(2006) 06 MAD CK 0319

In the Madras High Court

Case No : C.P. No''s. 58 and 59 of 2006

In Re: Ashwin Poultry Farms (India) (P.) Ltd.

Date of Decision : 26-06-2006

Acts Referred:

Companies (Court) Rules, 1959 — Rule 10, 11, 79
Companies Act, 1956 — Section 391, 394, 94, 97

Citation : (2007) 138 CompCas 505 : (2008) 85 SCL 192

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : H. Karthik Seshadri, M.T. Arunan, for the Appellant;

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—These company petitions are filed under Sections 391 and 394 of the Companies Act, 1956, read with Rules 11(a), (10) and 79 of the Companies (Court) Rules, 1959, to sanction the scheme of amalgamation.

2. Ashwin Poultry Farms (India) (P.) Ltd., the petitioner in C.P. No. 58 of 2006, is the transferor company. The main objects of the transferor company as set out in the Memorandum of Association is to establish poultry farms, hatcheries and to engage in the purchase, manufacture and sale of poultry outputs and to carry on the business of the agents, dealers, distributors, importers and/or exporters of poultry farm related products.

3. It is stated that the Board of Directors of the transferor company and the transferee company, in the resolutions passed on 23-12-2005, approved the scheme of amalgamation of the transferor company, the petitioner in C.P. No. 58 of 2006, with the transferee company, the petitioner in C.P. No. 59 of 2006. The resolutions passed by the transferor and transferee companies are marked as annexures 7 and 8, respectively.

4. It is stated that the transferee company is engaged in the similar type of business. The two members out of the total seven members of the transferee company hold 100 per cent of the capital of the transferor company. Hence, it

was felt that the proposed scheme of amalgamation would synergise the operations of the transferor and the transferee companies; that this will lead to better utilization of administrative, managerial and financial position by one large company as compared with two companies. It is also felt that the scheme would lead to economy of operation and improve the performance leading to better profitability. Further the integration of activities facilitating and securing additional capital on some favourable terms. Thus, it is expected that the integration of the activities, will produce a strong and versatile organization leading to better financial returns. Copy of the scheme of amalgamation is marked as annexure 9 in both the petitions.

5. The terms of the scheme of amalgamation would show that, on and from the appointed date, the entire undertaking of the transferor company, the petitioner in C.P. No. 58 of 2006 shall vest with the transferee company, the petitioner in C.P. No. 59 of 2006, in accordance with this scheme and in pursuance of Section 394 of the Companies Act. It is further stated that all assets, liabilities and obligations of the transferor company shall stand transferred to the transferee company. All the staff, workmen and other employees in the service of the transferor company would become staff, workmen and employees of the transferee company on the existing conditions of service. Thus, the service shall be continuous and terms and conditions applicable to the staff, workmen and employees of the transferor company shall not, in any way, less favourable than those applicable to the transferee company.

6. It is further stated that in clause 10.7 of the scheme that the existing ratio shall be worked out as follows :

10.7.1 Upon the scheme becoming finally effective, in consideration of the transfer and vesting of the undertaking of the transferor company in the transferee company in terms of this scheme, the transferee company shall, subject to the provisions of this scheme and without any further application or action or deed, issue at par and allot 4,00,000 equity shares of Rs. 10 (rupees ten only) credited as fully paid in the capital of transferee company to the shareholders of transferor company at the rate of 1 (one) fully paid equity share of Rs. 10 each to every 1.60 equity share of Rs. 10 each in transferor company and for this purpose, those shareholders whose names are found in the register of members of the transferor company on the effective date shall be taken as the shareholders to whom the shares of the transferee company shall be issued.

10.7.2 If necessary, the transferee company shall before allotment of equity shares in terms of the scheme, increase its authorized share capital by the creation of at least such number of equity shares of Rs. 10 each as may be necessary to satisfy its obligations under the provisions of the scheme.

10.7.3 The equity shares to be allotted as aforesaid, shall rank for dividend, votings and all other rights pari passu with the existing equity shares of the transferee company.

10.7.4 The shareholders shall surrender to the transferee company their share certificates in the transferor company for cancellation thereof and for fresh issue by the transferee company as per the said exchange ratio. In case of default by the shareholders of the transferor company to surrender their shares as aforesaid, upon issue and allotment of new shares by the transferee company to the shareholders of the transferor company, the share certificates in relation to the shares held by them in the transferor company shall be deemed to have been cancelled.

7. It is further stated that the transferee company, the petitioner in C.P. No. 58 of 2006, shall apply and obtain requisite consent or approval of the Reserve Bank of India and other statutory bodies for the issue and allotment of the equity shares of the transferee company to the respective members of the transferor company. It is also stated that on the scheme being sanctioned by the High Court, the transferor company shall stand dissolved without winding up.

