**(1995) 12 AP CK 0060**

**In the Andhra Pradesh High Court**

**Case No :** Company Petition No. 48 of 1995

Golkonda Engineering Enterprises Ltd. APPELLANT

Vs

Ginni Vyappaar Ltd. RESPONDENT

**Date of Decision :** 22-12-1995

**Acts Referred:**

Companies Act, 1956 — Section 153, 17, 391, 391(2), 392

**Citation :** (1997) 1 CompLJ 404

**Hon'ble Judges :** G. Bikshapathy, J

**Bench :** Single Bench

## Judgement

G. Bikshapathy, J.—This is a petition filed by the transferee company (M/s. Golkonda Engineering Enterprises Ltd.) u/s 394 read with section 391(2) of the Companies Act. The petitioner company hereinafter referred to as the transferee company was incorporated in February, 1985, in State of Maharashtra and, subsequently, the registered office was shifted to Secundarabad in October, 1990. The authorised share capital of the transferee company is Rs. 1,00,00,000 dividend into 10,00,000 of equity shares of Rs. 10 each. The issued subscribed and paid up capital is Rs. 49,50,700 comprising fully paid up shares of 4,95,070 comprising fully paid up shares of 4,95,070 of Rs. 10 each. The objects of the transferee company are set out in the memorandum of association. The transferor company, namely, M/s. Ginni Vyappaar Ltd., was incorporated on 8.12.1993 in West Bengal. It became a deemed public limited company with effect from 31.3.1994, its registered office is situated at Calcutta. Its authorised share capital is Rs. 2 crores while issue subscribed and paid up share capital is also Rs. 2 crores. The objects of the transferor company have been set out in the memorandum of association. In has been primarily incorporation in carrying on the business of, and to acquire by purchase or otherwise by subscription for tender, exchange, hold, sell, transfer, hypothecate, etc., of any shares, bonds, stocks, securities, etc. Clause III(B) 10 of the objects are understandingly (understandably) an ancillary to the main objects clause.

2. The transferee company is also inter alia engaged in the business carried on by the transferor company and in order to reduce the overheads and take advantage of localised and centralised large company for growth and to diversity for prosperity and for other reasons mentioned in para 11 intended to evolve scheme of amalgamation. The Board of directors of the transferee company in their meeting held on 1.3.1995 approved the scheme of amalgamation of the entire undertaking of the transferor company to be merged with the transferee company with effect from 1.4.1995. The Board of directors of the transferor company also held meeting and approved the amalgamation with transferee company. It is also stated that the transferor company filed Company Application No. 58/95 before the Calcutta High Court u/s 391 of the Act and the court by orders dated 20.3.1995 directed the meeting of the equity shareholders. By order dated 8.8.1995 in Company Petition No. 135 of 1995 approved the scheme of amalgamation. By Company Application No. 141/95, this court passed an order for holding meeting of equity shareholders and accordingly, the meeting was conducted on 26.8.1995. Sri S.K. Jilani Basha is directed to act as a Chairman and to preside over the meeting. The meeting was conducted as per usually and in the said meeting, the following resolution was unanimously passed :

"Resolved that the scheme of arrangement between the company an its members of amalgamation of M/s. Ginni Vyappaar Limited with M/s. Golkonda Engineering Enterprises Limited in terms of the Scheme laid before the meeting duly initiated and signed by the Chairman for the purpose of identification be and is hereby approved subject to such alternations and modifications thereof, if any, as may be directed by Hon''ble Court of Andhra Pradesh, Hyderabad."

Notice was also issued to the Central Government.

3. The Registrar of Companies on behalf of the Central Government filed counter affidavit stating that the matter relating to the scheme of arrangement of amalgamation was examined and an objection has been recorded by the Central Government stating that the transferee company is engaged in the business of buying, selling, exchanging/preparing for market, distribute etc., of all types of mechanical, electrical and electronic goods, while the transferor company has been carrying in the business on and to acquire, purchase, buy, subscribe, duly [deal] in disposing of all any shares, bonds, securities, etc. Therefore, it is submitted by the Central Government [that] the memorandum of association of the transferee company does not empower [it] to carry on the business of transferor company to carry (on), to deal in shares, stocks, etc., and, therefore, unless the object of the transferee company is suitably amended, the scheme of arrangement of amalgamation cannot be approved by this Court. Under those circumstances, the Central Government submits that the application as filed by the transferee company is liable to be dismissed.

