections if this Court were to grant sanction to the proposed Scheme.

19. Pursuant to the notice being issued in the Petition, the Regional Director has filed its representation/affidavit dated 06.12.2016, not raising any objections to the grant of the proposed Scheme.

20. An affidavit dated 05.12.2016 showing that no objections have been received by the Petitioner Companies or their counsel, from any person/party to the proposed Scheme, pursuant to the publication of citations in the newspapers has been filed by the Petitioner Companies and the same is on record.

21. In view of the foregoing and in view of the approval accorded by the shareholders and creditors of the Petitioner Companies and the representation/affidavit filed by the Regional Director, and the report of the OL, raising no objections to the proposed Scheme; there appears to be no impediment to grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme the provisions of section 391 to 394 of the Act.

22. 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.

23. 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.

24. Resultantly, it is hereby directed that the Petitioner Companies will comply with all the provisions of the proposed scheme and, in particular, those which are referred to hereinabove. The petitioner companies shall also comply with the statutory requirements in accordance with 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 are directed to deposit a sum of Rs.1,00,000/- with 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.

SIDDHARTH MRIDUL, J

JANUARY 30, 2017

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