

(2003) 10 KAR CK 0007
In the Karnataka High Court
Case No : Company Petition No. 173 of 2003
In Re: Bank Muscat SAOG

Date of Decision : 27-10-2003

Acts Referred:

Companies Act, 1956 — Section 391, 394, 591, 592, 600

Citation : (2004) 120 CompCas 340 : (2004) ILR (Kar) 1656 : (2004) 1 KCCR 599 : (2004) 51 SCL 191

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Naganand, for the Appellant; Veerendra Sharma, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The petitioner is a Company incorporated under the laws of Oman and having its designated office at Post Box No. 134, Postal Code 112, Ruwi, Sultanate of Oman. The petitioner-company set up a Branch Office at Bangalore vide licence No. (BG) No. 1797-98 dated March 16, 1998 issued by the Reserve Bank of India u/s 22(1) of the Banking Regulation Act, 1949 to carry on banking business in India. They have no other branches or establishments in India except at Bangalore. The authorised share capital of the petitioner-company as on March, 2003, is 7,50,00,000 Rial Omani equivalent to 922 crores 50 lakhs of Indian Rupees. Issued, subscribed and paid up capital is 4 crores 9 lakhs 37,480 Rial Omani equivalent to 603 crores 16 lakhs 10,040 Indian Rupees. The object of the petitioner-company is to carry on commercial and investment banking business, including the financing of trade and projects, etc. as set out in the Memorandum of Association. The petitioner-company is carrying on business through Bangalore Branch since 1998 which is situated at No. 29, Infantry Road, Bangalore-1, which is the principal place of business of the petitioner-company in India. The Company by name Centurion Bank Limited which hereinafter referred to as a Transferee Company was incorporated on June 30, 1994, as Public Limited Company under the provisions of the Companies Act, 1956, having its registered office at Durga Nivas, Mahatma Gandhi Road, Panaji-403001, Goa. The Transferee Company has built up key strength in retail banking, apart from

offering a range of corporate banking and treasury products. The management of the Transferee Company believes that the Transferee Company can progress at a faster rate with the infusion of additional capital. In line with this the Transferee Company has proposed to enter into a Scheme of Arrangement, inter alia which includes transfer of undertaking of the Bangalore Branch of the petitioner-company by restructuring and re-capitalization of the Transferee Company. The Board of Directors of the Transferee Company by a Resolution dated 23rd April, 2003, approved the proposal for restructuring and re-capitalization of the Transferee Company. The Board of Directors of the Transferor Company approved the draft Scheme of Arrangement vide Board Resolution dated 28-12-2002 a copy of which is produced as Annexure-A. The said Scheme of Arrangement, inter alia provides for transfer and vesting of business of the Bangalore Branch of the Transferor Company in the Transferee Company and a reorganisation of the Equity Share Capital of the Transferee Company and re-capitalization of the Transferee Company.

2. The petitioner-company presented an application No. 453/2003 before this Court under Sections 391 to 394 of the Companies Act, 1951, requesting this Court to permit them to convene meetings of shareholders and creditors of the petitioner-company. This Court by order dated 9th July, 2003, granted the permission sought for. Accordingly the meeting of the creditors of the petitioner-company was convened and held on 4th August, 2003, at Bangalore. The said meeting was attended by 311 persons and they represented a debt of Rs. 76 crores 35 lakhs 44,884. Out of the same 310 ballot papers representing 66 crores 84 lakhs 69,280-72, the value of debt has voted in favour of the Scheme while one ballot representing Rs. 50,75,604 was found to be against the Scheme of Arrangement. In other words, the Scheme of Arrangement was approved by the creditors constituting 99.68 per cent in number and representing about 99.24 per cent of the value of debts presented and voted.

3. Similarly the meeting of the shareholders was also convened on 19th August, 2003, at 5.00 p.m. at International Hotel, Shatt Al Qurum, Muscat. Out of 36 shareholders 17 persons were present representing 36 crores 18 lakhs 7,890 shares of whom all voted in favour of the Scheme of Arrangement. In the other words, the scheme was approved by the shareholders constituting 100 per cent of the value of the shares, out of 17 persons casting the ballots for 36 shareholders. It is submitted that there are no investigation proceedings in addition to the proceedings under Sections 235 to 251 of the Act of 1956. After the aforesaid meeting the chairman of the Company has filed his report before this Court.