4. A reply affidavit was filed by the transferee company stating that clauses 17, 24, 26, 28, 44 and 85 of the object clauses mentioned in the memorandum of

 

association empower the transferee company to carry on the business of investment and also to deal with the properties and shares, etc. Further, the proposed amalgamation would result in largescale of economies and pool of their resources to maximum advantage (sic). Alternatively also, it is mentioned that there need not be identity of objects of transferee company and transferor company, as such, a requirement is not stipulated in the statute.

5. The learned counsel for the transferee company (petitioner) Sri V.R. Raju submits that there is a complete compliance of sections 391 and 394 of the Companies Act and, therefore, the objection sought to be placed by the Central Government is not sustainable. He submits that the clauses which are styled as independently or ancillary (to) attainment of the main objects enumerated at Serial Nos. 17, 24, 26, 28, 44 and 85 would clearly and clinchingly establish that the transferee company is entitled to deal with any shares and securities etc. For a proper appreciation of the contention, the said clauses are extracted below :

"17. To amalgamate, enter into any partnership or acquire an interest in the business of any other company, person or firm, or enter into any arrangement for sharing profits or for cooperation or for mutual assistance with any such persons, firm or company or to acquire and carry on business and to give or accept by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon and to hold and retain, or sell, mortgage and deal with any shares, debenture stock or securities so received.

* * * * 24. To invest and deal with monies of the company not immediately required in any manner deems expedient by the directors.

* * * * 26. To pay for any business/property or rights acquired or agreed to be acquired by the company and to remunerate any person or company and generally to specify any obligations, of the company by cash payment or by the issue, allotment or transfer of shares of this or any other company credited as fully or partly paid up or debentures or other securities of this or any other company.

* * * * 28. To sell, lease, mortgage or otherwise dispose of the property, assets or undertaking of the company or any part thereof for such consideration as the company may think fit and in particular, for shares, stock, debentures or other securities of any other company whether or not having objects altogether or in part similar to those of the company.

* * * * 44. To carry on the business of investment in and acquire, by purchase, lease, exchange, or otherwise, and hold properties, land, buildings, hereditaments, licences, easements, concessions and other rights of any tenure and description wherever situate and any estate or interest therein and any rights over or connected with land to situate and to turn the same to account as may seem expedient and in particular by preparing building sites and by constructing, reconstructing, altering, improving decorating and furnishing

 

offices, flats, houses, factories, warehouses, shops, wharves, buildings, godowns, wells, reservoirs, mines, refineries works, conveniences of all kinds and by consolidating or connecting or sub-dividing, properties and by leasing out, hiring, exchanging, selling and disposing of the same in any other manner as may be expedient including selling of flats, blocks, shops, office premises, garages on ownership basis or promoting of cooperative societies.

* * * * 85. To undertake, carry out promote and sponsor rural development including any programme for promoting the social and economic welfare of or the uplift of the public in any rural area and to incur any expenditure on any programme of rural development and to assist [in] execution and promotion thereof either directly or through an independent agency or in any other manner. Without prejudice to the generality of the foregoing ''Programme of Rural Development'', and that the words ''rural area'' shall include such areas as may be regarded as rural areas u/s 35CC of the Income Tax Act, 1961, or any other law, relating to rural development for the time being in force in order to implement any of the above mentioned objects or purposes, transfer without consideration, or at such fair or concessional value and subject to provision of Companies Act divest the ownership of any property of the company to or in favour of any public or local body or authority or Central or State Government or any public institutions. And it is hereby declared that : the word ''company'' in this clause shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated and whether in India or elsewhere and the intention is that the objects specified in each paragraph be in no wise limited or restricted by reference to or inference from terms of any other paragraph or the name of the company and that the objects incidental or ancillary to the attainment of the main objects of the company as aforesaid shall also be incidental or ancillary to the attainment of the other objets of the company herein mentioned."

