

(1998) 01 P&H CK 0155
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 100 of 1994

Data Computer Services

APPELLANT

Vs

Northern Digital Exchanges Ltd.

RESPONDENT

Date of Decision : 21-01-1998

Acts Referred:

Companies Act, 1956 — Section 10, 10(1), 237, 391, 394

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 18(4), 19(3)

Citation : (1998) 92 CompCas 362 : (1998) 118 PLR 687 : (1998) 2 RCR(Civil) 326

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : G.L. Sadana, for the Appellant; A.K. Mittal, for the Respondent

Judgement

Swatanter Kumar J.—Data Computer Services, a proprietorship concern, has brought this petition for winding up of the respondent-company under sections 433, 434, 439 of the Companies Act, 1956, on the ground that the company is unable to pay its debt in spite of notice. The court has issued notice of this petition to the respondent-company. During the pendency of this petition, a reference was made u/s 15 of the Sick Industrial Companies (Special Provisions) Act, 1985. The company was declared as a sick industrial company under the provisions of that Act by the Board for Industrial and Financial Reconstruction. As a result of these proceedings, which were noticed, vide order dated January 20, 1995, the proceedings before this court were adjourned sine die. On due notice, the company was directed to be amalgamated with Crompton Greaves Ltd. The final order of amalgamation was passed by the Board on December 26, 1995. Thereupon, the company petition was revived on the application of the parties to the petition, vide order dated April 25, 1996. C.A. No. 170 of 1994 had been filed by the respondent-company wherein Crompton Greaves Limited was permitted to be substituted in the place of the respondent-company, The order dated July 18, 1996, passed by the company judge on C.A. No. 170 of 1994, reads as under :

"After hearing counsel for the parties, C.A. No. 170 of 1996 is allowed and the respondent, Northern Digital Exchange Ltd., is permitted to be substituted by Crompton Greaves Ltd. Reply on behalf of Crompton be now filed in Company Petition No. 100 of 1994 within four weeks with advance copy to counsel opposite.

Adjourned to August 8, 1996."

2. After the passing of the said order, the memorandum of parties was amended to incorporate the substituted company as the sole respondent, Crompton Greaves Limited. Earlier, a reply had been filed on behalf of the then sole respondent, Northern Digital Exchanges Limited, in which a number of preliminary objections were taken and the alleged liability was disputed on the merits as well. After substitution of the present respondent-company, it filed reply/written statement in detail disputing the liability. The main objection that was taken on behalf of the present respondent-company related to the territorial jurisdiction of this court to entertain the present winding up petition in view of the provisions of section 10(1)(a) of the Companies Act.

3. When this matter came up for hearing on January 15, 1998, learned counsel appearing for the respondent-company raised this objection by way of preliminary objection and submitted that the said objection with regard to jurisdiction should be heard first. With the consent of learned counsel for the parties, the matter was heard only on this question.

4. There is no dispute as to the fact that the registered office of the sole respondent-company is at 1, Dr. V. B. Gandhi Marg, Bombay (now named as Mumbai). Clause (2) of the memorandum of association of the respondent-company had specifically provided that the registered office of the company shall be located in Maharashtra. The fact that the registered office of the company is at Bombay has not been disputed even on behalf of the petitioner. In fact this could not even be disputed because the purchase orders filed by the petitioner-company itself on record with the original petition indicate that the registered office of the present respondent-company was at Bombay, because purchase orders were issued on the forms of this company. Learned counsel for the respondent has also not disputed the fact that the erstwhile respondent-company has fully and finally been amalgamated into the present respondent-company.

5. Learned counsel appearing for the petitioner while describing the contentions raised on behalf of the respondents as without substance, raised the following contentions :

- (i) the order and scheme of amalgamation of the erstwhile respondent-company into the present company does not have the effect of extinguishing the entity of the erstwhile company. Thus, the winding up petition instituted against the erstwhile respondent-company would have to be continued before this court; and
- (ii) the respondents are estopped from raising the plea of jurisdiction because at

their own instance they were permitted to be substituted in the place of the erstwhile respondent-company.

