

(2007) 08 MP CK 0040
In the Madhya Pradesh High Court
In Re: Asian Telephone Services Ltd.

Date of Decision : 30-08-2007

Acts Referred:

COMPANIES ACT, 1956 — Section 391, 394

Citation : (2008) 81 SCL 270

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This company petition is filed by a limited company known as "Asian Telephone Services Limited" (hereinafter referred to for brevity "transferor-company") u/s 391/394 of Companies Act seeking inter alia its amalgamation along with 6 other companies on the one side as transferor-company with another company known as "Idea Cellular Limited" (hereinafter referred to for brevity "transferee-company"). The amalgamation is sought on the grounds set out in detail in the scheme annexed along with the petition as Annexure A-12, it is averred that since the registered office of the transferor-company is situated at P.O. Birlagram, Nagda (M.P.) which falls within the territorial jurisdiction of this Court (Indore Bench) and hence, this petition is filed before this Court seeking sanction for the proposed amalgamation in accordance with the requirement of Section 391/394 of Companies Act read with relevant Company Court Rules applicable to cases relating to amalgamation. It is further averred that so far as other 6 transferor-companies are concerned, they (individually) have filed their company petition u/s 391/394 ibid before respective High Courts having territorial jurisdiction over the matter such as Bombay and Delhi High Courts seeking sanction/approval to the proposed amalgamation like the present petitioner with the transferee-company. These company petitions are entertained by the respective High Courts (Company Judge) and some are pending and some disposed of. It is also averred that similarly the transferee-company too has filed company petition u/s 391/394 ibid before competent High Court (ie., Gujarat) praying for similar sanction for amalgamation of these 6 transferor-companies with transferee-company, which has granted sanction to the proposed

amalgamation during pendency of this petition.

2. It is averred that transferor-company is wholly, owned subsidiary company of transferee-company having its authorised share capital of Rs. 11,80,00,000 whereas paid-up capital of Rs. 10,80,00,000 each share of Rs. 10. It is alleged that all the shares of transferor-company are held by transferee-company who has given their consent in writing dated 27-2-2007 for the proposed amalgamation. It is also alleged that there are no secured creditors of the transferor-company whereas there is only one unsecured creditor of transferor-company i.e., transferee-company who too has given their consent in writing dated 27-2-2007 for the proposed amalgamation.

3. The amalgamation of the transferor-companies with the transferee-company under the scheme of amalgamation is sought essentially on administrative and commercial exigencies. Keeping in view the fast developing economic reforms and globalization in IT Sector and competition in market, etc. It is averred that amalgamation once allowed, would integrate the business of mobile telephone services of these companies into one company. It will also do away with all kinds of avoidable charges and costs. It will further generate economies of scale, as also will enable the company to have focus on the business which in turn will add to the value of all stakeholders. The scheme then sets out salient features of the amalgamation, the manner in which it will be accomplished, once approved, and how it will be beneficial to every person associated with these companies. These are essentially the factors rather administrative and commercial one which are considered beneficial for the business of the companies in future years to come.

4. This Court while deciding the earlier Company Petition No. 2 of 2007 filed by these very petitioner companies by reasoned order dated 26-3-2007 granted exemption from convening the meetings of shareholders as also of creditors of petitioners' companies. In its concluding paras 9,10 and 11 of order, dated 26-3-2007 passed in Company Petition No. 2 of 2007 this Court passed following order:

9. It is apart from the fact that when similar order granting exemption has also been passed by other Company Judges who are seized of the company petitions of other transferor-companies then in order to maintain consistency in passing judicial orders in identical cases, I also grant exemption to petitioner as prayed.

10. In view of foregoing discussion, I am satisfied that a case for grant of exemption from convening the meeting of shareholders and creditors of petitioner-company is made out. As a consequence, the petitioner is accordingly, granted exemption from convening meeting of shareholders as also that of creditors (secured/unsecured) of transfer company.

11. The petitioner-company shall now file the petition within a period of 3 weeks as per Company Court Rules as an outer limit.

5. Pursuant to passing of the aforesaid order, the petitioner-companies have now

filed this company petition praying for the following reliefs:

(a) That the arrangement embodied in the Scheme (Annexure P-12 hereto) be sanctioned by this Hon"ble Court so as to be binding with effect from 1-4-2006, the Appointed Date, on the petitioner/ transferor-company, Equity Shareholders, Creditors as also on the transferee-company and its shareholders, creditors and all concerned persons;

(b) That the petitioner/transferor-company shall within 30 days after the date of sealing of the order to be made herein or within such other time as may be permitted by this Hon"ble Court cause a certified copy thereof to be delivered to the Registrar of Companies, Madhya Pradesh at Gwalior for registration.

(c) That the petitions/transferor-company, without any further act of deed, will stand dissolved without winding up.

