

(2004) 04 AHC CK 0066
In the Allahabad High Court
Case No : Company Application No. 7 of 2004
In Re: Bharat Explosives Ltd.

Date of Decision : 06-04-2004

Acts Referred:

Companies Act, 1956 — Section 391, 391(1), 391(2), 393, 394

Citation : (2005) 58 SCL 370

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : Sanjay Misra and Yashwant Varma, for the Appellant;

Judgement

S.P. Mehrotra, J.—The present company application has been filed u/s 391(1) read with Section 394 of the Companies Act, 1956 by M/s. Bharat Explosives Limited, a Public Limited Company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 9 K.M. Lalitpur Jhansi Road, Lalitpur-284403 (UP) (hereinafter referred to as "the Transferee Company").

2. It is, inter alia, prayed that the convening of meeting of the secured creditors of the Transferee Company meeting of the shareholders/members of the Transferee Company and the meeting of the unsecured creditors of the Transferee Company be dispensed with.

3. It appears that a Scheme of Amalgamation is proposed for the amalgamation of M/s. Bulk Explosive Limited, having its Registered Office at House No. 45, Gali No. 2, Ambedkar Vihar, near Harijan Basti, Sector 37, NOIDA (U.P.) hereinafter referred to as "the Transferor Company" with the Transferee Company. Copy of the proposed Scheme of Amalgamation has been filed as Annexure 4 to the company application.

4. It is, inter alia, stated in the company application that the Transferor Company was incorporated in Kolkata in the State of West Bengal on 9-7-1999 under the Companies Act, 1956 as a Private Limited Company; and that thereafter, the registered office of the Transferor Company was shifted from the State of West Bengal to the State of Uttar Pradesh; and that the change was duly conformed

by the Company Law Board, E.R. Bench, Kolkata on 25-7-2003 in C.P. No. 243(17) ERB/2003, and the same was duly filed with the Registrar of Companies, U.P. and Uttaranchal at Kanpur, pursuant to the provisions of Section 18(3) of the Act.

5. It is, inter alia, further stated in the company application that the Transferee Company was originally incorporated on 21-8-1962 under the Companies Act, 1956 under the name Narendra Explosives Limited, which was subsequently changed as Bharat Explosives Limited, by duly passing the special resolution on 30-9-1986 in terms of Section 21 of the Companies Act, 1956 and obtaining the necessary fresh certificate of information on 7-10-1986, consequent upon the change of name, from the Registrar of Companies, U.P. at Kanpur.

6. It is, inter alia, further stated in the company application that the registered office of the Transferor Company is situate at House No. 45, Gali No. 2, Ambedkar Vihar, near Harijan Basti, Sector 37, NOIDA (U.P.); and that the authorised share capital of the Transferor Company is Rs. 50,00,000 divided into five lakhs equity shares of Rs. 10 each; and that the issued, subscribed and paid up capital of the Transferor Company as on 31-3-2003 is Rs. 50 lakhs divided into five lakhs equity shares of Rs. 10 each fully paid up; and that as on 20-11-2003, the entire share capital of the Transferor Company is held by the Transferee Company together and jointly with six individual nominees of the Transferee Company, and they together and jointly hold five lakh shares of Rs. 10 each.

7. It is, inter alia, further stated in the company application that consequent upon the entire share capital of the Transferor Company being held by the Transferee Company with effect from 20-11-2003, by virtue of Section 3(I)(iv) of the Companies Act, 1956, the Transferor Company has become a Public Limited Company; and that accordingly, the Transferor Company has taken all necessary steps to change the name of the company by removing the word "private" from its name and the Registrar of Companies, U.P. and Uttaranchal has by fresh Certificate of Incorporation dated 22-1-2004 sanctioned the change of name by deleting the word "private" from its name. Copy of the fresh Certificate of Incorporation has been filed as Annexure-J to the company application.

8. It is, inter alia, further stated in the company application that the objects of the Transferor Company are set out in its Memorandum of Association. Copy of the Memorandum and Articles of Association of the Transferor Company has been filed as Annexure-2 to the company application. The main objects of the Transferor Company are stated in brief in paragraph 7 of the company application.