4. Thereafter the petitioner-company has presented this petition u/s 394 of the Companies Act for sanctioning of the Scheme. After the Petition was admitted notice was ordered to Regional Director, Department of Company Affairs, Southern Region, Chennai. After service of notice he entered appearance and submitted a report. In the said report it is contended that the petitioner is a

registered company having its registered office in the Sultanate of Oman and having a place of business in India at Bangalore but it is registered with the Registrar of Companies, National Capital Territory at Delhi, pursuant to Section 592 of the Companies Act, 1956 and he is looking after the compliance of various provisions of the Companies Act, 1956 relating to Foreign Companies carrying on their business in India and therefore the petition filed by the petitioner-company in this court is not maintainable as the petition ought to have been filed before the High Court of Delhi. It is further contended that the jurisdiction of this Court is analogous to the jurisdiction of the Registrar of Companies where the registered office of the company is situated, i.e., where the Company is registered and therefore it is not correct to file the company petition by the Transferor Company before this court as said company's Indian Office/business is registered with the Registrar of Companies, NCT at Delhi. It was further submitted that if there are any legal or any other proceedings pending against the Transferor Company, it will be known only to the Registrar of Companies, NCT at Delhi, and not to Registrar of Companies at Bangalore. Therefore it was submitted that a direction be issued to the petitioner-company to approach the Delhi High Court and dispose of this petition accordingly.

5. In view of the aforesaid facts the points that arise for my consideration is :

(1) Whether the High Court of Karnataka has jurisdiction to entertain this petition under Sections 391 to 394 of the Act of a Foreign Company which is having its principal place of business at Bangalore ?

(2) If this Court has got jurisdiction whether a case for sanctioning of the Scheme has been made out ?

Learned counsel appearing for the petitioner-company contended that in so far as company registered under the Companies Act is concerned it is the High Court where the registered office of the company is situate which has jurisdiction to entertain a petition under Sections 391 to 394 of the Act. In the case on hand, that is a company registered in a country outside India which is carrying on the business in India, it is High Court where the principal place where such company is carrying on business which got jurisdiction to entertain the petition. As admittedly, the principal place of business of the petitioner-company in India, is at Bangalore, and therefore this Court has jurisdiction to entertain this petition. The Registrar of Companies, Delhi and Haryana, where in terms of Section 597(1) of the Companies Act, the papers and documents have been filed, it does not amount to registering the company there. As such the contentions of the respondent is without any substance. In support of his contentions he has relied upon the provisions of the Act as well as several decisions which will be referred to while discussing the said point. Learned counsel appearing for the respondent contends that as u/s 597(1) of the Companies Act as documents of a Foreign Company is required to be delivered to the Registrar of Companies at New Delhi which means the Registrar of Companies at New Delhi has jurisdiction to entertain the petition u/s 391. This Court has no jurisdiction to entertain the

petition.

6. In order to appreciate these contentions it is necessary to have a look at some provisions of the Companies Act which has a bearing on the subject. Section 2(11) defines the "Court" under the Act. According to the said definition, the "Court" means with respect to any matter relating to a Company other than any offence against this Act, the Court having jurisdiction under this Act with respect to the matter relating to that company as provided u/s 10. The word "company" has been defined u/s 2(10) of the Act. According to the said definition the Company means the Company as defined u/s 3 of the Act. Section 3 in turn defines a company, means a company formed and registered under this Act or an existing company as defined in Clause (ii). Then Section 10 which deals with the jurisdiction of Courts under the Act, which states that the Court having jurisdiction under this Act shall be High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of Sub-section (2) and Sub-section (2) deals with the jurisdiction of the District Courts. Section 13 of the Act deals with the requirement with respect to memorandum which states that the memorandum of every company shall state the State in which the registered office of the Company is to be situated. Therefore a conjoint reading of the aforesaid provisions which deals with Court, company and the jurisdiction of the Court and where the registered office of the company is to be situated, makes it very clear that in deciding which Court has the jurisdiction over the company, what is relevant is the place at which the registered office of the company is situate. It is that Court where the registered office is situate which has the jurisdiction in respect to any matter relating to a company. What is to be noticed here is the law lays stress on the place at which the registered office of the company is situate and not where the company is registered. It is because the provisions of the Companies Act applies not only to the company registered under the Act, but they apply to certain legal entities which are not registered under the Act, but which are deemed to be the companies. In fact, Part-X of the Act deals with unregistered companies and Part-XI deals with companies incorporated outside India.

