

(2000) 12 AP CK 0008

In the Andhra Pradesh High Court

Case No : Company Petition No"s. 105 and 106 of 2000

In Re: Cheminor Drugs Limited (Transferor Company) and Dr. Reddy's Laboratories Ltd. (Transferee Company)

Date of Decision : 11-12-2000

Acts Referred:

Companies (Court) Rules, 1959 — Rule 80
Companies Act, 1956 — Section 391, 391(1), 394

Citation : (2001) 1 ALT 636

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : Bimal Bhaskar, for the Appellant;

Final Decision : Allowed

Judgement

1. Chelameswar, J.—The applicant in C.P.No. 105 of 2000 is the transferor company and the applicant in C.P.No. 106 of 2000 is the transferee company.

2. The Transferor company was originally incorporated on 21st December 1981 as Private Limited Company and subsequently converted into a Public Limited Company and an appropriate fresh certificate of incorporation was obtained from the Registrar of Companies. The main objects of the transferor company are to carry on the business as research, designers" manufacturers and dealers of organic and inorganic chemicals, intermediates and pharmaceuticals.

3. The transferee company was incorporated as Private Limited Company with effect from 24th February 1984 and subsequently converted into a Public Limited Company and an appropriate fresh certificate of incorporation was obtained from the Registrar of Companies. The main objects of the transferee company are also substantially similar to the objects of the transferor company.

4. The respective Memoranda of Association of both the companies provided for the amalgamation of each of the companies with any other company, which has similar objects.

5. Since both the companies are carrying on business, which is almost similar in

nature, it was believed by the Board of Directors of the respective companies, that the amalgamation of both the companies would be advantages for the companies, their respective members and the creditors. It is believed by both the companies that the amalgamation of both the companies would enable

"the amalgamated company to carry on the combined business more economically and efficiently. The amalgamated Company will have the benefit of the combined reserves, manufacturing assets and cash flows of both the companies. This would result in improved capital structure, which would enable the amalgamated company to raise the required finances on better terms and will afford access to resources easily and at lower cost. A larger Company will then generate more confidence in the general public and will mean enhanced financial growth for the amalgamated company and will thereby benefit the investors. The amalgamation will further enable the companies to pool their financial managerial and technical resources in order to meet the challenges of the new liberalized policies of the Government. In particular, it will help in expeditious and economical implementation of the modernization and expansion projects of the amalgamated company as the magnitude of the investments contemplated will be better met by the companies merged together. The amalgamation would also be conducive to avoidance of duplication and reduction in administration and other overhead expenses. It would result in greater control and administrative convenience, pooling of marketing, technical expertise, economies of procurement and marketing facilities, which would result in better growth prospects for both the Companies. The amalgamation would result in synergy in production and optimum utilization of manufacturing facilities. It would also result in more efficient utilization of manpower and other resources while reducing overheads and result in growth through combined R&D efforts. The amalgamation would therefore be in the best interest of both the companies and their respective shareholders."

6. In the abovementioned background, the Board of Directors of the transferor company in a meeting held on 31st May 2000 approved the scheme of amalgamation and a copy of the said scheme was filed as Annexure "A" to C.P.No. 105 of 2000.

7. Similarly the Board of Directors of the transferee company also approved the abovementioned scheme in a meeting held on 31st May 2000.

8. The scheme provided appropriate measures whereby employees of the transferor company shall become the employees of the transferee company without any break or interruption of service. It is also stated that all the creditors of the transferor company shall become creditors of the transferee company on the same terms and conditions without the transferee company extending further security for the same.

9. The transferor company by Company Application No. 215 of 2000 had earlier approached this Court seeking appropriate directions u/s 391(1) of the

Companies Act, 1956. This Court by an order dated 4th July, 2000 directed the meeting of equity shareholders of the petitioner/transferor company be held on 31st July 2000 at 3.30 p.m. under the Chairmanship of Sri Nainala Jaya Surya, an advocate of this Court. Accordingly, the meeting was held after following the due procedure. The learned Advocate Chairman submitted his report dated 3rd August 2000. According to the advocate Chairman's report 54 members/shareholders participated in the meeting of which 16 were proxies. The abovementioned shareholders held 97,74,259 equity shares of Rs. 10/- each and all the members are present and voting; [53 members who hold 97,74,259 shares] voted in favour of the proposed amalgamation scheme, which constitutes majority of the issued, subscribed and paid up equity share capital of One Crore fifty six lakhs thirty four thousand two hundred sixty five. Though the company petition discloses that one crore of preferential shares of Rs. 10/- each, were authorized to be issued, there is no mention about the authorized share capital in the company petition. The learned Counsel stated that the preferential shares never issued by the transferor company. In support of the submission, the learned Counsel placed before the Court the Annual Report of the company, for the year 1999-2000 filed as Annexure "C" to the petition. Therein also only equity shares, subscribed and paid up were shown but there is no information as to the issuance of the preference shares. The resolution of amalgamation of the transferor company with the Transferee Company was approved in the said meeting.

11. In paragraph 21 of the petition it is stated that the transferor company has only 13 creditors of whom nine are secured creditors, one is an unsecured creditor and three are debenture holders. The said fact is supported by a certificate issued by the auditors of the transferor company, which is filed as Annexure "H" of the petition. All the above creditors filed affidavits, which are filed as Annexures "I" to "U", the originals and the other affidavits are filed in C.A.NO. 215 of 2000.