9. It is, inter alia, further stated in the company application that the objects of the Transferee Company are set out in its Memorandum of Association. Copy of the Memorandum and Articles of Association of the Transferee Company has been filed as Annex-3 to the company application. The main objects of the Transferee Company are stated in brief in paragraph 8 of the company

application.

10. It is, inter alia, further stated in the company application that the authorised capital of the Transferee Company is Rs. 20,00,00,000 (Rupees twenty Crores only) divided into 1,80,00,000 equity shares of Rs. 10 (Rupees Ten only) each, and 2,00,000 cumulative preference shares of Rs. 100 each; and that the issued, subscribed, called and paid up capital of the Transferee Company, as on 31-3-2003 is Rs. 1,171.50 lakhs divided into 1, 17,15,000 equity shares of Rs. 10 each fully paid up.

11. It is, inter alia, further stated in the company application that the company application has been filed seeking sanction of this court in respect of the proposed Scheme of Amalgamation for the amalgamation of the Transferor Company with the Transferee Company. Copy of the proposed Scheme of Amalgamation, as mentioned above, has been filed as Annexure 4 to the company application,

12. The objects sought to be achieved by the proposed merger/amalgamation have been stated in brief in paragraph 13 of the company application.

13. It is, inter alia, further stated in the company application that the merger/amalgamation would be in the best interests of both the Transferor Company and the Transferee Company and all their shareholders and creditors.

14. It is, inter alia, further stated in the company application that Clause III(C) (19) of the objects of the Transferor Company permits the amalgamation of the Transferor Company; and that Clause 111(54) of the objects of the Transferee Company permits the amalgamation of the Transferee Company.

15. It is, inter alia, further stated in the company application that the proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company has been approved by the Board of Directors of the Transferor Company in its meeting held on 3-1-2004 as well as by the Board of Directors of the Transferee Company in its meeting held on 31-12-2003. Copies of the resolution passed in this behalf by the Board of Directors of the Transferor Company and the resolution passed in this behalf by the Board of Directors of the Transferee Company have been filed as Annexures 5 and 6, respectively to the company application.

16. It is, inter alia, further stated in the company application that the shares of the Transferor Company are not listed on any Stock Exchange; and that the equity shares of the Transferee Company are listed on the Stock Exchanges at Uttar Pradesh and New Delhi; and that pursuant to the listing agreement entered into with the aforementioned Stock Exchanges by the Transferee Company, the Stock Exchanges, had been duly informed of the proposed Scheme of Amalgamation and their approval have been received. Copies of the approval of the Stock Exchanges of Uttar Pradesh and Delhi have been collectively filed as Annexure 7 to the company application.

17. It is, inter alia, further stated in the company application that the proposed Scheme of Amalgamation is not intended in any manner to have any beneficial effect on the material interest, if any, of the Directors of the Transferor Company and the Transferee Company, and none of the shares of the Transferor Company is held by any Director.

18. It is, inter alia, further stated in the company application that no investigation proceedings have been initiated or are pending in relation to the Transferee Company or the Transferor Company u/s 235 or Section 251 or the like of the Companies Act, 1956.

19. It is, inter alia, further stated in the company application that in terms of Clause 3,1 of the Scheme of Amalgamation, the investment of the Transferee Company in the fully paid equity shares of the Transferor Company shall on the date of the scheme becoming effective stand cancelled and extinguished against the share capital of the Transferor Company; and that consequently, there will be no increase in the share capital of the amalgamated company; and that as the proposed Scheme of Amalgamation does not envisage a further allotment of fresh shares, no share valuation report is necessary.

20. The financial position of the Transferor Company as on 31-3-2003 has been stated in brief in paragraph 21 of the company application. Copy of the audited balance sheet and profit and loss account of the Transferor Company for the financial year ending 31-3-2003 has been filed as Annexure 8 to the company application.

