IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 04.11.2016
Judgment pronounced on:10.01.2017

CO.PET. 697/2016

IN THE MATTER OF:-

PARAG BREWERIES LIMITED
… Petitioner/Amalgamating Company

AND

CARLSBERG INDIA PRIVATE LIMITED
… Amalgamated Company

Through: Mr. Abhinav Vashisth, Senior Advocate, Mr. Anirudh Das, Mr. Kamaljeet Singh, Mr. Manu Krishnan and Mr. Vikram Shah, Advocates for the Petitioner, Ms.Aparna Mudiam, Assistant ROC, Mr. Rajiv Bahl, 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 under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') by Parag

Breweries Limited (hereinafter referred to as 'the Petitioner/Amalgamating Company') seeking sanction to the proposed scheme of Amalgamation (hereinafter referred to as 'the proposed scheme') of the Petitioner/Amalgamating Company with Carlsberg India Private Limited (hereinafter referred to as 'the Amalgamated Company').

2. The registered offices of the Petitioner/Amalgamating Company and the Amalgamated Company are situated at New Delhi, within the jurisdiction of this Court.

3. The Petitioner/Amalgamating Company was incorporated under the provisions of the Act, on 24.08.2005, with the Deputy Registrar of Companies, West Bengal. Thereafter, the Petitioner/Amalgamating Company shifted its registered office from the State of West Bengal to Delhi and obtained a certificate, dated 02.12.2015, in this behalf, from the Assistant Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

4. The Amalgamated Company was incorporated under the provisions of the Act, on 03.05.2006, with the Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi, under the name and style of South Asia Breweries Private Limited. Thereafter, the name of the Amalgamated Company was changed to its present name and a fresh Certificate of

Incorporation, dated 23.02.2009, was issued by the Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi in this behalf.

5. The present authorized share capital of the Petitioner/Amalgamating Company is Rs.17,70,00,000/-, divided into 1,77,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the Petitioner/Amalgamating Company is Rs.13,18,50,610/- divided into 1,31,85,061 equity shares of Rs.10/- each.

6. The present authorized share capital of the Amalgamated Company is Rs.1,61,88,00,000/- divided into 13,68,80,000 equity shares of Rs.10/-each aggregating to Rs.1,36,88,00,000/- and 2,50,00,000 preference shares of Rs.10/- each aggregating to Rs.25,00,00,000/-. The present issued, subscribed and paid-up share capital of the Amalgamated Company is Rs.82,12,39,240/- divided into 5,76,12,591 equity shares of Rs.10/- each aggregating to Rs.57,61,25,910/- and 2,45,11,333 preference shares of Rs.10/- each aggregating to Rs.24,51,13,330/-.

7. Copies of the Memorandum of Association and Articles of Association of the Petitioner/Amalgamating Company and the Amalgamated Company have been filed and the same are on record. The audited balance sheets as on 31.03.2015 of the Petitioner/Amalgamating Company and the Amalgamated Company, along with the reports of the auditors, have also been filed on record.

8. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and set out in detail in the present petition. It has been stated by the Petitioner/Amalgamating Company that the proposed amalgamation shall result in the following benefits:

i. Consolidation of the businesses presently being carried on by the Petitioner/Amalgamating Company and the Amalgamated Company;

ii. Optimal utilisation of resources due to pooling of management, administrative and technical skills of various resources, better administration, and cost reduction, including reduction m managerial, administrative and other common costs, thereby resulting in enhancing the cash flows and operational efficiencies;

iii. Consolidation of asset base and creation of value for the various stake holders and shareholders of the Petitioner/Amalgamating Company and the Amalgamated Company.

9. So far as the share exchange ratio is concerned, the proposed scheme provides that upon coming into effect thereof, no consideration shall be payable by the Amalgamated Company for the equity shares of the Petitioner/Amalgamating Company, since the Petitioner/Amalgamating Company is the wholly owned subsidiary of the Amalgamated Company.

10. It has been averred on behalf of the Petitioner/Amalgamating Company that there are no proceedings pending against the

Petitioner/Amalgamating Company and the Amalgamated Company, under Sections 235 to 250A of the Act (including their corresponding Sections of the Companies Act, 2013).

11. The Board of Directors of the Petitioner/Amalgamating Company and the Amalgamated Company, in their separate Board Meetings held on 07.03.2016 and 10.03.2016, respectively, have approved the proposed scheme. Copies of the Resolutions passed at the said meetings of the Board of Directors of the Petitioner/Amalgamating Company and the Amalgamated Company have been placed on record.