12. Coming to the transferee company that is the petitioner in C.P.No. 106 of 2000, the company approached this court by way of C.A.No. 216 of 2000 u/s 391 of the Companies Act and this Court by its order dated 4th July, 2000 directed that the meeting of the equity shareholders of the transferee company be held on 31st July 2000 at 10.30 a.m. under the Chairmanship of Sri M.R.S. Srinivas, an advocate of this Court. Accordingly, a meeting was convened after following the due procedure. The advocate Chairman submitted his report dated 3rd August 2000. According to the report the meeting was attended by 62 members of which 18 were proxies holding 73,63,817 equity shares of Rs. 10/- each, except one member who held 100 equity shares rest of the members unanimously passed the resolution and approved the scheme of amalgamation.

13. It is stated in the petition that the transferee company has only 5 creditors and the said statement is supported by a certificate issued by the statutory auditors of the company, which is filed as Annexure "H". It is further stated that

the transferee company owes an amount of Rs. 169 crores borrowed from five banking institutions. The said creditors gave affidavits, copies of which are filed as Annexures "I" to "M". All the creditors in their affidavits referred to above, stated that they have no objection for the abovementioned proposed scheme of amalgamation.

14. Both the company petitions were admitted on 17-8-2000 and appropriate publication under Rule 80 of the Companies Act was directed to be made and in fact such publication was made and proof of service was also filed into the Court on 19-9-2000.

15. The Official Liquidator and the Union of India put on notice as required under the provisions u/s 394 of the Companies Act. On behalf of the Union Bank of India the Deputy Registrar of Companies, Hyderabad filed an affidavit in C.p.No. 105 of 2000. The relevant portion of which reads as follows:

"(a) the scheme provides that the transferee company shall allot of shares to the shareholders of the transferor company against their 25 shares. The authorized capital of the transferee company is Rs. 30 crores out of which 26.5 crores was paid up leaving a balance of Rs. 3.5 crores, However, as per the proposed exchange ratio, the transferee company has to allot shares worth 5.62 crores approximately to the shareholders of the transferor company and as such the transferee company has to increase its authorized capital to Rs. 33 crores or above to absorb the capital to be issued to the shareholders of the transferor company.

(b) As at 31st March 2000, the transferor company has invested in 41.400 shares of the transferee company and the same needs to be cancelled.

(c) The transferee company's Balance Sheet as at 31st March 2000 disclosed an investment in the debentures of the transferor company to the extent of Rs. 22.80 crores and the same needs to be cancelled. Subject to the above the Central Government does not propose to support or oppose the scheme however this Hon'ble Court may be pleased to consider the scheme on merits and pass such order or orders as this Hon'ble Court may deem fit in the interest of Justice."

16. The General Manager of the transferor company one Mr. T.S. Rangan filed an affidavit dated 16-11-2000, with reference to the various issues pointed out by the Registrar of Companies the deponent who claims duly authorized to state all the facts on behalf of the transferor company stated that the authorized share capital of the company was increased to 53 crores. With reference to the second issue pointed out by the Registrar of Companies the deponent stated that Clause 10(i) of the scheme provided for the cancellation of the 41,400 fully paid up equity shares held by the Transferor in the transferee company. Coming to the third issue pointed out by the Registrar of Companies it is stated as follows:

"Insofar as clause (c) of the affidavit of the Deputy Registrar of Companies is

concerned, I most respectfully submit that the investment referred to in schedule 1.06 of the balance sheet dated 31st March, 2000 of the Transferee Company under the head "Investments" indicates Rs. 22,79,77,000 in 2,27,97,700 equity shares of the value of Rs. 10/- each invested by the Transferee Company in the Transferor Company in equity shares. I submit that the said investment is not in debentures as is sought to be contended by him, but is in equity shares of the Transferor Company and the Transferee Company has no objection to the same being cancelled."

17. Subsequently, Mr. Raghavan, General Manager of the Transferor Company filed an affidavit dated 2nd December 2000, the relevant portion of which is reads as follows:

"I submit that I am the General Manager (Finance) of the petitioner/ Transferor Company and also the authorized signatory under the Board resolution dated 31st May, 2000. I submit that I had sworn to a counter-affidavit in the abovementioned company petition to the affidavit sworn to by the Deputy Registrar of Companies, Hyderabad on the 16th November 2000. I submit that in the second last line of Para 3 thereof on page 2 there was a typographical error as a result of which the sentence which was to read as "I submit that the said investment is not in debentures as is sought to be contended by him, but is in equity shares of the Transferor Company and the Transferor Company has no objection to the same being cancelled" was by mistake as a result of a typographical error typed as "I submit that the said investment is not in debentures as is sought to be contended by him, but is in equity shares of the Transferor Company and the Transferee Company has no objection to the same being cancelled."

18. In so far as the first issue is concerned, in view of the fact that the shareholders of the Transferee company have already said to have been increased, the objection does not require any further consideration. Coming to the second issue, in view of the Clause 10(i) of the Scheme of amalgamation, no further examination is required. Coming to the third issue, an affidavit is filed by Mr. K. Satish Reddy, claiming to be the Managing Director of the Transferee Company, wherein it stated as follows:

"Insofar as Clause 2(c) of the affidavit of the Deputy Registrar of Companies is concerned, I most respectfully submit that the investment referred to in schedule 1.06 of the balance-sheet dated 31st March, 2000 of the Transferee Company under the head "Investments" indicates Rs. 22,79,77,000 in 2,27,97,700 equity shares of the value of Rs. 10/- each invested by the Transferee Company in the Transferor Company in equity shares. I submit that the said investment is not in debentures as is sought to be contended by him, but is in equity shares of the Transferor Company and the Transferee Company has no objection to the same being cancelled."

19. The Official Liquidator filed a report dated 16-10-2000 stating that the affairs

of the companies were conducted in such a manner that they were not in any way prejudicial to public interest.

20. In the background of the above-mentioned facts and in view of the fact that no objections have been received by the Court pursuant to the publication after the admission of the company petitions, the company petitions are allowed as prayed for.