(2006) 02 MAD CK 0098

In the Madras High Court

Case No : C.P. No''s. 234 and 235 of 2005

Bysani Consumer Electronics Ltd. APPELLANT

Vs

Jainsons Corpn. Ltd. RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:
Companies Act, 1956 — Section 391, 392, 393, 394, 94

Citation : (2006) 134 CompCas 99 : (2006) 69 SCL 66

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : K. Ramasamy, for the Appellant; M.T. Arunan, for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—These two company petitions are filed for grant of a scheme of Amalgamation under Sections 391 to 394 of the

Companies Act. The petitioner in C.P. No. 234 of 2005 is the first transferor company and the petitioner in C.P. No. 235 of 2005 is the second

transferor company.

2. It is seen from the petition filed that the transferee company has not filed any application under Sections 391 to 394 of the Companies Act on

the strength of the decision of this Court in C.P. No. 151 of 2005 wherein, it was held that when the transferor company is the subsidiary of the

holding company, it being a transferee company, a separate application from the transferee-company to grant a Scheme of Amalgamation need not

be filed at all.

3. In a meeting held by the Board of Directors on 20-12-2005, the Board of Directors of the respective petitioner company passed a resolution on

20-10-2005 for adopting the Scheme of Amalgamation and resolved to submit it to this Court for the sanction of amalgamation of the respective

petitioner companies with the transferee company. As per the Scheme of Amalgamation marked as Annexure-F found at page Nos. 169 to 185 in

C.P. No. 234 of 2005 and as Annexure-F at page Nos. 182 to 198 in C.P. No. 235 of 2005, the entire undertaking of the transferor companies

vested with the transferee company. The Board of Directors of the respective transferor companies considered that such an amalgamation would

contribute in furthering and fulfilling the objectives of the companies concerned and in the growth and development of their business. It is also

stated that the merger would strengthen the position of the amalgamated company enabling it to increase its profitability. It is further submitted that

rationalisation and streamlining of the Management and business, finances, elimination of duplication of work to the common advantage of the

companies would yield beneficial result and for the well-being of the companies concerned as well as shareholders, employees and all others

concerned. Thus, by the amalgamation, the company looked forward to establishment of a larger company with larger resources and wide capital

base enabling further development of the business of the companies concerned. Since the respective transferor companies are wholly owned

subsidiary companies of the transferee company, there was no need to allot the shares of the transferee company, and upon the Scheme coming

into effect, the entire equity share capital of the transfer company would stand cancelled; thereby, the question of allotment of shares to the holders

of the transferor-company does not arise.

4. By order dated 5-12-2005, this Court had dispensed with the meeting of the equity shareholders, in the light of the affidavit filed stating no

objection to the scheme. Affidavits are filed at pages 186 to 199 of the paper book as Annexure-G. The ''No Objection'' letter from the secured

creditor, namely, Canara Bank, is filed as Annexure-H at Page 200 of the paper book and a certificate from the Chartered Accountant is filed as

Annexure-I at Page No. 201.

5. Upon perusing the Scheme of Amalgamation, the Regional Director, Ministry of Company Affairs, Chennai, has submitted his report raising

objections:

(i) The transferor companies and the transferee company are two legal entities, and on amalgamation, only the transferee companies exist; thereby,

if the transferee company increases its authorised capital, it has to comply with the provisions of Sections 94 and 97 of the Companies Act by filing

relevant Returns with the Registrar of Companies;

(ii) As per Clause 11 of the Scheme, the authorised capital of the transferor companies would be combined with the authorised capital of the

transferee company, which is not tenable since both are notional limits upto which a company can increase its paid-up capital. It is stated that two

notional limits could not be clubbed together.

6. I have perused the paper book, considered the submissions made by the counsel for the petitioner as well as the learned Additional Central

Government Standing Counsel representing the Regional Director.

7. In answer to the objections raised by the learned Additional Central Government Standing Counsel, learned Counsel for the petitioners placed

reliance on the decision of this Court in C.P. Nos. 90 and 91 of 2005 dated 18-6-2005 and C.P. Nos. 191 and 192 of 2005 dated 25-11-2005

and submitted that the objections on the front of notional limit was totally unsustainable. The decisions given by this Court on earlier occasions on

similar counters from the Regional Director rested on the decision of the Delhi High Court reported in Hotel Hot Celdings (P.) Ltd. In re [2005]

127 Comp.Cas. 165 : 57 SCL 367 and Jaypee Cement Ltd. In re [2004] 122 Comp. Cas. 854 : 52 SCL 801 (All.).

8. I have perused the judgment of this Court rendered rejecting similar contentions as put forth by the Regional Director herein. Following the

abovesaid decisions, I do not find any merit in sustaining the objections made by the learned Additional Central Government Standing Counsel.

9. In the absence of any contra decisions, the objections both on the count of two notional limits not to be clubbed as well as the necessity for

complying with Sections 94 and 95 of the Companies Act are hereby rejected. As I had stated that the transferor companies are subsidiaries of the

transferee company, a single application at the instance of the transferor company would be sufficient.

10. In the Scheme of Amalgamation, all the assets and liabilities of the transferor companies are transferred to and vested in the transferee

company. It is stated in Clause 12 that the employees of the respective transferor companies would become the employees of the transferee

company and thus the interest of the employees are taken care of. There is no objectionable feature in the Scheme of Amalgamation which is

detrimental to either the creditors or the employees of the company. There is no clause violative of any statutory provision. Hence, the Scheme of

Amalgamation between the transferor companies, namely, M/s. Bysani Consumer Electronics Limited, No. 129, Royapettah High Road,

Mylapore, Chennai-600 004, petitioner in C.P. No. 234 of 2005 and M/s. Jainsons Corporation Limited, No. 133, Royapettah High Road,

Mylapore, Chennai-600 004, petitioner in C.P. No. 235 of 2005 with the transferee company namely, M/s. Vivek''s Limited and its shareholders

and creditors, as provided in the Company Petitions as per Annexure-F, is hereby sanctioned, as the procedure laid down under Sections 391 to

394 of the Companies Act are duly complied with. The petitions are allowed.

11. The books of account of the respective transferor companies are directed to be placed at the disposal of the Official Liquidator so as to enable

him to file his report to have an order of dissolution of the transferor companies without winding up.

Learned Additional Central Government Standing Counsel is entitled to a fee of Rs. 5,000 (Rupees five thousand only) from each company.