6. Clauses 17, 24, 26, 28 and 44 are grouped in the ancillary and incidental clauses to the attainment of the main objects while clause 85 is grouped in other objects.

7. The learned counsel for the petitioner submits that each clause has to be read independently and not correlating to the main objects of the company. That is precisely (the) reason why clause 85 has been specifically incorporated whereby specific declaration was recorded to the effect that the objects specified in each paragraph cannot be limited or restricted to a reference to incidental or ancillary objects to the attainment of the main objets of the company, but also incidental and ancillary to the attainment of the other objects of the company as well. He also further submits that the funds of the transferee company have also been invested in shares of various companies. Thus it suggests that the transferee company is also engaged in the business of investment of shares and dealing in the securities, etc. He relies on the decision reported in Birds Investments Ltd. Vs. Commissioner of Income Tax, . In the said case, clause 3 of the

 

memorandum of association was as follows :

"The objects for which the company is established are (and it is expressly declared that the several sub-clauses of this clause and all the powers thereof are to be cumulative and in no case is the generality of any one sub-clause to be narrowed or restricted by any particularity of any other sub-clause, nor is any general expression in any sub-clause to be narrowed or restricted by any particularity of expression in the same sub-clause or by the application of any rule or construction ejusdem generies or otherwise."

It was submitted in the said case that the words in the parenthesis in that clause cannot be treated as a guiding factor in understanding the main objects of the company as the main objects have been described in sub-clause (B) which govern the subsequent clauses. The Calcutta High Court after considering various judgments held that each object clause has to be treated as independent clause and the same has to be read in isolation and not (as) ancillary to or limited or controlled by other clauses.

8. Basing on the said judgment, the learned counsel submits that since the object clause provided that the transferee company is entitled to deal with and transact the business of investment, buying and selling of shares and securities, etc., and therefore, it is to be held that some of objects of the transferee company are also the objects of the transferor company. He also relies on the decision of Calcutta High Court, reported in In Re: Marybong and Kyel Tea Estate Ltd., . The said case related to the amalgamation of company(ies). A similar objection was taken before the Company Court to the effect that inasmuch as in the memorandum of association of the two companies, the was no provision for amalgamation with other companies, without incorporating the necessary power in the memorandum of association for amalgamation u/s 17 of the Act, the scheme of amalgamation cannot be sanctioned. The court, repelling the contention, held as follows :

"Regarding the contention of Mr. Bose that without specific powers in the memorandum or the articles of both the companies and without an application u/s 17 of the Companies Act, 1956, for alteration of the objects clause of the memorandum of the companies by incorporating powers to amalgamate, the scheme for amalgamation in this case cannot be sanctioned. I am unable to accept the same. Firstly, after going through the objects clauses, it appears that the company has power to amalgamate; secondly, the transferor company is an English company and no confirmation by courts as required u/s 17 of the Companies Act, 1956, is necessary u/s 5 of the English Companies Act, 1948; and, thirdly, there is a statutory power of amalgamating a company with another company without any specific power in the memorandum u/s 391 to [section] 396 of the Companies Act, 1956. I may refer to the observations of A.N. Ray, J., as he then was, in Hari Krishna Lohia Vs. Hoolungooree Tea Co. Ltd. and Another, which are as follows :

 

''The power to amalgamate may flow from the memorandum or it may be acquired by resorting to the statute. Section 17 of the Companies Act indicates that a company which desires to amalgamate with another company will take necessary steps to come before a court for alteration of its memorandum in aid of such amalgamation. The statue confers a right on a company to alter its memorandum in aid of amalgamation with another company. The provisions contained in sections 391 - 396 and 494 illustrate some instances of statutory power of amalgamating a company with another company without any specific power in the memorandum.''

The said principle seems to me also to be applicable in the present case, if the objects clause in the memorandum of association of any of the companies is construed as not to specifically empower any of the companies to amalgamate with any other company as there is a statutory power of amalgamation under the said section. I may also refer to an unreported judgment of mine in United Bank of India Ltd. Vs. United India Credit and Development Company Ltd., , which is under appeal, where I have held the same view as I am doing here to the statutory power to amalgamate without any specific power for amalgamation in the memorandum of association of a company."

