



IN THE COURT OF FIRST INSTANCE
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

30 January 2021

CASE No: AIFC-C/CFI/2021/0002

UNICORN CROPS LIMITED

Claimant

V

ZEREN BIDAI GROUP LIMITED LIABILITY PARTNERSHIP

Defendant

JUDGMENT

Justice of the Court:

Justice Sir Stephen Richards

ORDER

1. **The Court sanctions under section 124 of the AIFC Companies Regulations the proposed arrangement for a reconstruction involving the amalgamation of the Defendant with the Claimant.**
2. **Pursuant to section 126 of the AIFC Companies Regulations the Court orders that the Defendant be amalgamated with the Claimant on the basis set out in the Agreement for Amalgamation between them dated 21 December 2020.**

JUDGMENT

1. By an application filed on 21 January 2021 and re-filed in amended form on 28 January 2021, the applicant, Unicorn Crops Limited (“the Company”) seeks (a) an order under section 124 of the AIFC Companies Regulations sanctioning an arrangement proposed between the Company and its 100% shareholder, Unicorn Holdings Limited (“the Shareholder”) for a reconstruction involving the amalgamation of Zeren Bidai Group Limited Liability Partnership (“the LLP”) with the Company, and (b) an order under section 126 of the AIFC Companies Regulations giving effect to the amalgamation of the LLP with the Company.
2. The Company is a Private Company registered in the Astana International Financial Centre and is a “Company” within the meaning of the AIFC Companies Regulations (see the definitions in paragraph 4 of schedule 1 to those Regulations). The Shareholder is also a Private Company. The LLP is a legal entity registered outside the AIFC and operating in accordance with the legislation of the Republic of Kazakhstan.
3. The LLP is named as defendant to the application but the application is not opposed.
4. It is stated in the application, supported by a statement of truth signed by the Company’s authorised legal representative, Mr Shynggys Beibituly Oralbayev, that the Shareholder has decided to amalgamate the LLP with the Company and that the Company has decided to amalgamate with the LLP, as confirmed in each case by relevant minutes of meetings and resolutions. It is stated further that the Company, acting as the sole participant of the LLP, has made resolutions for the restructuring and amalgamation, the notification of creditors and the registration of termination of the LLP activity in connection with the amalgamation. Documents filed in support of the application include (a) the Company’s Standard Articles of Association, dated 2 October 2020, (b) an Agreement on Amalgamation between the Company and the LLP, dated 21 December, and (c) two notifications dated 24 December 2020 to creditors of the LLP.
5. The Agreement on Amalgamation describes the subject of the Agreement as amalgamation of the LLP with the Company, with the transfer of all rights and obligations of the LLP to the Company (clause 1.1). Basic data on the balance sheets of the parties are set out (clause 3). Detailed provision is made for the reorganisation procedure (clause 4). It is provided that at the end of the reorganisation process “the Private Company becomes the legal successor of [the LLP] for all obligations of [the LLP] in accordance with the transfer act as approved by the authorized body of the [the LLP]” (clause 5.1), and that the reorganisation “is completed as [the LLP] is excluded from the National Register of Business Identification Numbers of the Republic of Kazakhstan” (clause 5.2).

6. I am satisfied that section 124 of the AIFC Companies Regulations applies in this case, in that the matters summarised above constitute an arrangement proposed between the Company and its 100% shareholder (section 124(1)(b)).
7. There is no application for the Court to order that a meeting of shareholders be held to vote on the proposal (section 124(2)), and I take the view that no such order is needed, since the information provided to the Court is that a meeting has already been held at which the Shareholder (being the sole shareholder in the Company) has already passed a resolution in favour of the proposal on the basis of full information as to that proposal.
8. The Court has not been informed of any objection to the proposal. Moreover the proposal appears adequately to protect the position of third parties by the transfer of all obligations of the LLP to the Company which on the face of it has sufficient assets to meet the existing liabilities of the LLP.
9. In the circumstances I consider it appropriate for the Court to sanction the proposed arrangement by order under section 124(3).
10. Section 126 provides that if an application is made to the Court under section 124 for the sanctioning of an arrangement between a Company and its shareholders, “the Court may make any orders as it considers appropriate to facilitate the ... arrangement, including a reconstruction of the Company, or an amalgamation of the Company with any other Company”. It provides further that “in this section Company may be taken to include a Body Corporate incorporated outside the AIFC”.
11. The amalgamation of the LLP with the Company is at the heart of the proposed arrangement and it is appropriate in my view for the amalgamation to take place to facilitate the arrangement. An amalgamation involving a limited partnership registered outside the AIFC does not fall within the express wording of the section, but that wording is not exhaustive of the forms of amalgamation that may be ordered (“including ... an amalgamation of the Company with any other Company”). I see no reason of principle why an order should not extend in an appropriate case to the amalgamation of a Company with a limited partnership, nor why a limited partnership registered outside the AIFC should be in any worse a position in that respect than a body corporate incorporated outside the AIFC.
12. I therefore conclude that the Court should make an order under section 126 that the LLP be amalgamated with the Company on the basis set out in the Agreement for Amalgamation between them dated 21 December 2020.

By the Court,