8. It is stated that by order dated 7-3-2006 in C.A. No. 282 of 2006, taking note of the consent affidavits of the shareholders, this Court dispensed with convening of the meeting of the shareholders of the transferor company, the petitioner in C.P. No. 58 of 2006. The consent affidavits given by the shareholders are enclosed at page Nos. 71 to 74 in the Paper-book of C.A. No. 282 of 2006.

9. It is stated that, by order dated 7-3-2006 in C.A. No. 283 of 2006, taking note of the consent affidavits of the shareholders, this Court dispensed with convening of the meeting of the shareholders of the transferee company, the petitioner in C.P. No. 59 of 2006. The consent affidavits given by the shareholders are enclosed at page Nos. 71 to 92 in the Paper-book of C.A. No. 283 of 2006.

10. It is further stated that the transferor company, the petitioner in C.P. No. 58 of 2006, has two secured creditors, viz., ING Vysya Bank, Coimbatore-2 and HDFC Bank Ltd., Trichy Road, Coimbatore-18, and they have given their no objection letter to the scheme which are enclosed at page Nos. 67 and 68 in the Paper-book of C.A. No. 282 of 2006.

11. As regards the transferee company, the petitioner in C.P. No. 59 of 2006, the two secured creditors, viz., ICICI Bank and HDFC Bank and they have given their no objection letter, which are enclosed at page Nos. 68 and 69 in the Paper-book of C.A. No. 283 of 2006.

12. Consequent on notice from this Court, the Regional Director, Ministry of Company Affairs, has filed a report. In the report, it is stated that, on merger, the transferee company has to increase the authorized capital to accommodate the shares to be allotted to the shareholders of the transferor company as contemplated in clause 12.1 of the scheme; subject to the same, the scheme be considered for approval. It is further stated that clause 6 of the scheme contemplates the combining of the authorized capital of the transferee company which is not tenable on the ground that the authorized capital of a company is notional limit upto which a company can increase its paid up capital. Further the

transferor and transferee companies have separate legal entities. The transferor company on amalgamation would be dissolved. Hence, on account of scheme of amalgamation, if the transferee company increases its authorized capital, it has to comply with the provisions of Sections 94 and 97 of the Companies Act. It is further stated that this Court had already allowed the merger of the authorized capital on similar case for amalgamation of Henkal Spic India Ltd. with Henkal India Ltd. The Registrar of Companies, Chennai, has filed an appeal against the said order dated 28-7-2005.

13. The learned Counsel appearing for the petitioners countered by saying that the scheme provides for increasing the present authorized capital of the transferee company to accommodate the allotment of shares of the transferor company as contemplated in clause 12.1 of the scheme. Considering the said provision that the authorized capital of the transferee company on the scheme becoming effective shall be Rs. 85,00,000 divided into 8,50,000 equity shares of Rs. 10 each and having regard to the provision of which the company has to comply with, this objection is overruled.

14. As regards the second objection that the authorized capital being a notional limit up to which the company can increase its paid up capital, this Court already considered the same issue in C.P. Nos. 90 and 91 in the case of In Re: Cavin Plastics and Chemicals P. Ltd.; In Re: Cavinkare P. Ltd.,

15. The Regional Director, in his report, stated that similar case for amalgamation of Henkal Spic India Ltd. with Henkal India Ltd. has gone on appeal. However, the report contains no details as regards the filing of appeal and the status or stay obtained therein. In the absence of any particulars, this objection is also overruled.

16. Under the circumstances, there are no merits in the objections raised to stand in the way of granting of approval to the scheme. The scheme protects the interest of the employees of the transferor-company and, thus, the interests of the employees are taken care of. There is no objectionable feature in the scheme of amalgamation which is detrimental either to the employees of the transferor company or the transferee company. The said scheme is not violative of any statutory provisions. The scheme is fair, just, sound and is not against any public policy or public interest. All statutory provisions were complied with.

17. Hence, the scheme of amalgamation between the transferor company, the petitioner in C.P. No. 58 of 2006 with the transferee company, the petitioner in C.P. No. 59 of 2005, as provided in annexure 9 is hereby sanctioned, with effect from appointed date i.e., on 1-10-2005, as the procedure laid down under Sections 391 and 394 of the Companies Act are duly complied with. The petitions are allowed.

18. The books of account of the transferor company, the petitioner in C.P. No. 58 of 2006 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

company in C.P. No. 58 of 2006 without winding up. The learned Additional Central Government Standing Counsel is entitled to a fee of Rs. 2,000 from each company.