9. The learned counsel for the petitioner also relied on a decision of Bombay High Court reported in In Re: Pmp Auto Industries Ltd., The Bombay High Court held that in order to enable the amalgamation between two companies, it is not necessary that there should be unison in the object of the two companies. That the objects of the transferor company were different from those of the transferee company could not per se be a fetter to the sanctioning of the scheme of amalgamation. It was further held in the said case that section 391 is not only a complete code, but [is] intended to be in the nature of a ''single window clearance'' system to ensure that the parties are not put to avoidable unnecessary and cumbersome procedure of making repeated applications to the court for various other alterations and changes, which must be needed effectively to implement the sanction[ed] scheme whose overall fairness and feasibility has been judged by the court u/s 394 of the Act. In this, decision, it has been clearly indicated that there need not be any unison of objects of both transferor and transferee company.

10. I have gone through the clauses referred to above of the memorandum of association and find that there is sufficient material to establish that the transferee company is entitled to invest and deal with the shares, securities etc. Clause 17 permits amalgamation or enter into any partnership or acquire interest in the business of any other company and to carry on the business of selling, marketing and dealing with any shares of securities, etc. Clause 24 also empowers the company to invest money in any manner as decided by the Board of directors. Clause 44 also empowers the company to carry on the business of investment in and acquire the property, land, building, etc. As per clause 85, it was made clear that every object clause need not be restricted or limited with

 

reference to the ancillary and incidental to the main objects and therefore, each clause has to be treated as an independent clause. Hence, I hold that the petitioner company is having some of the objects in its memorandum of association similar to the objects of transferor company.

11. Further, it is to be seen that the Calcutta High Court clearly held that this court is vested with the jurisdiction to sanction the arrangement even though there is no power in the company as per the object clauses in the memorandum of association. This court can exercise the power of amalgamation even though there is no special object clause in the memorandum of association of the company for amalgamation with another company. It is to be held that to amalgamate with another company is the power of company and not an object of the company. The amalgamation has to be effected by the order of the court under sections 391 and 394. The said power of this court is not subject to any restriction that it must be within the object clauses of both the companies.

12. It is not the case of the Central Government that the amalgamation is not being brought for public purpose and that it is prejudicial to the interest of the members or the public. The only grievance put forth by the Central Government is that there is no similarity of objects of both the transferee company and transferor company. In Canara Bank Ltd. In re (1973) 43 Comp Cas 157, it was held that there is no restriction as to the kind of companies with which there can alone be amalgamation. If the shareholders resolve to amalgamate with a company having same or different objects, the court will not sit in judgment over the wisdom or otherwise of the resolution. Therefore, the trend of the judgment is that even irrespective of the object clauses, the court is empowered to sanction scheme of amalgamation provided it does not prejudice the interest of the public of harm public interest.

13. It is also to be noted that the Calcutta High Court on an application made by the transferor company already sanctioned the scheme of amalgamation subject to the result of the application filed by the transferee company before this court.

14. The learned counsel for the Central Government relies on the judgment of the Chancery Division reported in Oceanic Steam Navigation Co. (1939) 9 Comp Cas 229, wherein it is stated that when the memorandum of association of the company did not contain any power of dispose of the undertaking, section 153 of the Companies Act, 1929, does not authorise an arrangement to be made or to be sanctioned by the court, if that arrangement would involve transaction outside the powers of the company as defined in its memorandum of association.

15. I need not go into the controversies whether in the absence of any similarity of object clause, this court can grant approval for scheme of amalgamation, inasmuch as, in the instant case, I held that the transferee company is having the object clauses similar to that of the transferor company.

16. For the aforesaid reasons, the company petition is allowed. Accordingly, there shall be order in terms of prayer at para 27(a) to (c). No part of the scheme will

 

operate in any manner so as to obviate the requirements of the Companies Act/ or any application wherever the same is required under the said Act.

17. The company petition is accordingly allowed. There shall be no order as to costs.

 