21. The financial position of the Transferee Company as on 31-3-2003 has been stated in brief in paragraph 22 of the company application. Copy of the audited balance sheet and profit and loss account of the Transferee Company for the financial year ending 31-3-2003 has been filed as Annexure 9 to the company application.

22. In paragraph 27 of the company application, it is, inter alia, stated that the following are the secured creditors of the Transferee Company:

- (a) The Laxmi Vilas Bank Limited.
- (b) SBI Factors and Commercial Services Private Limited.
- (c) State Bank of Mysore.
- (d) Madhya Pradesh State Industrial Development Corporation.

23. It is, inter alia, further stated in paragraph 27 of the company application that the aforesaid secured creditors have given letters of consent indicating therein that they have no objections to the proposed Scheme of Amalgamation; and that the aforesaid secured creditors have also submitted notarised affidavits indicating that they have no objections to the Scheme and further stating that the meeting of the creditors as required under the provision of Section 391(2) of the Companies Act, 1956 be dispensed with. Copies of the said letters of consent

together with copies of the said affidavits have been filed as Annexure 10 to the company application.

24. It may be mentioned that the said letters of consent, in original, and the said notarised affidavits, in original, have also been filed as Annexure I to Civil Misc. Application No. 49465 of 2004 filed on behalf of the Transferee Company.

25. It is, inter alia, prayed in paragraph 28 of the company application that in view of the aforementioned circumstances, the convening of meeting of the secured creditors of the Transferee Company be dispensed with.

26. It is, inter alia, stated in paragraph 29 of the company application that 89.85% of the shares of the Transferee Company are held by the promoter companies; and that the said Promoter Companies by individual resolutions have resolved to support the proposed Scheme of Amalgamation; and that the constituted attorneys of the said promoter companies have also filed notarised affidavits stating that they have no objection to the proposed Scheme of Amalgamation and that the meeting of the shareholders as envisaged under the provision of the Companies Act, 1956 be dispensed with. Copies of the said resolutions and copies of the said affidavits have been filed as Annexure 11 to the company application.

27. It may be mentioned that certified true copies of the said resolutions and the said affidavits, in original, have also been filed as Annexure-2 to the said Civil Misc. Application No. 49465 of 2004.

It is, inter alia, prayed in paragraph 30 of the company application that in light of the above facts, the convening of the meeting of the shareholders of the Transferee Company be dispensed with.

28. It is, inter alia, further stated in paragraph 31 of the company application that various small individuals have made deposits with the Transferee Company amounting to Rs. 246.73 lakhs; and that the interest of the said deposit holders shall not be affected by any provision of the proposed Scheme of amalgamation.

29. It is, inter alia, further stated in paragraph 32 of the Company Application that certain corporate entities have also made deposits (intercorporate deposits) with the Transferee Company, and the corporate depositors valued at Rs. 151.64 lakhs have given their consent to the proposed Scheme of Amalgamation. Copies of the Consent Letters given by 10 such corporate depositors have been filed as part of Annexure-12 to the company application at pages 248,249,251,253,254,255,256,257,258 and 259, respectively of the Paper Book.

30. It may be mentioned that the said Letters of Consent, in original, have also been filed as part of Annexure-3 to the said Civil Misc. Application No. 49465 of 2004 filed on behalf of the Transferee Company.

31. It is, inter alia, further stated in paragraph 33 of the Company Application that the Transferee Company has trade creditors/sundry creditors valued Rs.

440.39 lakhs as on 31-3-2003; and that the interest of the said trade creditors / sundry creditors shall not be affected by the proposed Scheme of Amalgamation.

32. It is, inter alia, prayed in paragraph 34 of the Company Application that the meeting of the unsecured creditors as envisaged under the Companies Act, 1956 may be dispensed with.

33. I have heard Shri Yashwant Verma, learned counsel for the Transferee Company/Applicant.

34. As regards convening of meeting of secured creditors of the Transferee Company, it is submitted by Shri Yashwant Verma that there are only 4 secured creditors of the Transferee Company, and each of the said secured creditors has given its Letter of Consent and also Notarised Affidavit indicating their no objection to the proposed Scheme of Amalgamation and the waiver of the meeting of the creditors, as required u/s 391(2) of the Companies Act, 1956..

