courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 16/08/2026

(2014) 03 MP CK 0044

In the Madhya Pradesh High Court

Case No : Company Petition No. 14 of 2013

Baheti Rotoplast Private Limited APPELLANT

Vs

Vectus Industries Limited RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:
Companies Act, 1956 — Section 235 236 237 238 239

Citation : (2014) 03 MP CK 0044

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Anubhav Mehrotra, for the Appellant; Nitin Agarwal, Advocate for Ministry of Company Affairs, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—By invoking the jurisdiction of this Court under Sections 391(2) & 394 of the Companies Act, 1956 (for brevity ''Act''), the petitioner company has prayed for sanction of the Scheme of Arrangement (''Scheme'') of Baheti Rotoplast (P) Limited (for brevity, ''Transferor Company'') and Vectus Industries Limited (for brevity, ''Transferee/petitioner company''). Along with affidavit, the petitioner has placed on record the copy of order dated 28.1.2014, passed by High Court of Delhi in Company Petition No. 542/2013. This petition was filed by the transferor company, which is having its registered office at Delhi. The Delhi High Court has finally approved the second motion filed by the transferor company and accorded its sanction to the scheme of amalgamation between the transferor and transferee/petitioner company. The aforesaid transferor and transferee companies are parties to the present petition.

2. The registered office of petitioner company is situated at Gwalior,. Thus, it is within the jurisdiction of this Court.

3. The petitioner has placed the copies of Memorandum of Article of Association as well as latest audited annual reports for the year 31st March, 2012. The

petitioner has also filed the details regarding date of incorporation of petitioner company, its authorized, issued, subscribed and paid up capital in the petition.

4. The petitioner has also filed copy of the resolution passed by the Board of Directors of the petitioner company, whereby they have approved the Scheme aforesaid.

5. Petitioner has stated that no proceeding under Sections 235 to 251 of the Act is pending against the petitioner Company.

6. Regarding share exchange ratio for arrangement, it is contended that the Scheme provides that the transferee/petitioner Company will issue its 5 (five) equity shares of Rs. 10/- each, to everyone holding 1 (one) equity share of Rs. 10/- to the shareholders of the transferor Company, and the balance towards the fraction shares would be paid in cash.

7. For first motion, the petitioner company earlier filed a Company Petition No. 11/2013. The directions were accordingly issued by this Court in the said petition for convening the meetings of the secured creditors of the petitioner company. The petitioner had prayed for dispensation of the requirement of conducting meeting of shareholders, unsecured creditors and sundry creditors by I.A. No. 3850/2013 in the said case. It was allowed by this Court by order dated 06.09.2013.

8. This Court by said order dated 06.09.2013, directed that the meeting of secured creditors of the company should be held on 26.10.2013 at the registered office. In connection with the aforesaid order and as per the report of the Chairperson for the secured creditors of meeting filed before this Court, the secured creditors of the Company for a value of more than 3/4 (Three Fourth) of the total value have accorded their consent and approval to the proposed amalgamation between the transferor Company and the transferee/petitioner company.

9. The petitioner has filed the present petition praying for sanction of the Scheme. By order dated 11.12.2013, notices in the present petition were directed to be issued to the Regional Director, Department of Company Affairs, M.P. Government and to the Registrar of Companies, Gwalior. Advertisements were published in ''Nai Dunia'' (Hindi) and The Hindustan Times (English). Affidavit of service and publication had been filed by the petitioner to show the compliance of the court order. The newspaper publications dated 24.2.2014 are placed on record.

10. In response to the notices aforesaid, Mr. Shambhu Kumar Agarwal, Regional Director, N.W. Region, Ministry of Corporate Affairs, has filed his affidavit/ response dated 22.01.2014. The petitioner company in response to the said affidavit of Shri Agarwal, filed affidavit of Mr. Rajesh Dixit on 24.02.2014 and has undertaken/stated as under:-

(a) The petitioner company vide its affidavit has agreed and confirmed that the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/baheti-rotoplast-private-limited-…

share capital of the Transferee Company in the scheme be read and to be understood as Rs. 7,50,00,000/- [Rs. Seven Crores Fifty Lakhs Only] instead of Rs. 7,50,000/- [Rs. Seven Lakhs Fifty Thousand only] which is stated to be a typographical error as stated in the scheme.

