

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 14.12.2016
Judgment pronounced on: 10.02.2017

CO.PET. 973/2015

IN THE MATTER OF:-

AOI INTERNATIONAL PRIVATE LIMITED

... Petitioner/Transferor Company

AND

GRAPECITY INDIA PRIVATE LIMITED

...Petitioner/ Transferee Company

Through: Mr. Ashish Midha, Advocate
for the Petitioner.
Ms. Aparna Mudiam, Asst.
ROC for RD.
Mr. Rajiv Bahl, Advocate for
the OL.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTHRIDUL

J U D G M E N T

SIDDHARTHRIDUL, J.

1. The present petition has been filed jointly, under Section 391(1) to 394 read with Section 100 of the Companies Act, 1956 (hereinafter referred to as 'the Act') and the Companies Act, 2013 (to the extent applicable) by AOI International Private Limited (hereinafter referred to as 'Transferor Company') and GrapeCity India Private Limited (hereinafter referred to as 'Transferee Company') seeking sanction to the Scheme of Amalgamation

(hereinafter referred to as 'Scheme') of the Transferor Company with the Transferee Company.

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

3. The Transferor Company was incorporated under the Act on 23.11.1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The Transferee Company was originally incorporated under the Act on 27.11.1996 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of 'Bunka Orient India Private Limited'. The company changed its name to its present name and obtained the fresh certificate of incorporation on 20.12.2001 from the Deputy Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The authorized share capital of the Transferor Company, as on 31.03.2014 is Rs.3,00,00,000/- divided into 30,00,000 equity shares of RS.10/- each. The issued, subscribed and paid up capital of the company, as on 31.03.2014 is Rs.1,99,00,000/- divided into 19,90,000 equity shares of Rs.10/- each.

6. The authorized share capital of the transferee company, as on 31.03.2014 is Rs.21,00,00,000/- divided into 21,00,000 equity shares of

Rs.100/- each. The issued, subscribed and paid up capital of the company is Rs.20,46,24,000/- divided into 20,46,240 equity shares of Rs.100/- each.

7. Copies of Memorandum and Articles of Association of the Petitioner Companies have been filed on record along with Company Application (Main) No. 164 of 2015, which earlier came to be filed by the Petitioner Companies. The audited balance sheets, as on 31.03.2014, of the Petitioner Companies, along with the reports of the auditors, have also been filed alongwith Company Application (Main) No. 164 of 2015 and the same are on record.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and set out in detail in the Petition. It has been stated on behalf of the Petitioner Companies that the proposed scheme will result in formation of a larger company enabling further growth and development of the businesses of the said company thus enabling the said company to obtain greater facilities possessed and enjoyed by one large company compared to a small company for raising capital, securing and conducting trade and business on favourable terms and other related benefits. It has further been stated that the proposed amalgamation will result in reduction in overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, better and more productive utilization of various resources and will

enable the undertakings concerned to effect internal economies and optimize productivity.

9. So far as the share exchange ratio is concerned , the Scheme provides that upon coming into effect of this Scheme, the Transferee Company shall issue and allot equity shares to the shareholders of the Transferor Company in the following ratio:-

“01 equity share of Rs.100/- each of the transferee company, for every 10 equity shares of Rs.10/- each held in the transferor company.”

10. 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 the Petitioners.

11. The Board of Directors of the Petitioner Companies in their separate meetings held on 15.06.2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the Petitioner Companies have been placed on record along with Company Application (Main) No. 164 of 2015.

12. The petitioner companies had earlier filed Company Application (Main) No. 164 of 2015 seeking directions of this court to dispense with the requirement of the convening the meetings of their equity shareholders, secured and unsecured creditors. By way of order dated 06.11.2015, this Court allowed the application and dispensed with the requirement of

convening and holding the meetings of equity shareholders of the Petitioner Companies, secured and unsecured creditors of the Transferee company, (there being no secured creditors and unsecured creditors of the Transferor Company) to consider and, if thought fit, approve, with or without modification, the Scheme of Amalgamation.

13. The Petitioner Companies have thereafter filed the present Petition seeking sanction to the scheme. Vide order dated 18.12.2015, 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, 'Business Standard' (English) and 'Business Standard' (Hindi). An affidavit dated 29.04.2016 has been filed by the Petitioners showing compliance regarding publication of citations on 07.04.2016 in the aforesaid newspapers.

14. Pursuant to the notices issued in the present Petition, the Official Liquidator has filed a report dated 02.05.2016 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 Petitioner Companies 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.

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

16. Further, in response to the notices issued in the present petition the Regional Director, Northern Region, Ministry of Corporate Affairs has filed its affidavit dated 14.07.2016 not raising any objection to the grant of sanction to the proposed scheme.

17. It has been noted that no objections have been received to the proposed scheme from any other party. The Transferee Company vide affidavit dated 20.04.2016, filed by its authorized representative, has averred that the Petitioner Companies have not received any objection to the Scheme pursuant to publication of citations in the newspapers.

18. Considering the approval accorded by the shareholders of the Transferor Company and shareholders, secured and unsecured creditors of the Transferee Company to the proposed scheme; the affidavit filed by the Regional Director, Northern Region and the report filed by the Official Liquidator, not raising any objection to the proposed scheme, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme under the provisions of the Act.

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

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

21. 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

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. The Transferor Company shall stand dissolved without being wound up.

24. 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.

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

SIDDHARTHMRIDUL, J

FEBRUARY 10, 2017_{sb/mk}