35. Shri Verma refers to Annexure-10 to the Company Application and Annexure-1 to the said Civil Misc. Application No. 49465 of 2004, and submits that each of the said secured creditors has given its consent, mainly, subject to the condition that the charge in favour of such secured creditor is continued with the company to be created upon amalgamation.

36. It is submitted that the said condition mentioned in the consent given by each secured creditor stands satisfied in view of Clauses 2.1,2.2,2.3 and 2.4 of the proposed Scheme of Amalgamation annexed as Annexure 4 to the Company Application at page 102 of the Paper Book. The said clauses of the proposed Scheme of Amalgamation appearing at pages 104 and 105 of the Paper Book are as follows:

"2.1 All the properties, rights and claims whatsoever of BEPL and its entire undertakings, trade marks, patents, permits, quotas authorities, privileges, various exemptions/incentives granted under different schemes of State/Central Government, licences including the existing industrial licence for manufacturing and/or carrying on of its business and any other authorization/permission thereunder and rights in respect of property, movable and immovable properties allotted by Government agencies whether by ownership lease or otherwise, fittings and fixtures. telephones, telex and fax connections, cash balances, reserves, security deposits, refunds, goodwill, outstanding balances, stocks, investments, leases, licences, contracts, approvals, authorizations, agreements and other rights and interests of all description in or arising out of such properties as may belong to or be in possession of BEL and all books of account and documents and records relating thereto, all of which is hereafter called (the "said Undertakings") shall without further act or deed, be transferred to and vest in BEL pursuant to sections 391 and 394(2) of the Act, with effect from the Appointed Day, so as to become the assets and properties and authorization, permission and licence of BEL, but subject to voluntary and statutory charges if applicable or due, affecting the same. Provided always that any reference in any

security document/arrangement to which BEPL is a party, to any assets of BEPL offered as security for any financial obligation or assistance, shall be construed as a reference to only the assets or authorization or licences and permission of BEPL as are vested in BEL under this Scheme and the Scheme shall not operate to enlarge the security for any loan, deposit or facility created by or available to BEPL, which shall vest in BEL by virtue of the amalgamation/merger and BEL shall not be obliged to create any further or additional security thereon after the amalgamation has been effective or otherwise.

2.2 All the debts, duties, obligations and liabilities of the said undertakings of BEPL (hereinafter referred to as the "said Liabilities") shall also stand transferred to BEL with effect from the Appointed Day without further act or deed pursuant to Section 394(2) of the Act, so as to become the said Liabilities of BEL.

2.3 In respect of such of the assets as are movable in nature or are otherwise capable of manual delivery or by endorsement and delivery the same shall also stand transferred from the appointed day and shall become the assets and property of BEL and thereon as an integral part of BEL, but subject to all such charges effecting the same.

2.4 BEL may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise execute deeds of confirmation in favour of any party to any contract or arrangement to which BEPL is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. BEL shall under the provisions of this Scheme, be deemed to be authorized to execute any such writings on behalf of BEPL to carry out or perform all such formalities or compliances referred to above on the part of BEPL to be carried out or performed."

37. It may be mentioned that BEPL in the above Clauses stands for Bulk Explosives Limited, i.e., the Transferor Company, while BEL in the above clauses stands for Bharat Explosives Limited, i.e., the Transferee Company, as is evident from the Definition clause of the proposed Scheme of Amalgamation at page 103 of the Paper Book.

38. It is submitted by Shri Yashwant Verma that in view of the above Clauses of the proposed Scheme of Amalgamation, it is evident that the charge created in favour of each of the above four secured creditors will not be affected as a result of the amalgamation, and the same will continue to remain in operation even after amalgamation.