6. I consider it appropriate to deal with both these contentions collectively because they are in any way interdependent.

7. There is no dispute to the effect that first the scheme for merger was presented before the Board for Industrial and Financial Reconstruction of which the present petitioner had due notice. They of their own will did not object and participated in the scheme proposed before the BIFR. A conditional order of merger was passed by the Board and which on fulfilment of the conditions imposed therein was made final by holding that the merger is complete. This final order was passed by the Board on April 22, 1996, a copy of which is annexed as annexure A-3 with C.A. No. 170 of 1996. The relevant extract of the order reads as under :

"Whereas the Board, vide order dated December 12, 1995, u/s 18(4) read with section 19(3) 6f the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act"), and modified, vide the said order u/s 18(5) of the Act has approved amalgamation/merger of Northern Digital Exchanges Ltd. (hereinafter referred as "NDDE") with Crompton Greaves Ltd. (hereinafter referred as "CGL"), and the said amalgamation/merger was to be effective on fulfilment of the following conditions :

... and, whereas the necessary approvals, as stated above, had been obtained, all the stipulations made under the sanctioned scheme of amalgamation/merger had been fulfilled and NDDE stood amalgamated/merged with CGL from the date of such approvals, and has since then been operating as a division of CGL.

Now, therefore, the case no longer requires to be dealt with under the Sick Industrial Companies (Special Provisions) Act, 1985, and is hereby formally closed."

8. Once the final order of merger had been passed, the erstwhile respondent-company would lose its legal or corporate entity. The amalgamation of a company must be understood as having a definite meaning, as opposed to a reorganisation or scheme of arrangement arrived at between two companies. In the case of one company being merged into the other in terms of the scheme the transferor company merges in the transferee for all purpose and intents, including loss of its corporate character and legal entity. The amalgamation thus is a blending of two or more existing companies into one and the transferee company become holders of the shareholding of the transferor company complete merger of one company into another with complete assets and liability being transferred to the transferee company is not a mere or temporary eclipse. The legal and financial status of the merged company has the effect of replenishing the very corporate and legal entity of the said company. In simple words, it is loss of legal entity by the earlier company. In this regard, reference could be made to the case of Brooklands Selangor Holdings Ltd. v. IRC [1970] 2

All ER 76 and Halsbury's Laws of England, third edition. It is true that the scheme of amalgamation has to be read as a whole to clearly establish whether it is a case of reconstruction or amalgamation. This, in fact, is not even being contested before me that it is not a case of reconstruction but of complete merger of the erstwhile respondent-company into the present respondent-company. In any case, the cumulative effect of the scheme placed on record read in conjunction with the order passed by the Board, seen in the light of the fact that complete assets and liabilities which the company was holding not only stood transferred but the entire company with all its infrastructure stood merged into the present company, would completely make a case of amalgamation which has the effect of the earlier company losing its entity. The relevant portion of the order reproduced above, in any case leaves, no doubt in the mind of the court that the erstwhile company having lost its entity is only operating as a division of Crompton Greaves Limited and nothing more.

9. It may be appropriate to refer to the judgment of the Supreme Court in *Saraswati Industrial Syndicate Ltd. Vs. Commissioner of Income Tax*, where the court was directly concerned with the effects of amalgamation of one company into the other. In the aforesaid case, the Supreme Court held as under (headnote of *Saraswati Industrial Syndicate Ltd. Vs. Commissioner of Income Tax*,) :

"But there cannot be any doubt that when two companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.

Where the company which had been allowed certain amount as trade liability in previous year was subsequently amalgamated with the assessee-company and under the terms of amalgamation the trade liability was taken over by the assessee-company, the assessee-company would not be liable to pay tax u/s 41(1) on the amount taken over as the amalgamating company to whom the amount was allowed loses its identity after amalgamation."

