

(2014) 01 MP CK 0030

In the Madhya Pradesh High Court

Case No : Company Petition No. 25 of 2013

In Re: Companies Act, 1956

Date of Decision : 07-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1
Companies Act, 1956 — Section 391, 394

Citation : (2014) 2 JLJ 38

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : Vijayesh Atre, Advocate for the Appellant; H.Y. Mehta for Official Liquidator and Abhishek Tugnawat for Regional Director, North-Western Region, Advocate for the Respondent

Judgement

Prakash Shrivastava, J.—This petition u/s 394 of the Companies Act, 1956 has been jointly filed by the Fabiola Sea Foods Private Limited (transferor company No. 1), Fragrant Chemicals Private Limited (transferor company No. 2) and Magnum Infrareal Private Limited (transferee company) seeking sanction of the scheme of amalgamation, whereby the entire undertaking of the transferor companies as going concern together with all assets and liabilities is proposed to be transferred and vested in the transferee company. The transferor company No. 1 Fabiola Sea Foods Private Limited was incorporated on 5.7.1989 and its registered office is situated at M-9, Rukmani Plaza, 14 Palasia, A.B. Road, Indore 452 018 (M.P.). The last audited balance-sheet along with the report of the statutory auditors as on 31.3.2012 and unaudited balance-sheet as on 28.2.2013 have been placed on record. The transferor company No. 2 Fragrant Chemicals Private Limited was incorporated on 9.8.1989 having its registered office at M-9, Rukmani Plaza, 14 Palasia, A.B. Road, Indore 452 018 (M.P.). Its last audited balance-sheet and the latest unaudited balance-sheet has also been placed on record. The transferee company Magnum Infrareal Private Limited was incorporated on 30.5.1989 initially in the name of "Hamilton Fertilizers and Chemicals Limited". On 1.1.2013 its name was changed to Magnum Infrareal Private Limited and its registered office is situated at 210, MTH Compound, 24/2,

M.G. Road, Indore 452 001 (M.P.). Its last audited balance-sheet and latest unaudited balance-sheet has also been placed on record. It has been disclosed that all the three companies are loss making companies and the operational activity of transferor and the transferee company are the same, and all the three companies are engaged in the same line of business under the same management.

2. It has been disclosed that the scheme of merger will not only reduce the cost of operations but will also bring the entire business of the companies under one umbrella and will integrate the entire business holding and achieve the managerial synergy and other benefits. It has also been disclosed that the proposed scheme has been approved by the Board of Directors of the petitioner companies. The resolution of the Board of Directors have been placed on record.

3. In the first stage proceedings in Company Petition (Application) No. 22/2013 filed u/s 391 of the Companies Act, this Court vide order dated 8.5.2013 had dispensed with the meeting of the shareholders and unsecured creditors taking note of the Letter of Consent of the shareholders as well as the unsecured creditors. It was also noted that the petitioner companies had no secured creditors.

4. In the present petition, this Court on 17.7.2013 had issued notice to the Registrar of the Companies, M.P. and Chhattisgarh, Gwalior, Regional Director, Western Region, Ahmedabad and to the Official Liquidator and had also directed the advertisement of the petition in accordance with the Rules in the Official Gazette of the State and two daily newspapers, namely Naidunia (Hindi) and Free Press (English) published from Indore. The affidavit dated 12.8.2013 has been filed by the petitioner reporting compliance of the order dated 17.7.2013 passed by this Court.

5. The Regional Director in his report dated 12.9.2013 has raised certain objections, which have been duly replied by the petitioner and which are dealt with hereunder:

(a) The first objection is about the filing of the joint petition by the petitioners.

In this regard the counsel for the petitioners has pointed out that there is no bar under the Act and Rules for filing the joint petition, and the joint petition has been filed to avoid the multiplicity of the petitions since common question of fact and law arise in the matter. He has also pointed out Order 1 rule 1 of the CPC which permits joining of all persons. It has also been pointed out that the three petitioner companies have paid the separate court-fee for their part of the petition. The counsel for the petitioner has further placed reliance upon the judgment of the Madras High Court in the matter of W.A. Beardsel and Co. (P) Ltd., in Re reported in (1968)38 Company Cases 197, Delhi High Court in the matter of In Re: Mohan Exports India Ltd., , and the judgment of Karnataka High Court in the matter of Chembra Orchard Produce Ltd., In Re: Chembra Orchard Produce Ltd., , in support of his submission that the joint petition is maintainable.

In view of the above submissions and taking note of the judgments which have been relied upon by the counsel for the petitioner, it is found that the objection relating to the maintainability of the joint petition raised by the Regional Director, need not be sustained.

(b) The second objection of the Regional Director is about alteration in the object clause of the petitioner No. 3-Company on 31.12.2012 without any footnote.

Counsel for the petitioners has fairly admitted the said mistake and has stated that the footnote will be inserted disclosing that the object has been altered. He has also pointed out that the object has been altered keeping in view the Scheme of Merger which has been formulated.

