(2012) 08 MAD CK 0016

In the Madras High Court

Case No : C.P. No''s. 124 and 125 of 2012

In Re: Accel Frontline Services Ltd.

Date of Decision : 27-08-2012

Acts Referred:
Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2012) 175 CompCas 544

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : S. Ramasubramaniam and Associates, for the Appellant;

Final Decision : Allowed

Judgement

K.B.K. Vasuki, J.—Accel Frontline Services Ltd. (hereinafter called as ""the transferor company"") is the petitioner in C.P. No. 124 of 2012.

It was originally incorporated in the State of Karnataka on December 6, 1995, as M/s. XLNC Info Tech Solutions P. Ltd., under the provisions of

the Companies Act, 1956. The name of the company was subsequently changed to Accel Frontline Service P. Ltd., on August 5, 2008.

Thereafter, it became a deemed public company on June 2, 2009, u/s 43A of the Companies Act, 1956. In 2010, its registered office was shifted

from Karnataka to be located at No. 75, Nelson Manickam Road, Aminjikarai, Chennai-29, which comes within the jurisdiction of this court. A

copy of the memorandum and articles of association of the transferor company has been filed as annexure 1. The authorised share capital of the

transferor company is Rs. 3,00,00,000 divided into 30,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of

the transferor company is Rs. 2,50,00,000 comprising of 25,00,000 equity shares of Rs. 10 each. A copy of the audited account of the transferor company for the period ending with March 31, 2011, as approved by its shareholders has been produced as annexure 2. Accel Frontline Ltd.

(hereinafter called as ""the transferee company"") originally known as Accel Computers Ltd., was incorporated under the Companies Act, 1956 in

the State of Tamil Nadu on June 8, 1995. The name of the transferee company was subsequently changed as Accel ICIM Systems and Services

Ltd., on October 21, 1999 and further changed as Accel ICIM Frontline Ltd., on August 27, 2004 and changed as Accel Frontline Ltd., on

November 3, 2005. A copy of the memorandum and articles of association of the transferee company has been produced as annexure 1. The

registered office of the transferee company is at Plot No. 75, Nelson Manickam Road, Aminjikarai, Chennai-600 029. Its authorised share capital

is Rs. 30,00,00,000 comprising of 3,00,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of transferee

company is Rs. 22,50,90,000 comprising of 2,25,09,000 equity shares of Rs. 10 each. A copy of the audited account of the transferee company

for the period ending with March 31, 2011, as approved by the shareholders has been produced as annexure 2.

2. Now, by the proposed scheme, the transferor company is sought to be amalgamated with the transferee company. The scheme of amalgamation

proposed has been produced as annexure 4. The board of directors of the transferor company and the board of directors of the transferee

company in the meeting held on November 10, 2011, have approved the scheme of amalgamation and the resolutions approving the scheme of

amalgamation by the directors of the transferor company and transferee company respectively are annexed as annexure 5 in both the petitions.

3. After the scheme of amalgamation was approved by the respective board of directors, the transferor company has approached this court with

Company Application No. 160 of 2012 for dispensing with the convening and holding of meeting of its equity shareholders to consider the scheme

of amalgamation with or without modification. All the seven equity shareholders of the transferor company had expressed their consent for the

implementation of the scheme of amalgamation and the affidavits expressing their consent have been produced as annexure 8 in C.P. No. 124 of

2012. In view of the same, this court passed an order on February 14, 2012, dispensing with convening and holding of the meeting of the equity shareholders of the transferor company.

4. So far as the transferee company is concerned, an application was filed in Company Application No. 159 of 2012 for convening and holding the

meeting of its equity shareholders of the applicant-company. By an order of this court dated February 14, 2012, such meeting was convened on

March 22, 2012, under the chairmanship of Thiru N.R. Panicker, managing director of the said company. In the said meeting, necessary resolution

approving the scheme of amalgamation without any dissent came to be passed as revealed by the report of the chairman of the meeting filed along

with C.P. No. 125 of 2012. The transferee company is a listed company and hence it has obtained no objection from the National Stock

Exchange and Mumbai Stock Exchange for the proposed scheme of amalgamation and the same have been produced as annexure 9 in C.P. No.