7. In that background, now we have to find out whether a company which is incorporated outside India, in other words, a Foreign Company, in respect of any matter relating to such foreign company, which Court in India would have jurisdiction. In that regard, Part-XI of the Act which deals with company incorporated outside India is to be looked into. Section 591 of the Act deals with application of Sections 592 to 602 to a Foreign Company which reads as under :

"(a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and

(b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an

established place of business within India at the commencement of this Act.

(2) Notwithstanding anything contained in Sub-section (1), where not less than fifty per cent, of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it. were a company incorporated in India." [Emphasis supplied]

Section 592 deals with documents etc., to be delivered to the Registrar of Foreign Companies carrying on business in India, which reads as under :

"Documents, etc., to be delivered to Registrar by foreign companies (carrying on business in India).--(1) Foreign companies which, after the commencement of this Act, establish a place of business within India shall, within (thirty days) of the establishment of the place of business, deliver to the Registrar for registration--

(a) a certified copy of the charter, statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company; and if the instrument is not in the English language, a certified translation thereof;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company, containing the particulars mentioned in Sub-section (2);

(d) the name and address or the names and addresses of some one or more persons resident in India, authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and

(e) the full address of the office of the company in India which is to be deemed its principal place of business in India.

(2) The list referred to in Clause (c) of Sub-section (1) shall contain the following particulars, that is to say:--

(a) with respect to each director

(i) in the case of an individual, his present name and surname in full, any former name or names and surname or surnames in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(ii) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality, and nationality of origin, if different from that nationality of each of its directors;

(b) with respect to the secretary, or where there are joint secretaries, with respect to each of them--

(i) in the case of an individual, his present name and surname, any former name or names and surname or surnames, and his usual residential address; and

(ii) in the case of a body corporate, its corporate name and registered or principal office :

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in Clause (b) of this sub-section.

(3) Clauses (2) and (3) of the Explanation to Sub-section (1) of Section 303 shall apply for the purpose of the construction of references in Sub-section (2) to present and former names and surnames as they apply for the purposes of the construction of such references in Sub-section (1) of Section 303.

(4) Foreign companies, other than those mentioned in Sub-section (1), shall if they have not delivered to the Registrar before the commencement of this Act the documents and particulars specified in Sub-section (1) of Section 277 of the Indian Companies Act, 1913 (7 of 1913), continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act." [Emphasis supplied]

Section 597 deals with offices where documents to be delivered which reads as under :

"Office where documents to be delivered.--(1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in this Part except in Sub-section (2) shall be construed accordingly.

(2) Any such document as is referred to in Sub-section (1) shall also be delivered to the Registrar of the State in which the principal place of business of the company is situate.

(3) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is to be given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India."

Sub-section (4) of Section 600 which is very relevant reads as under :

"(4) In applying the sections referred to in Sub-sections (1), (2) and (3) to a foreign company as aforesaid, references in those sections to the Registrar shall be deemed to be references to the Registrar having jurisdiction over New Delhi,

and references to the registered office of the foreign company shall be deemed to be references to its principal place of business in India." [Emphasis Supplied]

