

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

PRINCIPAL BENCH

C.P. No. 7 of 2016

IN THE MATTER OF:

Pinokio Entertainment Pvt. Ltd.

.....Petitioner

SECTION : UNDER SECTION 391(2) & 394

Order delivered on 07.09.2017

Coram:

CHIEF JUSTICE M.M. KUMAR
Hon'ble President

Deepa Krishan
Hon'ble Member (T)

For the Petitioner(s) : R. Jawaharlal, Advocate

For the Respondent(s) :

For the RD (NR) Delhi/ROC, Delhi : Mr. Manish Raj, Company Prosecutor

For the OL : Ms. Rukmini Mukherjee, Company Prosecutor

ORDER

The first motion petition was filed before the Hon'ble Delhi High Court on 03.12.2015 for sanctioning the scheme of arrangement. The matter was transferred to this Tribunal on 23.12.2015. Clause 23(i) of the Scheme provides as under:-

- “(i) In the event of this Scheme failing to take effect within 12 months of first filing in High Court or such later date as may

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be agreed by the respective Board of Directors of the Transferor Company and Transferee Company, this Scheme shall stand revoked, cancelled and be of no effect and become null and void and in that event no rights and liabilities whatsoever shall accrue to or be incurred inter se by the parties or their shareholders or creditors or employees or any other person. In such case, each Company shall bear its own costs, charges and expenses or shall bear costs, charges and expenses as may be mutually agreed.”

A perusal of the aforesaid clause would show that if the scheme fails to take effect within 12 months of the first filing in Hon'ble High Court or such later date as may be agreed by the respective Board of Directors of the Transferor and the Transferee Companies then the Scheme shall stand revoked, cancelled and was to be of no effect. The clause further states that the Scheme is to become null and void and in that event no rights and liabilities whatsoever were to accrue or to be incurred inter se by the parties or their shareholders or creditors or employees or any other person. Each Company was to bear its own costs.

It is admitted that the period of 12 months expired on 04.12.2016 when the matter was still pending before Hon'ble High Court and there was no other agreed date approved by the respective Board of Directors of the Transferor and Transferee Companies as per the provisions of

clause 23(i) of the scheme. Learned counsel for the petitioner has placed reliance on para 33 of a judgment of the Hon'ble Rajasthan High Court rendered in the case of Sistema Shyam Teleservices Limited and Ors. v. Reliance Communication Limited, (2016) 199CompCas 136 (Raj). According to learned counsel such an objection with regard to the approval of the scheme was overruled by the Hon'ble High Court.

We have carefully considered the submissions made by the learned counsel and are of the view that para 33 of the aforesaid judgment would not come to the rescue of the petitioner. In order to appreciate the submission, para 33 of the judgment of the Hon'ble Rajasthan High Court is set out below:-

“As far as the objection to sanction of the scheme for reason it having expired by efflux of time under clause 19.2 thereto, (on 30- 6-2016), I am of the considered view that the objection is vacuous, overlooking the clear language of the clause 19.2 itself, whereunder the scheme is not closed ended as of 30-6-2016 but it is to remain effective even subsequent thereto in the event of it so being agreed between the Transferor and Transferee companies through their Board of Directors or authorised representatives. Letter of agreement dated 23-6-2016 has been filed by the transferor company before this court signed by Sergey Savchenko authorised signatory of the Transferor company and Amit Mathur

authorised signatory of the transferee company, whereunder with reference to clause 19.2 of the scheme the validity of the scheme has been extended upto 30-9- 2016. Besides, I am of the considered view that clause 19.2 of the scheme between two corporate entities duly approved by their shareholders is purely contractual. Thereunder the contracting parties to the scheme of arrangement have an inexhaustible mutual right to extend the currency/ validity of the date of the scheme before the expiry of the date of validity or even post facto, when and if warranted by resort to the doctrine of ratification of contract. The sanction of the scheme can thus always be subject to its validity being extended by the Transferor and transferee company in terms of clause 19.2 thereof. The objection of the Regional Director on this count is also thus liable to be rejected."

A perusal of the aforesaid para would make it patent that the scheme was to come to an end as per the clause in the scheme on 30.06.2016 and Transferee companies through their Board of Directors were authorized to agree for another date. The letter of agreement was issued on 23.06.2016 which extended the scheme upto 30.09.2016. However, in the present case the scheme has expired on 04.12.2016 but letter of ratification was issued on 12.04.2017. It is obvious that the letter of ratification^{was} issued after the expiry of the scheme. Clause 23(i)

obviously came into operation. On the language of clause 23 it cannot be accepted that a scheme which has become null and void and was revoked by operation of the aforesaid clause could be revived by passing any resolution on 12.04.2017 because no new life could be infused in a dead scheme.

In view of the aforesaid we are unable to approve the scheme and the petition for approval is hereby dismissed. No costs.

It is needless to add that this order shall not be construed to cause any prejudice to the rights of the parties to frame a new scheme and pass a new resolution by their respective Board of Directors if deemed necessary.

Sd/-

(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

— Sd —

(DEEPA KRISHAN)
(MEMBER TECHNICAL)

07.09.2017
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