10. The legal entity of a merged company ceases to exist in the eye of law and cannot raise a claim that it exists any longer so as to refer even to its existence for seeking protection of legislation like the Rent Restriction Act. The observation made in the case of *General Radio and Appliances Co. Ltd. and Others Vs. M.A. Khader (Dead) by Lrs.*, may be significant which are as under :

"The order of amalgamation has been made on the basis of the petition made by the transferor company in Company Petition No. 4 of 1968, by the High Court of Bombay. As such it cannot be said that this is an involuntary transfer effected by order of the court. Moreover, the first appellant-company is no longer in existence in the eye of law and it has effaced itself for all practical purposes."

11. The cumulative effect of the above settled principles of law enunciated by the highest court of the land, upon its application to the facts and circumstances of

the case, leaves no doubt in my mind that the earlier company had completely lost its legal entity and ceases to exist in the eye of law. This is a case which on the bare reading of the scheme and the order shows that one company has merged and been absorbed into the other and blended with the other causing loss of legal entity of the erstwhile petitioner-company. The complete rights and liabilities of the transferor-company had become vested with all such rights and liabilities in the transferee company.

12. The order of substitution dated July 18, 1996, which was passed in the presence of counsel for the parties does not carve out any such exception on the basis of which it could reasonably be inferred that the earlier respondent-company had reserved any of its rights in the present petition or even generally at the time of substitution of the respondent. The inevitable result is that as a matter of fact the name of the erstwhile respondent-company was struck off from the record and was substituted by the present respondent-company and furthermore the earlier company ceases to exist in law.

13. Learned counsel appearing for the petitioner while relying upon clauses (3) and (5) of the proceedings held before the Board dated December 12, 1995, has contended that the present company having taken over the liabilities of the first company and the fact that pending cases were not to be affected by the scheme of amalgamation, the proceedings have to be continued before this court. Clauses (3) and (5) of the approved scheme of amalgamation can be reproduced herebelow :

"3. If any suit or appeal or other proceedings of whatsoever nature (hereinafter called "the proceedings"), by or against the transferor company be pending, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of the undertaking of the transferor company to the transferee company or of anything contained in the scheme but the proceedings may be continued, prosecuted and enforced by or against the transferee company in the same manner and to the same extent as if this scheme had not been made.

5. Subject to the other provisions contained in the scheme all lawful contracts, deeds, bonds agreements and other instruments of whatever nature to which the "transferor company" is a party subsisting or having effect immediately before the amalgamation shall be in full force against or in favour of the transferee company and may be enforced as fully and as effectively as if instead of the transferor company the transferee company had been a party thereto."

14. The bare reading of the aforesaid provisions only protects and secures that proceedings against and by the company would continue in the same manner and to the same extent as they were before the coming into force of the scheme and all liabilities of the earlier company would be fully enforceable against the transferee company. These provisions in no way affected the above legal position but only provided a clarity that all pending proceedings would continue from the

same stage at which they were at the time of amalgamation. The transferee company cannot defeat such proceedings on the ground of its liabilities. Once all assets and liabilities are transferred and the rights/obligations accrued in favour of the transferee company it in any way cannot escape the liability. As a matter of fact, it was not even so argued by learned counsel appearing for the respondent-company. The question of the extent and liability to pay any amount would obviously remain open to adjudication and it cannot even change the stand which was already taken by the erstwhile respondent-company on record. But such determination and adjudication has to be by the court of competent jurisdiction. As I have heard learned counsel for the parties only on the question of jurisdiction, I do not even consider it appropriate to refer to the merits of the case other than the one relevant for determining the question of jurisdiction alone.

15. Section 10 of the Companies Act is a statutory provision relating to the jurisdiction of the court. The Act deals with companies alone and even in that clause the Legislature in its wisdom has opted to provide for a restricted clause relating to jurisdiction. Section 10 of the Companies Act reads as under :

"10. (1) The court having jurisdiction under this Act shall be -

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2); and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the court, not being the jurisdiction conferred -

(a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 to 407, both inclusive;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees by Part VII (sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up."