A reading of the aforesaid provisions makes it very clear, in terms of Section 591 of the Act, Sections 592 to 602 of the Act applies to Foreign Companies which are incorporated outside India which after commencement of this Act, establishes a place of business within India. Section 592 deals with Foreign Companies who have established a place of business in India, within thirty days from such establishment shall deliver to the Registrar for registration of the documents mentioned therein. Clause (b) of Sub-section (1) of Section 592 deals with full address of the registered or principal office of the company. Section 597 of the Act states that the documents enumerated in Section 592 shall be delivered to the Registrar having jurisdiction over New Delhi and reference to the Registrar in this part shall be construed accordingly. In other words, when a foreign company establishes business and wants to carry on business in India it shall get itself registered in India by delivering copies mentioned in Section 592(1) to the Registrar having jurisdiction over New Delhi. Sub-section (2) of Section 597 further makes it clear, in the event of such Foreign Company not carrying on business at New Delhi or if it does not have a principal place of business at New Delhi, then those documents mentioned in Section 592 shall be delivered to the Registrar of the State in which the principal place of business of the company is situated. Therefore, for the purpose of registration of Foreign Company, Registrar means the Registrar having jurisdiction over New Delhi and if they intend carrying on business outside New Delhi and have the principal place of business, in that context the documents mentioned in Section 597 shall be delivered to the Registrar of the State in which the principal place of business of the company is situated. Sub-section (4) of Section 600 makes it abundantly clear that in applying the sections referred to in Sub-sections (1), (2) and (3) to a Foreign Company as aforesaid, references in those sections to the Registrar shall be deemed to be references to the Registrar having jurisdiction over New Delhi, and references to the registered office of the Foreign Company shall be deemed to be references to its principal place of business in India. Therefore, in respect of Foreign company which are registered outside India, though they are expected to register those company by filing necessary documents in the Registrar having jurisdiction over New Delhi, the registered office of such company shall be deemed to be its principal place of business in India. In so far as Foreign Companies are concerned, the Legislature has consciously made departure in so far as place of registration and place of registered office is concerned. A registered office of Foreign company be situated in a State outside the place of registration of the company, namely. New Delhi. Therefore, in respect of Foreign companies, though the registration takes place at Registrar having jurisdiction over New Delhi, registered office could be situated outside the jurisdiction of New Delhi. In view of the language employed in Section 10 in finding out which Court has jurisdiction in respect of any matter relating to these foreign companies are concerned, it is that Court where its principal place of business is situated has

the jurisdiction, because its principal place of business is deemed to be the registered office of the foreign company. In this context it is useful to refer to few judgments on the point which are rendered under the provisions of the old Act.

8. In fact, dealing with the contention Madras High Court in the case of Travancore National & Quilon Bank, In re [1939] 9 Comp. Cas. 50 (sic) has held as under :

"The registration of the company is not for all purposes of itself decisive. The question in each case is, where is it that the real business of the company is carried on ? According of the answer to that question, the company's domicile must in the main be determined."

The Punjab High Court in the case of Frontier Bank Ltd, In re [1951] 21 Comp. Cas. 1 has held thus :

"...The High Court at Punjab in India has jurisdiction u/s 153 of the Indian Companies Act, 1913, to sanction a scheme of arrangement in respect of a company whose registered office is in Pakistan and which has complied with the requirements of Section 277." (p. 1)

Therefore, it is not the registration of the Company under the Act within the jurisdiction of a particular Court which decides the jurisdiction of the Court to entertain in respect of any matter relating to a company but it is the place where the registered office is situate which decides the territorial jurisdiction of the Court to decide the matters relating to the company. Insofar as foreign company is concerned it is the place where its principal place of business is situated which is deemed in law to be its registered office which decides the jurisdiction of the Court. In other words the Court where the foreign company's principal place of business is situated would have jurisdiction in respect of any matter relating to such foreign company.

9. From the aforesaid Judgments and the aforesaid provisions of the Companies Act it becomes clear that in the case of a Company registered under the Companies Act where the registered office is situate will have jurisdiction to entertain the proceeding against such company. In the case of unregistered companies that is the Foreign Companies which carry on the business in India it is the principal place of business of such companies which is the decisive factor to decide a domicile of such company and High Court with a jurisdiction over such a principal place of business will have jurisdiction to entertain the petition under the Act. Merely because, as a statutory requirement the documents are filed with the Registrar of Delhi for registering in terms of Section 597(1) of the Act, that does not mean that a Foreign Company being registered in that office the High Court of Delhi only has jurisdiction over the said company. If that arguments were to be accepted in respect of an unregistered Companies which are incorporated outside India it is only the Delhi High Court which will have a jurisdiction over all such Foreign Companies. If that was the intention of the Legislature the said intention could have been made explicit by enacting a

specific provision under the Companies Act though Chapter XI deals exclusively with Foreign Companies. On the contrary Section 600 of the Act categorically states that in so far as Foreign Companies are concerned the Registrar means the Registrar of Companies at Delhi. The Registered Office means the principal place of business where that company is situated and carries on business. It is the registered office which decides the jurisdiction of any High Court to entertain the Petition under the Companies Act. If this is so as the principal place of business is the Registered Office of a Foreign Company, the High Court within whose jurisdiction such Registered Office/principal place of business is situated has jurisdiction to proceed under the Act in respect of such company. In that view of the matter, I do not find any substance in the points raised on behalf of the respondent on behalf of Registrar of Companies. This Court has jurisdiction to entertain the petition in view of the fact that the principal place of business of the petitioner-company in India is at Bangalore.