12. The Petitioner/Amalgamating Company and the Amalgamated Company had earlier filed Company Application (M) no.54 of 2016 seeking directions of this Court to dispense with the requirement of convening the meetings of the equity shareholders and unsecured creditors of the Petitioner/Amalgamating Company; and the meetings of the equity shareholders, preference shareholders, secured creditors and unsecured creditors of the Amalgamated Company.

13. This Court, vide order dated 27.07.2016, allowed the said application and dispensed with the requirement of convening the meetings of the equity shareholders and unsecured creditors of the Petitioner/Amalgamating Company; and the equity shareholders, preference shareholders, secured creditors and unsecured creditors of the Amalgamated Company, to consider and, if thought fit, approve, with or without modification the proposed scheme.

14. Further, by way of the said application, being Company Application (M) no.54 of 2016, another prayer was sought, for dispensing with the requirement of filing a company petition by the Amalgamated Company, seeking sanction to the proposed scheme. It is observed that by way of the said order dated 27.07.2016, the requirement of filing a company petition by the Amalgamated Company, to seek grant of sanction to the proposed scheme, has also been dispensed with.

15. The Petitioner/Amalgamating Company has thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 10.08.2016, notice in the present petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in the newspapers, namely, 'The Statesman' (English) and 'Jansatta' (Hindi). Affidavit of service and publication, dated 14.10.2016, has been filed by the Petitioner/Amalgamating Company showing compliance regarding service on the Regional Director, Northern Region, Official Liquidator and Registrar of Companies and also regarding publication of citations in the aforesaid newspapers on 14.09.2016.

16. In response to the notices issued in the present petition, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi has filed its affidavit dated 19.10.2016. At para 8 of the said affidavit, the Regional Director has stated that as regards the Petitioner/Amalgamating Company, there are pending disputed liabilities with respect to the Sales Tax, Value Added Tax, Income Tax and Service Tax. It has further been stated that with respect to the Amalgamated Company as well, there are pending disputed liabilities with respect to the Sales Tax, Value Added Tax and Service Tax.

17. In response to the observations made by the Regional Director, the Amalgamated Company by way of affidavit dated 04.11.2016 has stated that, upon the proposed scheme becoming effective all pending proceedings as regards the Petitioner/Amalgamating Company w.r.t. the disputed liabilities on account of Sales Tax, Value Added Tax and Service Tax, shall be transferred to the Amalgamated Company and shall be continued by or against the Amalgamated Company. Further, the Amalgamated Company by way of said affidavit dated 04.11.2016 has undertaken that it shall, subject to available appellate remedies, be bound by orders passed by the relevant statutory authorities w.r.t. the disputed liabilities on account of Sales Tax, Value Added Tax, Income Tax and Service Tax. The Amalgamated Company has further stated that it shall be the continuing entity post sanction of the proposed scheme and all pending proceedings shall continue by or against the Amalgamated Company.

18. In view of the foregoing, it has been stated on behalf of the Regional Director that the objections raised vide its said affidavit dated 19.10.2016, stand satisfied and that no further objections remain against the proposed scheme.

19. Pursuant to the notices issued in the present petition, the Official Liquidator has filed its report dated 07.10.2016 wherein, *inter alia,* it has been stated that the Official Liquidator has not received any complaint *qua* the proposed scheme from any interested person/party and that the affairs of the Petitioner/Amalgamating Company do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

20. No objection has been received to the proposed scheme from any other party. Learned counsel for the Petitioner/Amalgamating Company in its affidavit dated 20.12.2016 has submitted that that neither the Petitioner/Amalgamating Company nor its counsel have received any objection to the proposed scheme pursuant to publication of citations in the newspapers on 14.09.2016.

21. In view of the foregoing and upon considering the approval accorded by the members and creditors of the Petitioner/Amalgamating Company and the Amalgamated Company to the proposed scheme; the report filed by the Official Liquidator having not raised any objection to the proposed scheme; and in view of the circumstance that the objections raised by the Regional Director in its affidavit stand satisfied, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme. The Petitioner/Amalgamating Company will comply with all the statutory requirements, in accordance with law. Upon the sanction becoming effective from the appointed date of the proposed scheme i.e. 1st April, 2015, the Petitioner/Amalgamating Company shall stand dissolved without undergoing the process of winding up.

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

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/Amalgamating Company and the Amalgamated Company.

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

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

SIDDHARTH MRIDUL, J

JANUARY 10, 2017
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