
**In Re: Celica Developers P. Ltd. (No. 2); In Re: Microfirm Software P. Ltd.;
In Re: Glacier Farms P. Ltd.**

C.P. No. 118 of 2007 and Company Application No. 259 of 2007

Court: Calcutta High Court

Date of Decision: Dec. 5, 2007

Acts Referred:

Companies Act, 1956 " Section 394(2)

Citation: (2008) 145 CompCas 155 : (2008) 4 CompLJ 46 : (2009) 93 SCL 47

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: N.C. Chatterjee, L.K. Chatterjee and R.S. Bose, S.N. Mukherjee and M. Bhuteria,
for the Appellant;

Judgement

Sanjib Banerjee, J.

The above petition coming on for hearing on this day upon reading the said petition the order dated March 29, 2007,

whereby convening the meetings of the shareholders of the abovenamed petitioner-company No. 1. Celica Developers P. Ltd.
(hereinafter

referred to as "the said Celica"), the abovenamed petitioner-company No. 2 Micro-firm Software P. Ltd. (hereinafter referred to as
"the said

Microfirm") and the abovenamed petitioner-company No. 3 Glacier Farms P. Ltd. (hereinafter referred to as "the said Glacier")
were ordered to

dispense with, for the... purpose of... considering and if thought fit approving with or without modification the scheme of
arrangement proposed to

be made between the said Celica, Microfirm and the said Glacier and annexed to the joint affidavit of Kalyan Bose, Ram Prakash
Singhania and

Anuj Bhagat filed on March 28, 2007, and upon reading on the part of the petitioner-companies an affidavit of Anup Chakorborty
filed on May 7,

2007 and the exhibits therein referred to and upon reading the orders made herein and dated April 12, 2007 and upon reading on
the part of the

Regional Director (Eastern Region), Ministry of Company Affairs, an affidavit of U.C. Nahta filed on July 17, 2007 and upon hearing Mr. S. N.

Mukherjee (Ms. M. Bhuteria, advocate appearing with him) senior advocate for, the said petition-companies and Mr. N.C. Chatterjee (Mr. L.K.

Chatterjee and Mr. R.S. Bose appearing with him), (senior advocate for the Central Government and in view of the fact that the said petitioner-

companies undertake before this Court to increase the authorised share capital of the said Glacier to enable it to allow shares in terms of the said

scheme in accordance with law and to pay adequate fees therefor. And the said petitioner-companies further submit before this Court that there is

no embargo on shares being issued by the said Glacier to the said Celica and Microfirm and it is a matter between the said petitioner-companies

concerned. And if such allotment of shares is made directly to the said Celica and Microfirm it may or may not amount to a sale or may or may not

entitle the said companies concerned to avail of the benefits under the Income Tax Act, but there is no violation of any provisions. And it does not

appear that the issuance of shares by the said Glacier to the said Celica and Microfirm is not permissible and since the said petitioner-companies

give assurance before this Court that the employees would remain unaffected and continue with the said Celica and the said Microfirm

notwithstanding the transfer of investment divisions and further submit before this hon"ble court that the substantial business remains with the said

Celica and the said Microfirm.

2. And in view of the matter that particularly as the employees have not stepped forward to object the said scheme. And since the said petitioner-

companies ensure before this hon"ble court that accounting following the said scheme would be in accordance with the Accounting Standards,

particularly AS-14 thereof, notwithstanding anything contrary that may be found in the said scheme. And it is recorded that the said petitioner-

companies following the above have pointed out that the clause 4(d) of the said scheme needs to be modified and clause 7 of the same is to be

deleted and further have pointed out that in terms of the findings as hereinabove clause 5 of the said scheme becomes irrelevant.

3. This Court doth hereby sanction the proposed scheme of arrangement subject to the aforesaid condition imposed and undertakings recorded set

forth in annexure A of the petition and specified in the Schedule A hereto and doth hereby declare the same to be binding with effect from April

15, 2007 (hereinafter referred to as ""the said appointed date"") or. the said Celica, Microfirm and Glacier and this shareholders and all concerned.

4. This Court doth order:

(1) That all the properties, rights and powers of the said Celica and Microfirm relating to their respective ""outgoing business undertakings"" be

transferred to from the said appointed date and rest without any further act or deed with the said Glacier and accordingly the same shall pursuant

to Section 394(2) of the Companies Act, 1956, be transferred to and rest in the said Glacier for all the estate and interest of the said Celica and

Microfirm relating to their respective ""outgoing business undertakings"" therein but subject nevertheless to all charges now effecting the same ; and

(2) That all the debts, inabilities, duties and obligations of the said Celica and Microfirm relating to their respective ""outgoing business undertakings

be transferred from the said appointed date without further act or deed to the said Glacier and accordingly the same shall pursuant to Section

394(2) of the Companies Act, 1956, be transferred to and become the debts, liabilities, duties and obligations of the said Glacier; and

(3) That all proceedings and/or suits and/or appeals now pending by or against the said Celica and Microfirm relating to their respective ""outgoing

business undertakings"" shall be continued by or against the said Glacier ; and

(4) That leave be and the same is hereby granted to the said Celica and the said Microfirm to file their schedule of assets relating to their respective

outgoing business undertakings"" as stated in paragraph 12 of the petition herein within a period of three weeks from the date hereof; and

(5) That the said Celica and the said Microfirm and the said Glacier do within a period of thirty days from the date hereof cause the certified copies

of this order to be delivered to the Registrar of Companies, West Bengal, for registration respectively ; and

(6) That the second objection regarding the issuance of shares on the said Glacier to the said Celica and the said Microfirm and not to the

shareholders of them be and this same is hereby does not service accordingly ; and

(7) That the third objection with regard to the fate of the employees of the said Celica and the said Microfirm who are working in the said

outgoing business undertakings"" respectively be and the same is hereby disregarded ; and

(8) That the said petitioner companies do pay to the Regional Director its costs of and incidental to this application assessed at five hundred gold

mohars; and

(9) That upon receiving a computerised print out of the said scheme and the schedule of assets relating thereto from the said petitioners-companies

in acceptable form, the Department concerned will append the same to the certified copy of this order sanctioning the said scheme without insisting

on a hand-written copy thereof.

5. Witness Mr. Surinder Singh Nijjar, the Chief Justice at Calcutta aforesaid the fifth day of December in the year two thousand and seven.