(b) The petitioner company vide its said affidavit has stated that the Amalgamation of Companies under the Companies Act 1956, is an action under the statute and governed by the provisions of Section 391 to Section 394A and there is no requirement of any specific power under the Memorandum of Understanding encapsulating enabling objects clause for authorising the amalgamation.

(c) The petitioner company vide the said affidavit has agreed, confirmed, clarified and undertaken the necessary compliance under AS-14 shall be made during the amalgamation of the affairs (including books of accounts) of the Transferor and the Transferor Company as and when required.

(d) The petitioner company in terms of the said affidavit has also agreed that the appointed date for the scheme of the amalgamation shall be taken to be 01.04.2013.

(e) The petitioner company has stated that notices to all the four secured creditors of the company was sent, however State Bank of India was present at the meeting, and after adjourning the meeting for 30 minutes from 11.30 A.M. to 12.00 PM, the meeting was held to be concluded. The petitioner company states that as under Para 14 of the order dated 06.09.2013 of this Court in Company Petition No. 11/2013, the quorum fixed was one, the resolution passed at the meeting held on 26.10.2013 is in accordance with the scheme of the Companies Act, 1956, and also in compliance with the Order dated 06.09.2013.

11. No objection has been received to the Scheme from any other quarter/party in terms of the report received from the office of the Registrar of Companies, Madhya Pradesh.

12. Learned counsel for the Regional Director submits that in view of the undertaking given by the Company in its affidavit dated 24.02.2014 aforesaid, he has no objection if the Scheme is sanctioned by this Court.

13. I have heard learned counsel for the parties at length and I am of the considered opinion that the scheme of amalgamation between the transferor and transferee Company needs to be accepted, with the appointed date as 01.04.2013, as mentioned in the aforesaid affidavit and also noted by Delhi High Court in its aforesaid order.

14. In view of the approval accorded by the shareholders and creditors of the petitioner company; response/affidavit filed by the Regional Director, Ministry of Corporate Affairs, NW Region to the proposed Scheme and the aforesaid response filed by Mr. Rajesh Dixit, and the facts and circumstances of the case, there seems to be no impediment in granting sanction to the Scheme, subject to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/baheti-rotoplast-private-limited-…

the above modifications. Resultantly, sanction is hereby granted/accorded to the Scheme under Sections 391 and 394 of the Act between the transferor and the transferee Company. The petitioner company shall comply with the statutory requirements in accordance with law.

15. It is further recorded that since the transferor Company has undertaken before Delhi High Court that there will be no cash outflow against fractional shares and the same would vest with Mr. Sourabh Somani, who will act as trustee & custodian for the benefits of the holders of fractional entitlement and shall subsequent to the amalgamation administer the transfer/inter se transfer of the same at the volition and directions of the beneficial holders, the transferor and transferee Companies shall remain bound by the said statement and the scheme is being sanctioned with the said modification only.

16. It is ordered that the certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the order. In terms of the Sections 391 and 394 of the Act and in terms of the Scheme, the whole or part of the undertaking, the property, rights and powers of the transferor Company be transferred to and vest in the transferee/petitioner company without any further act or deed. Similarly, as per the Scheme, all liabilities and duties of the transferor Company be transferred to the transferee/petitioner Company without any further act or deed. However, it is clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other statutory charges payable in accordance with any law or permission/ compliance with any other requirement which may be specifically required under any law.

17. Learned counsel for the petitioner submits that the petitioner company would voluntarily deposit a sum of Rs. 20,000/- (Rupees Twenty Thousand) in the Common Pool Fund of the Official Liquidator within three weeks from today. The statement is accepted. In terms of aforesaid, the petition is allowed.

CC as per Rules.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/baheti-rotoplast-private-limited-…