
(2010) 11 DEL CK 0173

In the Delhi High Court

Case No : Company Petition No. 336 of 2010

Bilt Paper Holdings Limitd, Solaris Holdings Limited and KCT
Papers Limited

APPELLANT

Vs

Avantha Holdings Limited

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Companies Act, 1956 — Section 391, 392, 393, 394

Citation : (2010) 11 DEL CK 0173

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

**Advocate : Neeraj Kishan Kaul, Anirudh Das and Rohan Dheman, for the
Appellant; Atma Sah, Astt. and Rajiv Behl, for the Respondent**

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—This second motion under Sections 391-394 of the Companies Act, 1956 (Act, for short) has been filed for sanction/approval of the scheme of amalgamation, enclosed as Annexure A to this petition, amongst Bilt Paper Holdings Limited, Solaris Holdings Limited, KCT Papers Limited (hereinafter referred to as the Amalgamating Company Nos. 1 to 3 respectively) and Avantha Holdings Limited (hereinafter referred to as the Amalgamated company).

2. The four petitioner companies had earlier filed Company Application (M) No. 111/2010, which was disposed of vide order dated 4th June, 2010 directing that meeting of the equity shareholders, secured and unsecured creditors of Amalgamating Company No. 1, secured creditors of Amalgamating Company No. 2 and equity shareholders of Amalgamating Company No. 3 should be held. By the said order, the Court dispensed with the requirement to convene and hold meeting of the equity shareholders, preference shareholders and unsecured creditors of Amalgamating Company No. 2, secured and unsecured creditors of Amalgamating Company No. 3 and equity shareholders, preference shareholders and secured and unsecured creditors of the Amalgamated Company.

3. Pursuant to the said order, meetings as directed vide order dated 4th June, 2010 have been held and reports of the Court appointed Chairpersons have been filed in this Court.

4. Equity shareholders representing 96.44% of the subscribed paid up equity capital of Amalgamating Company No. 1 have approved the scheme. No negative votes were cast by the equity shareholders, who were present and have voted. Two secured creditors of the Amalgamating Company No. 1 representing 100% of the secured debt have voted in favour of the scheme. Out of five unsecured creditors of the Amalgamating Company No. 1, four unsecured creditors attended the meeting and have unanimously voted in favour of the scheme. They represent 93% of the unsecured debt of the Amalgamating Company No. 1 in value terms.

5. Four out of twenty one, secured creditors of Amalgamating Company No. 2 representing 20.1% of the secured debt of Amalgamating Company No. 2 in value terms attended the meeting and have voted in favour of the scheme. Along with the affidavit filed on 12th November, 2010, the petitioner companies have filed no objection certificates from Infina Finance Private Limited, Kotak Mahindra Prime Limited and Laxmi Narain Investments Limited, now known as ABNL Investment Limited, who have accorded and given their consent to the scheme of amalgamation. No objection certificate of Axis Trustee Services Limited has also been filed. The Axis Trustee Services Limited are the debenture trustees pursuant to debenture trust deed executed on 11th March, 2010 of Rs. 500 crores secured debentures issued by Amalgamating Company No. 2. Learned Counsel appearing for Amalgamating Company No. 2 has today produced before the Court photocopy of the debenture trust deed dated 11th March, 2010 and the same has been kept on record. He has drawn my attention to Clause 6.3(b). It is pointed out that notices were also issued to registered debenture holders as on 21st May, 2010 but they did not attend the meeting. The debenture trustee in their letter dated 4th November, 2010 has referred to Clause 6.3(b) of the trust deed and has stated that as amalgamation is with the holding company, no specific permission is required. They have further stated that they have no objection to the scheme. It is noticed that the Amalgamated Company is the holding company of the Amalgamating Company No. 3 and holds more than 90% of the shares of the Amalgamating Company No. 3. The Amalgamating Company No. 3 and the Amalgamated Company will be bound by Clause 6.3(b) and the conditions imposed therein. In case it is found that there is any violation of the said clause, it will be open to the Court to recall the present order. Amalgamation will not affect or dilute the charge in favour of the debenture holders. It is stated in the affidavit filed on 12th November, 2010 that no dues are payable to L and T Finance Limited and SICOM Limited. As per the report of the Chairman, notices were issued to L and T Finance Limited and SICOM Limited but they did not attend the meeting of the secured creditors. The no dues certificates issued by L and T Finance Limited and SICOM Limited have been enclosed. In the said circumstances, it is held that the secured creditors have approved the scheme

subject to the conditions mentioned above.

6. Shareholders of the Amalgamating Company No. 3, who attended and have voted in the meeting have approved the scheme of amalgamation. The said equity shareholders represent 94.2% of the paid up equity share capital of the Amalgamating Company No. 3.

7. After filing of the present petition, notices were issued to the Regional Director (Northern Region) and the Official Liquidator. The Regional Director (Northern Region) has filed their report stating that the Central Government does not have any objection to the proposed scheme of amalgamation. The Official Liquidator has filed their reply/response stating that they have not received any complaint against the proposed scheme of amalgamation from any person/party interest in the scheme in any manner on the date of filing of the report. On the basis of information submitted by the petitioner companies, Official Liquidator is of the view that the affairs of the Amalgamating Company Nos. 1 to 3 do not appear to have been conducted in a manner prejudicial to the interest of its members or the public interest.

8. In terms of order dated 13th August, 2008, notice of hearing of the petition was advertised in the Delhi Edition of Newspapers "The Statesman" (English) and "Jansatta" (Hindi). The said publication has been carried out and copy of the publications have been placed on record. The petitioners have filed affidavit in this Court to the same effect. In the affidavit filed on 12th November, 2010, the petitioner companies have stated that they have not received any objection to the proposed scheme of amalgamation till the date of filing of the said affidavit.

9. Keeping in view the aforesaid facts, the scheme of amalgamation subject to the conditions mentioned above is approved/sanctioned. It is clarified that this Court has not specifically examined the share exchange ratio. It is also clarified that stamp duty, if payable, will be paid in accordance with law. This Court has not granted exemption from payment of stamp duty. The Amalgamating Company Nos. 1 to 3 shall stand dissolved from the effective date. It may be noted here that it has been stated at the Bar that the Amalgamated Company does not intend to come out with any IPO as of now.

The petition is disposed of.