39. I have considered the submissions made by Shri Yashvant Verma, learned counsel for the Transferee Company/Applicant.

40. A perusal of the Letters of Consent given by the aforesaid four secured creditors shows that each of the four secured creditors has given its consent to the proposed Scheme of Amalgamation subject to certain conditions mentioned

in the said Letters of Consent. Copies of the said Letters of Consent, as noted above, have been filed as part of Annexure-10 to the Company Application at pages 189,190,192 and 194 of the Paper Book.

41. Besides the aforesaid Letters of Consent, each of the secured creditors has also submitted an affidavit, inter alia, stating that it has, in principle, no objection in the event of amalgamation of the Transferor Company with the Transferee Company pursuant to the draft Scheme of Amalgamation, subject to the condition that the charge in favour of such secured creditor is continued with the company, which is to be created upon amalgamation; and that it (secured creditor) shall have no objection if the meeting of the secured creditors is waived by this Court. Copies of the said affidavits, as noted above, have been filed as part of Annexure-10 to the Company Application at pages 189 (2nd page), 190 (2nd page), 193 and 195 of the Paper Book.

42. It is, thus, evident that each of the four secured creditors of the Transferee Company has given its no objection to the proposed Scheme of Amalgamation and to dispensing with the requirement of holding meeting of the secured creditors of the Transferee Company. However, the said no-objection is subject to the conditions mentioned in each of the Letters of Consent and in each of the affidavits submitted by the aforesaid four secured creditors, mainly, regarding the continuance of the charge in favour of each of such secured creditors with the company to be created upon amalgamation.

43. A perusal of the aforesaid clauses, namely 2.1, 2.2, 2.3 and 2.4 of the proposed Scheme of Amalgamation, referred to by Shri Yashvant Verma, learned counsel for the Transferee Company/Applicant, shows that these clauses basically deal with the transfer of the assets and liabilities of the Transferor Company to the Transferee Company on amalgamation. These clauses, inter alia, provide for continuance of the security created by the Transferor Company on the assets of the Transferor Company even after amalgamation. It is further clear from the said Clauses that the security created by the Transferor Company on its assets will continue after amalgamation, but there will be no enlargement of such security on the assets of the Transferee Company.

44. It follows, by implication, that the charges created by the Transferee Company on its assets will not be adversely affected on amalgamation under the proposed Scheme of Amalgamation. However, there does not appear to be any express provision in this regard in the proposed Scheme of Amalgamation.

45. Hence, in my opinion, it is necessary that express provision(s) be incorporated in the proposed Scheme of Amalgamation ensuring fulfilment of the conditions mentioned by the above four secured creditors in their aforementioned Letters of Consent and Affidavits (Annexure-10 to the Company Application). It is further necessary that affidavit(s) be filed by/ on behalf of the Transferee Company/Applicant making averments ensuring fulfilment of the said conditions mentioned by the above four secured creditors.

46. Accordingly, it is directed that while filing petition for confirmation of the proposed Scheme of Amalgamation on behalf of the Transferee Company/Applicant, express provisions), as mentioned above, will be incorporated in the proposed Scheme of Amalgamation, and further, affidavit(s) making averments, mentioned above, will also be filed.

47. In view of the aforementioned facts and circumstances, particularly in view of the fact that all the four secured creditors have given their no objection to the proposed Scheme of Amalgamation and to dispensing with the requirement of holding meeting of the secured creditors of the Transferee Company, and also in view of the directions given above regarding incorporation of express provision(s) in the proposed Scheme of Amalgamation and regarding filing of the affidavit(s) while filing the Petition for confirmation of the proposed Scheme of Amalgamation, I am of the opinion that it is not necessary to call meeting of the secured creditors of the Transferee Company for consideration of the proposed Scheme of Amalgamation, as per the requirements of Section 391(1) and (2.) read with Section 393 of the Companies Act, 1956. In the circumstances, the requirement for holding the meeting of the secured creditors of the Transferee Company for consideration of the proposed Scheme of Amalgamation, as per the requirements of Section 391(1) and (2), read with Section 393 of the Companies Act, 1956, is dispensed with.