(c) The third objection of the Regional Director that the object of the petitioner-companies is to transfer the assets (land) to the transferee company to save the stamp duty payment on transfer of immovable assets and the income tax savings.

In this regard, it has been stated on oath in the reply-affidavit dated 12.11.2013 by the petitioner-companies that on approval of the scheme necessary stamp duty will be paid by the transferee company on transfer of the land, as per the Indian Stamp Act. It has further been stated that the petitioner-companies will abide by all the provisions of the Income Tax Act in respect of payment of the capital gains.

(d) The next objection of the Regional Director is that since the certificate issued by the Chartered Accountant only shows the figures of the net worth of all petitioners and the Chartered Accountant has not recommended any share exchange ratio and valuation method as to how the net worth was arrived at, therefore, the petitioner should be directed to place on record the calculation of the exchange ratio and valuation report with all working sheets duly certified by the Chartered Accountant.

In this regard, it has been stated that all the three petitioner-companies are having almost same net worth and a detailed working on the net worth and calculation of number of equity shares along with the list of shareholders is filed as Annexure-1 along with the reply affidavit dated 12.11.2013.

(e) The next objection of the Regional Director is that as per scheme, the total number of shares of the transferee company will be 2900, whereas as per the Annexure-2 submitted by the petitioner-, companies with the reply, the total number of shares of the transferee company will be 3000.

In this regard it has been stated by the counsel for the petitioners that the figure of 3000 is a typographical error. He has referred to clause 4 of the scheme to point out that correct number is 3000.

(f) The next objection of the Regional Director is that the petitioners have not disclosed about continuation of services of the employees other than permanent employees.

In the reply-affidavit, the petitioners have undertaken that services of all the employees of the transferor companies, whether permanent or temporary, will continue with the transferee company on the terms which are not less favourable from the present benefits.

(g) Another objection of the Regional Director is in respect of the compliance of the Accounting Standard-14.

In this regard, it has been clearly stated by the petitioners in the reply-affidavit dated 12.11.2013 that the transferee company undertakes to fully comply with all applicable accounting standards while finalizing the annual accounts of the transferee company, after approval of the scheme of amalgamation.

(h) The other objection of the Regional Director is that the scheme nowhere proposes that the authorized share capital of the transferor companies will be merged with the authorized share capital of the transferee company without any further act, deed and without requirement of payment of ROC fees/stamp duty/registration charges etc.

In this regard, it has been disclosed in the reply-affidavit that in paragraph 7(iv) of the scheme it has been provided that the authorized capital of the transferor companies will be merged with the authorized share capital of transferee company, for which the transferor companies have already paid full amount of fee to the Government and such merger of authorized capital is permissible. In this regard, he has placed reliance upon the order of this Court dated 30.1.2013 passed in Company Petition No. 18/2012 in the matter of Ketu Constructions (India) Limited and two others, in Re.

In view of the above analysis, objections raised by R.D. do not survive.

6. Apart from the above, no other objection has been raised by the Regional Director. As per the reply of the Regional Director, no complaint against the petitioner companies including any complaint/representation against the scheme of amalgamation of the petitioner companies, have been received, and the scheme of amalgamation except for the above objections, is not prejudicial to the interest of the shareholders of the petitioner-companies and public at large.

7. The Official Liquidator has also filed the report in the form of OLR 33/2013. The Official Liquidator has raised an objection in respect of payment of stamp duty on transfer of land from transferor companies to transferee company. It has been stated on oath in the affidavit dated 12.11.2013 that the transferee company will comply with all the provisions of the Stamp Act in connection with the transfer of land in its name.

8. The Official Liquidator in his report has mentioned that the Official Liquidator has not received any complaint against the present scheme of amalgamation from any person/party interested in the scheme, in any manner, and that the affairs of both the transferor companies have not been conducted in a manner prejudicial to the interest of its members, creditors or public interest.

9. Having considered the scheme and on perusal of the record and reports, the scheme appears to be fair and reasonable and not opposed to public interest.

10. Accordingly, the scheme of arrangement filed as Annexure P-10 to the petition is hereby approved. The said scheme may be read as part of this order. The petitioner company to lodge a copy of this order and the scheme duly authenticated by the Company Registrar, High Court, Indore Bench with the concerned office of the Registrar of Companies within 30 days from the date of order.

11. The petitioners No. 1 and 2 transferor companies to pay the cost of Rs. 25,000/- to the Official Liquidator for deposit in common pool fund maintained by the Official Liquidator within four weeks from today and also to pay Rs. 10,000/- to the counsel for Regional Director and Rs. 5,000/- to the counsel for Official Liquidator within same period.

12. The petitioners No. 1 and 2 (transferor Companies) shall stand dissolved without winding up.

13. Filing and issuance of the drawn up order is dispensed with. All concerned authorities to act on a copy of this order along with the scheme duly authenticated by the Company Registrar, High Court, Indore Bench.