

(1982) 04 CAL CK 0017

In the Calcutta High Court

Case No : Company Petition No. 75 of 1982 connected with Company Application No. 274 of 1981

Hindusthan General Electrical Corporation Ltd.

APPELLANT

Vs

Karamchand Thapar and Bros. and Others

RESPONDENT

Date of Decision : 29-04-1982

Acts Referred:

Monopolies and Restrictive Trade Practices Act, 1969 — Section 23(3)

Citation : (1984) 55 CompCas 497

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : R.C. Nag, for the Appellant; S.B. Mookherjee, for the Respondent

Judgement

T.K. Basu, J.—This is an application u/s 391(2) read with Section 394 of the Companies Act, 1956, for confirmation of a scheme of amalgamation. The statutory formalities which are required to be complied with prior to an application for confirmation have been complied with.

2. The only objection that is taken by Mr. S. B. Mookherjee, appearing on behalf of the Central Govt., is that u/s 23(1) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as "the Act"), prior approval by the Central Govt. is necessary before a scheme can be sanctioned in the instant case.

3. This is because admittedly both the transferor and the transferee-companies are registered under the provisions of the Act. According to Mr. Mookherjee, the exemption provided by Sub-section (3) of Section 23 of the Act is not applicable in the instant case.

4. Mr. R. C. Nag, appearing on behalf of the petitioner, referred to a decision of the Bombay High Court in the case of Tata Iron and Steel Co. Ltd., In re [1975] 45 Comp Cas 355. In that case, the only controversy raised by the Company Law Board appears to be whether the expression made in Section 23(3) of the Act was only confined to end-products or finished goods which were marketable or

intermediate goods which were utilised for the manufacture of the end-products. The Bombay High Court came to the conclusion that having regard to the very wide definition of " goods " in the Act, it should not be confined only to finished and marketable goods which were end-products.

5. The above decision of the Bombay High Court was approved and followed by the Madras High Court in the case of Coimbatore Cotton Mills Ltd. and Lakshmi Mitts Co. Ltd., In re [1980] 50 Comp Cas 623.

6. As has been laid down by the above decision, in order to avail of the exemption offered by Section 23(3) of the Act, three conditions are to be satisfied. Firstly, both the transferor and the transferee-companies must be inter-connected companies. Secondly, neither of them before the amalgamation or for that matter after the amalgamation be a " dominant under- taking " within the meaning of the Act. Thirdly, that both the companies must produce the same goods.

7. Certain questions arose whether in the case of companies which produced a multiplicity of goods but had only one common item, the volume of production of that item in relation to the total volume of business of the company was a relevant consideration or not. Certain other questions arose as to whether the production of the goods within the meaning of Section 23(3) of the Act would have to be the principal business of the companies concerned.

8. Happily I find that there is nothing in the Act which militates against the submission that was made by Mr. Nag on behalf of the petitioner, that even where more than one type of goods is produced by the companies, if there is one common item, that should be sufficient for invoking Section 23(3) of the Act. Similarly, there is nothing in the Act which militates against the submission made by Mr. Nag that the volume of production of that common item in relation to the total business is not a relevant consideration for deciding the applicability of Section 23(3) of the Act.

9. I am of the opinion that the final decision on these questions should be left for an appropriate future occasion. Suffice it to say, that in my view, all the three conditions for the applicability of Section 23(3) of the Act, which I have enumerated above, are present in the instant case. That being so, it must follow that the petitioner is entitled to exemption u/s 23(3) of the Act and no prior approval of the Central Govt. is necessary before I can confirm the scheme. The objection raised on behalf of the Central Govt., therefore, fails.

10. In the result this application succeeds. There will be an order in terms of prayer (a) after deletion of the words " or from such other date as this Hon'ble court may fix" occurring after the words " 1st day of January, 1982 ". There will be an order in terms of prayers (b), (c), (d), (e), (f), (g) and (h). Leave is given to file the schedule of assets within two weeks from date. In allotting the shares of the transferee-company to the members of the transferor-company, I direct that the 146 equity shares of the transferor-company of the face value of Rs. 10

each which are held by the transferee-company should be ignored. The official liquidator is directed to supply a copy of the office report in terms of prayer (f) of the petition to the petitioner's advocate on record on the usual terms. All parties are to act on a signed copy of the operative portion of this order on the usual undertaking.