10. In so far as sanctioning a scheme proposed by the petitioner-company is concerned the proposed scheme provides for adequate capital to the transferee company by the proposed amalgamation which results in deployment of high quality management resources along with enhanced risk management, corporate governance and customer service which in turn also results in restoration of investor and depositors confidence in the Transferee company and would strategically reposition the Transferee Company by enhancing value for all the stakeholders. The said proposal also envisages certain advantages to the Transferor company viz., an ability to service non-resident Indians in Oman who hail from various parts of India rather than from Bangalore alone owing to a wider network of branches as compared to a single branch in Bangalore and expression of a long term commitment to invest greater resources in India and promote trade and project finance from international trade involving India and also to promote greater flow of investments between India and the gulf region. On the Scheme becoming affective, all staff and employees of the petitioner Bank relating to its Bangalore Branch in service on the Effective Date who are willing shall be deemed to have become staff and employees of Transferor Company from the appointed date without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferor Company shall not be less favourable than those applicable to them with reference to petitioner-Bank. Under the terms and conditions the net worth of the Bangalore Branch of Bank Muscat after deducting therefrom cash and cash equivalents, is Rs. 15 crores. Under the terms the petitioner-company has to contribute a sum of Rs. 75 crores, as reduced by the grant of consideration viz., 15 crores which is the net worth of the Bangalore Branch of the petitioner-company to the Transferee Company by subscribing in cash equity shares of the Transferee Company having face value of Re. 1 each of Transferee Company at a premium of Rs. 3 per share. On receipt of the said contribution the Transferee Company shall issue and allot to the shareholders of the petitioner-company such number of equity shares but not exceeding 37.50 crores Equity

Shares in aggregate, of the face value of Re. 1 each at a premium of Rs. 3 per share and credited as fully paid up and equate the funds contributed by existing principal shareholders in accordance with Clause 14.1 of the Scheme the interest of the shareholders of the petitioner-company unit at Bangalore is taken care of with effect from the appointed date of debts of Assets and Liabilities contingent or otherwise duties and obligations relating to Bangalore Branch of the petitioner-company is on the--of the business on the preceding the appointed day whether or not provided in the Books of Bank, Muscat. All other liabilities relating to Bangalore which arises or accrues on or before the appointed date or up-to the appointed date shall be deemed to be liabilities and obligations of the Transferee Company.

11. All contracts, deeds, bonds and other instruments entered into between the Bangalore Branch of the petitioner-company with third party shall be fully binding on the Transferee Company as if the same is executed by them in their favour.

12. Thus, a reading of the Scheme makes it very clear that the interest of the shareholder, creditors, employees and public is fully taken care of and their interest has been fully secured. 100 per cent of the shareholders have approved the scheme of arrangement. The statutory requirement as contemplated u/s 391(2) has been complied with. The Reserve Bank of India has granted permission to the petitioner bank to carry on the business in India and has also granted necessary permission for merger of the petitioner's Bangalore Branch with the Transferee Company by letter dated 6th August, 2003. The Bombay High Court (Panaji Bench) sanctioning the Scheme of Amalgamation on a Petition filed by the Transferee Company No. 9- Co.P.No. 9 of 2003 by an order dated 5/12th September, 2003 has held that all the statutory requirements have been complied with and there is no legal impediment for according a sanction and the sanction is not only in the interest of shareholders, creditors of the petitioner-Bank, but is also in public interest, under the circumstances, in pursuance to the Public notice issued notifying the hearing date which was duly published no shareholder, creditor or any person has appeared before this Court opposing the Petition. I am of the view that sanction sought for has to be accorded. Accordingly, I pass the following order :

Company petition is allowed. That the scheme of arrangement as at Annexure-A is hereby sanctioned so as to be binding on the shareholders, and creditors of the petitioner and the Transferee Company.

Office is directed to draw a decree in Form No. 42.