48. As regards convening of meeting of the shareholders/members of the Transferee Company, it is submitted by Shri Yashvant Verma, learned counsel for the Transferee Company/Applicant that 89.85% of the shares of the Transferee Company are held by the promoter Companies. The said promoter Companies by individual resolutions have resolved to support the proposed Scheme of Amalgamation. The constituted attorneys of the said promoter Companies have also filed Notarized affidavits stating that they have no objection to the proposed Scheme of Amalgamation and to dispensing with the holding of the meeting of the shareholders as envisaged under the provisions of the Companies Act, 1956.

49. In the circumstances, Shri Verma submits, the requirement of convening the meeting of the shareholders of the Transferee Company be dispensed with.

50. In this regard, Shri Verma refers to the averments made in Paragraph 29 of the Company Application. He also refers to Annexure-11 to the Company Application and Annexure-2 to the said Civil Misc. Application No. 49465 of 2004.

51. I have considered the submissions made by Shri Verma, learned counsel for the Transferee Company/Applicant, and I find myself unable to accept the same.

52. A perusal of the Annual Report of the Transferee Company for the year 2002-2003 annexed as Annexure-9 to the Company Application shows that the pattern of shareholding of the Transferee Company as 011 31-3-2003 (See page 161 of the Paper Book) is as follows:

PATTERN OF SHAREHOLDING AS ON 31-3-2003

No.	of	Shares	Held	%age	Category Holding
Promoter	Companies		10525870		1. 89.85
Government	Bodies		Nil		2. Nil
Bodies	Corporate		123250		3. Other 1.05
Public		819575			4. Indian 7.00
OCBs		246305			5. NRIs/ 2.10
11715000					Total 100.00

53. It is evident from the above Table that while 89.85% of the shareholding of the Transferee Company is held by the promoter Companies, the remaining 10.15% is held by Other Bodies Corporate (1.05%). Indian Public (7.00%) and NRIs/OCBs (2.10%).

54. These minority groups of shareholders holding 10.15% of the shareholding in the Transferee Company have not given their consent to the proposed Scheme of Amalgamation or to waiver of the meeting of the shareholders of the Transferee Company.

55.1 am of the opinion that in order to safeguard the interest of the said three minority groups of shareholders, namely, other bodies corporate, Indian Public, and NRIs/OCBs, it is necessary to convene the meeting of the shareholders/ members of the Transferee Company for consideration of the proposed Scheme of Amalgamation as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956.

56. As regards convening of meeting of the unsecured creditors of the Transferee Company, Shri Verma submits that various small individuals have made deposits with the Transferee Company amounting to Rs. 246.73 lakhs. The interest of these deposit holders, it is submitted, will not be affected by any provision of the proposed Scheme of Amalgamation.

57. Shri Verma further submits that besides the aforesaid deposits made by various small individuals, certain corporate entities have also made deposits (inter-corporate deposits) with the Transferee Company, and the Corporate depositors valued at Rs. 151.64 lakhs have given their consent to the proposed Scheme of Amalgamation. Shri Verma refers to the averments made in paragraph Nos. 31 and 32 of the Company Application. He further refers to the copies of the Consent Letters given by ten such corporate depositors filed as part of Annexure-12 to the Company Application. He further submits that the said

Consent Letters given by ten corporate depositors, in original, have been filed as part of Annexure-3 to the Company Application.

58. Shri Verma further submits that the Transferee Company has trade creditors/sundry creditors valued at Rs. 440.39 lakhs as on 31 -3-2003, and the interest of the said trade creditors/sundry creditors will not be affected by the proposed Scheme of Amalgamation. He refers to the averments made in paragraph 33 of the Company Application in this regard.

59. Shri Verma submits that in view of the aforesaid circumstances, the meeting of the unsecured creditors as envisaged under the Companies Act, 3956 may be dispensed with.

60. I have considered the submissions made by Shri Yashvant Verma, learned counsel for the Transferee Company/Applicant, and I find myself unable to accept the same.