16. There is no doubt as to the basic fact that in the States of Punjab and Haryana jurisdiction u/s 10 of the Act is exercisable only by the High Court, but it

is the High Court in whose jurisdiction the registered office of the company is situate which can exercise such jurisdiction. The necessary implication of this is that jurisdiction of all other courts except the court in whose jurisdiction the registered office of the company is located is excluded. Under sub-section (3) of section 10, the Legislature has even specifically defined the expression "registered office" the period of six months immediately preceding the presentation of the petition for winding up is fully satisfied in the present case. The office of the present respondent-company right from the inception is in Maharashtra and at Mumbai. This fact is already noticed as is evident from the documents which have been filed by the petitioner-company along with the petition. The memorandum of association of the company has specifically provided that the registered office of the respondent-company would be in Maharashtra alone.

17. The cardinal principle of interpretation of statutes relating to jurisdictional provisions have to be construed with more definiteness and not so liberally that it would defeat the very object and purpose of such jurisdictional provisions. The present respondent-company having substituted the erstwhile company whose legal entity has ceased to exist has its registered office at Mumbai. Thus, this court cannot have jurisdiction to entertain and decide the winding up petition on the merits against the respondent-company. The provisions of Part 7 of the Companies Act and its Chapters 1 to 4 are a self-contained code within the Companies Act, 1956, which deals with the winding up of companies and consequences thereof. There appears to be a definite and clear purpose underlying these provisions and that is, the registered office of the company and all the main assets and management of the company should be at a place, where the court passing the order of winding up or considering such petition has the jurisdiction. This very object and the legislative intent behind the special provisions would stand decimated if the contention of learned counsel for the petitioner-company is to be accepted.

18. Learned counsel for the petitioner has relied upon a judgment of the Delhi High Court in the case of Telesound India Ltd., In re [1983] 53 Comp Cas 926 in support of his contention. This judgment has no application to the facts and circumstances of the present case. The court in this case was concerned as to which of the courts each of the companies under the scheme of amalgamation should approach. Even in this case, the court also held that the transferor company loses its corporate shell and thriving as a part of the larger whole. The court in this case was largely concerned with the sanction of the scheme of amalgamation presented before the court.

19. In my humble view this judgment cannot forward the case of the petitioner any further.

20. The language of section 10 of the Companies Act explicitly expressed that the court where the registered office of the company is situated would be the court having jurisdiction to entertain the petition for winding up. This clearly

implies that the jurisdiction of the courts other than that is excluded. This interpretation is the only plausible interpretation and this court would have no inherent jurisdiction to entertain and decide the petition on the merits after substitution of the respondent-company specially when such substitution is in furtherance of the order of amalgamation passed under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

21. Equally unfounded is the plea raised on behalf of the petitioner-company that acquiescence on behalf of the respondent-company in passing of the order of substitution estops them from raising this plea. It is not for the parties to confer jurisdiction on the court by consent, more so, where jurisdiction on a court is conferred by the statutory provisions itself. No contract between the parties or any amount of mutual understanding can be said to be capable of creating jurisdiction in another court, if the provision conferring the jurisdiction in a statute specifies that the jurisdiction would be vested in a particular court. Any alteration thereof would neither be permissible nor proper. In the face of the provisions of section 10 of the Companies Act no amount of acquiescence can be permitted in loss of jurisdiction of specified court and creation of jurisdiction in a court which under law does not have the jurisdiction. Such meddlesome interpretation is bound to offend the statutory provisions, their objects and legislative intent behind such an enactment.

22. In view of the above detailed discussion, I have no hesitation in coming to the conclusion that this court has no jurisdiction to entertain and decide the present winding up petition as the registered office of the respondent-company is situated at Mumbai. This petition is, therefore, rejected with the direction that the registry could return the original petition to the petitioner for presentation before a court of competent jurisdiction. However, in the facts and circumstances of the case, there shall be no order as to costs.

23. The company petition as well as the C.A. are accordingly disposed of.