6. This Court on 9-4-2007 while admitting the petition directed issuance of notices of petition to Registrar of Companies M.P./Chhattisgarh, Official Liquidator of this Court and Regional Director, Central Government (Western Region). The petition was also directed to be advertised in accordance with the requirement of Rule 80 read with Rules 24 and 25 in Form No. 5 in Official Gazette of State and two daily Newspapers having circulation at Indore. The petitioners in compliance to aforesaid order ensured its compliance. It was accordingly, taken note of by this Court in its order dated 9-5-2007. Similarly, pursuant to notices issued to authorities specified above, the Regional Director filed an affidavit on 8-5-2007 so as also the Official Liquidator who filed his reply on 9-5-2007. Perusal of affidavit dated 8-5-2007 filed by Regional Director revealed that it did not contain full particulars as are required to be taken note of in terms of Section 391/394 *ibid* and hence, this Court granted further opportunity to Regional Director for filing additional affidavit and also for production of the report of Registrar of Companies, Gwalior. Pursuant to this order and order dated 18-6-2007, the Registrar of Companies, Gwalior filed his additional report dated 26-6-2007. These reports were then taken on record. Perusal of three reports filed by these specified authorities entrusted with the task of probing into the affairs of the company as per requirement of Section 391/394 *ibid* would go to show that all the three specified authorities have given their no objection to grant of sanction to the scheme in question. In other words, report of Registrar in clear terms records as statement based on inquiry made by him, that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest.

7. Heard Shri A.K. Chitale, learned senior counsel with Shri M. Atre, learned Counsel for the petitioner, Shri Vinay Zelawat, learned Assistant Solicitor General of India for Union of India and Shri R.L. Saraswat, Official Liquidator present in person.

8. Having heard the L/c for the parties and having perused the record of the case, I am inclined to grant sanction to the scheme (Annexure A-12) proposed

by the aforementioned companies.

9. In my considered opinion, I have not been able to notice any infirmity or objectionable feature of any kind or illegality or lacking bona fide in the scheme so proposed. It also does not appear to have been framed to defeat the rights of the creditors or any class of creditors or even any class or group of minority shareholder or to defeat any governmental dues or revenue. Indeed all persons, who are directly or indirectly associated and dealing with the transferor-company, such as shareholders, creditors, Registrar of the Companies, Regional Director, Companies Affairs have given their no objection certificate/consent for approval of the scheme in question. As taken note of supra, the Scheme in question has been unanimously passed and approved by shareholders and creditors by giving their no objection certificates.

10. It cannot be disputed that all such schemes are essentially meant for shareholders and creditors of the company. When the entire body of shareholders and creditors do not object to it and on the other hand approves it in express terms by giving their no objection for the said purpose then it has to be given effect to because wishes of shareholders and creditors must be allowed to prevail in the absence of any other illegality being noticed by this Court within the meaning of Sections 391/394 of the Companies Act.

11. In my opinion, the Scheme of amalgamation proposed is essentially to achieve administrative excellence. It will enable the transferee-company to run their business more effectively and economically. It will certainly reduce the expenses which are being incurred today by these companies. Moreover, the proposed scheme does take into consideration and safeguard the rights of shareholders of the companies. In other words, none of the liabilities of any nature of either companies are in any way going to be adversely affected by the Scheme if allowed to be implemented. So far as the rights of the creditors are concerned, they also remain intact so too of shareholders who will be paid dividend on their shareholding depending upon the profitability of the company and the business done.

12. So far as authorities are concerned i.e., Regional Director, Official Liquidator and Registrar Companies their reports clearly indicate that all the three specified authorities have stated in their respective reports/ affidavits that they have no objection to the acceptance of the scheme as proposed by the petitioner companies

13. As observed supra, it is in clear terms opined by all the three authorities that the scheme in question is in conformity with the requirement of law as provided in proviso to Section 394 ibid and secondly, affairs of the company in question are conducted in the manner not prejudicial to the interest of its members or public interest. It is also opined that on examination of records of the company and getting the audit, etc., done, the same has been found in order.

14. It may also be relevant to mention that during pendency of this "petition,

Gujarat High Court by order, dated 3-7-2007 passed in Company Petition No. 77 of 2007 has granted sanction to the Scheme in question at the instance of transferee-company. In this view of the matter and under these circumstances, these petitioners are also entitled to claim sanction from this Court to the scheme in question.

15. I therefore, allow the petition and grant sanction to the proposed Scheme of arrangement/merger (Annexure A-12) as prayed. It is however made clear that the sanction so granted by this Court would be subject to grant of sanction by other High Courts. A separate order as per Rules 81 and 84 in Form Nos. 41 and 42 is accordingly, passed. Petitioner to pay fees of standing counsel for the Central Government Rs. 10,000.