61. It is evident from the averments made in paragraphs 31 and 32 of the Company Application that the unsecured creditors of the Transferee Company consist of various small individuals and certain corporate entities.

62. The said individual depositors, who are unsecured creditors of the Transferee Company have made deposits amounting to Rs. 246.73 lakhs, as per the averments made in paragraph 31 of the Company Application.

63. During the course of arguments, Shri Verma, learned counsel for the Transferee Company/Applicant has submitted a list of the said individual depositors with the Transferee Company. A perusal of the said list shows that the individual depositors as on 31 -3-2003 are 382 in number, and they have made deposits amounting to Rs. 2,47,25,000.

64. The said individual depositors have evidently not given their consent to the proposed Scheme of Amalgamation or to the waiver of the meeting of the unsecured creditors.

65. As regards the corporate entities, who have made deposits (intercorporate deposits) with the Transferee Company, Shri Verma, during the course of arguments, has submitted a list of the corporate entities, which have made deposits with the Transferee Company, The said list shows that the following 14 corporate entities have made deposits with the Transferee Company amounting to Rs. 1,72,01,669 (i.e., Rs. 172.02 lakhs approximately):

(1) Anurag TR, Lease & Inv. (P) Ltd.

(2) Archana TR. & Inv. Co. (P) Ltd.

(3) Dear Investment Pvt. Ltd.-ICD

(4) Excellent Comm. Ent. & Inv. Ltd.

(5) General Expo. & Credit Ltd.-ICD

- (6) Harvatex Engg. & Proce. Co. Ltd.
- (7) Uac Investment P. Ltd. (ICD 2)
- (8) Lohanak Enternational P, Ltd.-ICD
- (9) Light weight Aggregate Pvt. Ltd.
- (10) Pashupatinath Comm. (P) Ltd.-ICD
- (11) Sachin Holdings Pvt. Ltd.
- (12) Sanjay TR. & Inv. Co. (P) Ltd.
- (13) Swastik Comm. Pvt. Ltd.-ICD
- (14) Trishul Commercial Pvt. Ltd.-ICD.

66. It is further evident from a perusal of the averments made in Paragraph 32 of the Company Application and the copies of the Consent Letters Annexed as part of Annexure-12 to the Company Application, that out of the above 14 corporate depositors, 10 such corporate depositors have given their Consent Letters copies whereof have been filed as part of Annexure-12 to the Company Application. The said 10 corporate depositors, as per the averments made in paragraph 32 of the Company Application and as per the list submitted by Shri Verma, have made deposits amounting to Rs. 151.64 lakhs. Thus, 4 corporate depositors, who have made deposits amounting to Rs. 20.38 lakhs have not given their consent to the proposed Scheme of Amalgamation or to the waiver of the meeting of the unsecured creditors of the Transferee Company.

67. As the individual depositors, who have made deposits amounting to Rs. 246.73 lakhs, and the 4 corporate entities, which have made deposits amounting to Rs. 20.38 lakhs, have not given their consent to the proposed Scheme of Amalgamation or to the waiver of the meeting of the unsecured creditors. I am of the opinion that in order to safeguard the interest of the said unsecured creditors, it is necessary to hold the meeting of the unsecured creditors of the Transferee Company, as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956.

68. To summarise the conclusions mentioned above:

- (1) The meeting of the secured creditors of the Transferee Company for consideration of the proposed scheme of Amalgamation as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956 is dispensed with.
- (2) It is necessary to hold the meeting of the shareholders/members of the Transferee Company for consideration of the proposed Scheme of Amalgamation as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956.

(3) It is necessary to hold the meeting of the unsecured creditors of the Transferee Company for consideration of the proposed Scheme of Amalgamation as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956.