125 of 2012.

5. Both the transferor and transferee companies are engaged in the business of I.T. Services. While the transferor company is engaged in back

office services, the transferee company is engaged in on-site I.T. Services. The transferor company has seven shareholders including the transferee

company. The transferee company holds 98 per cent. of the paid-up capital of the transferor company and one Mr. R. Ganesh holds the balance 2

per cent. of the paid-up share capital of the transferor company. It has been stated in the petitions that the merger would provide consolidation and

rationalising the activities of the transferor and transferee companies and will also result in enhanced focus, on the common I.T. business. It has also

been stated that the proposed scheme of merger of the transferor company with the transferee company will be in the interest and to the best

advantage of the shareholders and creditors of both the companies.

6. The Regional Director, Ministry of Corporate Affairs, Chennai has, in his affidavit dated July 17, 2012, raised an objection to the effect that

payment of additional filing fee and stamp duty is required as the amalgamation of the companies will result in increasing the authorised share capital

of the transferee company. As rightly argued by learned counsel for the petitioner in both the petitions, the issue of payment of additional filing fee

and stamp duty in the case of amalgamation of two companies is already raised and decided by the Division Bench of our High Court in the judgment reported in [20081 141 Comp Cas 475 (Regional Directory. Cavin Plastics and Chemicals P. Ltd.), wherein, the Division Bench has

answered the issue in the negative and held in paragraph 12 as follows (page 481);

We have also gone through the decision of the Calcutta High Court in In Re: Areva T and D India Limited, relied upon by the appellant. In the said

judgment, the Calcutta High Court has held that the right to increase its paid-up capital to its authorised limit, is a right unique to each company and

incapable of being transferred, just as the fee paid for registration of the company is also incapable of being transferred and, consequently, a

separate fee would be payable u/s 95 read with section 97 of the Act. We are unable to agree with the reasoning of the learned single judge. The

issue is not whether the fee, which is already paid by the transferor company would automatically be transferred to the transferee company. But,

what is intended by section, 391 of the Act is to reconstitute the company without the company being required to make a number of applications

under the Companies Act for various alterations which may be required in its memorandum and the articles of association for functioning as a

reconstituted company under the scheme. Not only is section 391 of the Act a complete code in itself, but it is intended to be in the nature of a

''single window clearance''.

7. Following the said decision, the learned brother judge of our High Court in the judgment reported in In Re: Convansys (India) P. Ltd., , is also

pleased to reject such contention and ordered the petitions as prayed for. Thus, the objection raised by the Regional Director is answered as per

the decision referred to above, in favour of the petitioner in both the petitions.

8. Publications were already effected in pursuance of the order of this court dated April 27, 2012 and so far no objections have been received

from any quarters. Pursuant to the order of this court dated April 27, 2012, the official liquidator has also submitted a report to the effect that the

affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or the public interest and that there

are no investigation or proceedings pending against the transferor company or the transferee company under sections 235 to 251 or any other

provisions of the Companies Act, 1956. It has also been stated that the directors of the transferor company have not committed any misfeasance,

diversion of funds, etc., attracting provisions u/s 542 /543 of the Companies Act, 1956 and they have not acted against the interest of the

company, shareholders or stakeholders of the transferor company.

9. This court perused the scheme of amalgamation filed by the petitioner in both the petitions and finds no objectionable feature, which is

detrimental either to the employees, members or creditors of both the transferor or transferee companies. The scheme is not violative of any

statutory provisions. The scheme is also fair, just, sound and is not against any public policy or public interest. All the statutory provisions are

complied with.

10. Consequently, there shall be an order, approving the scheme of amalgamation of the transferor company M/s. Accel Frontline Services Ltd.,

the petitioner in C.P. No. 124 of 2012 with the transferee company M/s. Accel Frontline Ltd., the petitioner in C.P. No. 125 of 2012 with effect

from April 1, 2011 and both the petitions are allowed, in terms of the order passed by this court. The transferor company shall stand dissolved

without being wound up. The necessary formalities, if any, are to be complied with, within 30 days from the date receipt of a copy of this order.

The fee for counsel for the Ministry of Corporate Affairs is fixed at Rs. 2,500.