69. In the circumstances, it is ordered as follows:

Upon the application of the company Bharat Explosives Limited (hereinafter referred to as "the Transferee Company") having its registered office at 9 K.M. Lalitpur Jhansi Road, Lalitpur-284403 in the State of Uttar Pradesh, by summons presented on the 4th day of March, 2004 seeking amalgamation of the company Bulk Explosives Limited (hereinafter referred to as "the Transferor Company") having its registered office at House No. 45, Gali No. 2, Ambedkar Vihar, Near Harijan Basti, Sector-37, NOIDA in the State of Uttar Pradesh with the Transferee Company, and upon hearing Shri Yashvant Verma, Advocate, for the applicant, and upon reading the application, Exhibits thereto, and the affidavit in support thereof (Exhibit/Annexure-4 being a copy of the proposed Scheme of Amalgamation).

IT IS ORDERED

That for the purpose of considering, and if thought fit, for approving, with or without modification, the proposed scheme of Amalgamation, it is necessary to have separate meetings of the shareholders/members and the unsecured creditors of the Transferee Company.

That meeting of the shareholders/members of the Transferee Company will be convened and held at 9 K.M., Lalitpur Jhansi Road, Lalitpur-284403 on 15th day of May, 2004 (Saturday) at 11,00 O'clock in the forenoon for the purpose of considering, and if thought fit, approving, with or without modifications, the proposed Scheme of Amalgamation.

That meeting of the unsecured creditors of the Transferee Company will be convened and held at 9 K.M., Lalitpur Jhansi Road, Lalitpur-284403 on 15th day of May, 2004 (Saturday) at 3.00 O'clock in the afternoon for the purpose of considering, and if thought fit, approving, with or without modifications, the proposed Scheme of Amalgamation.

That at least 21 clear days before the day appointed for the meetings of the Transferee Company to be held as aforesaid, a notice convening the said meetings at the place and time aforesaid, together with the copies of the said scheme and of the statement required to be furnished pursuant to Section 393 of the Companies Act, 1956, and the prescribed form of proxy, shall be sent by pre-paid letter post under certificate of posting, addressed to each of the shareholders/members of the Transferee Company and each of the unsecured creditors of the Transferee Company aforesaid at their respective registered or last known addresses.

That, in addition, at least 21 clear days before the day appointed for the

meetings in respect of the Transferee Company, as aforesaid, separate advertisements convening the said meetings in respect of the Transferee Company, and stating that copies of the said scheme together with the copy of the statement required to be sent u/s 393 of the Companies Act, 1956 and the prescribed form of proxy can be obtained free of charge at the registered office of the Transferee Company, shall be published in the daily national newspapers, one in English may be published in Financial Express published from Delhi and the other in Hindi may be published in Dainik Jagran published from Jhansi in its Lalitpur Edition.

That for the purposes of conducting the meetings of the shareholders/ members and the unsecured creditors of the Transferee Company, the Court hereby appoints Shri Ajay Bahnot, Advocate, as the Chairman and appoints Shri Rahul Sahai, Advocate as the alternate Chairman, The Chairman will be paid Rs. 15,000 per meeting plus incidental expenses and the alternate Chairman will be paid Rs. 7,500 per meeting plus incidental expenses, in addition, the expenses of the journey and stay in respectable hotel being taken care of.

That the Chairman appointed for the meetings will issue the advertisements and send out the notices of the meetings referred to above.

That the quorum for the said meeting of the shareholders/members of the Transferee Company to be held as aforesaid shall be 30 by number and 60% by value of the shareholders/members of the Transferee Company present either personally or by proxy.

That the quorum for the said meeting of the unsecured creditors of the Transferee Company to be held as aforesaid shall be 20 by number and 55% by value of the unsecured creditors of the Transferee Company present either personally or by proxy.

That voting by proxy shall be permitted, provided that a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the Transferee Company at its registered office not later than 48 hours before the meeting.

That the value of each shareholder/member and the value of each unsecured creditor shall be in accordance with the books of the Transferee Company and, where the entries in the books are disputed, the Chairman shall determine the value for purposes of the meeting.

AND IT IS FURTHER ORDERED that the Chairman will report to this Court the result of the said meetings within two weeks of the conclusion of the meetings, and the report shall be verified by his affidavit.

70. List for orders on 5th July, 2004.