

**(2009) 08 MAD CK 0219**

**In the Madras High Court**

**Case No : C.P. No's. 152 to 154 of 2009**

**In Re: Convansys (India) P. Ltd.<BR>In Re: FCG Softward Services  
(India) P. Ltd.<BR>In Re: Computer Sciences Corpn. India P. Ltd.**

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**Date of Decision : 07-08-2009**

**Acts Referred:**

Companies Act, 1956 — Section 231, 232, 233, 234, 235

**Citation :** (2009) 152 CompCas 148

**Hon'ble Judges :** P. Jyothimani, J

**Bench :** Single Bench

**Advocate :** K. Ramasamy, for the Appellant; C.V. Ramachandra Murthy, Additional Central Govt. Counsel for the Regional Director, Jayakumar, Deputy Official Liquidator appeared in person, for the Respondent

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## **Judgement**

P. Jyothimani, J.—These company petitions are preferred under Sections 391 - 394 of the Companies Act, 1956, for sanctioning the scheme of amalgamation of the transferor companies, the petitioners in C.P. Nos. 152 and 153 of 2009 with the transferee company, the petitioner in C.P. No. 154 of 2009, with effect from April 1, 2009. The scheme of amalgamation is annexed as annexure C in each of the petitions.

2. The petitioner in C.P. No. 152 of 2009 is the first transferor company; the petitioner in C.P. No. 153 of 2009 is the second transferor company and the petitioner in C.P. No. 154 of 2009 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. The chartered accountant's certificate stating that the transferor and the transferee companies have no secured creditors is annexed as annexure "G" in each of the petitions. The copy of the resolution of the board of directors of the transferor and the transferee companies adopting the scheme of amalgamation is marked as annexure "D" in each of the petitions.

4. The consent of affidavit from the equity shareholders to the scheme of amalgamation for approving the scheme of amalgamation is marked as annexure "F" in each of the petitions. This court, in its order dated June 17, 2009, in C.A.

Nos. 744 to 746 of 2009 in case of the transferor companies and the transferee company, respectively, dispensed with the convening, holding and conducting of the meeting of the shareholders for the purpose of considering and if thought fit, approving with or without modification, the scheme of amalgamation of the transferor companies with the transferee company.

5. On notice, the Regional Director, Ministry of Company Affairs has filed his report raising the following objections:

(a) The authorised capital of the company is a notional limit up to which a company can increase its paid-up capital. Hence, two notional limits cannot be clubbed together.

(b) The authorised capital of the company is not a liability like other liabilities which are to be returned or refunded. Hence, the authorised capital will not come within the purview of transfer of liabilities under the scheme of amalgamation.

(c) The transferor company and the transferee company have separate legal entities. On amalgamation, the transferor company will be dissolved and only the transferee company exists. At this stage if the transferee company on account of scheme of arrangement, increases its authorised capital, it has to comply with the provisions of Sections 94 and 97 of the Companies Act, 1956, by filing returns with the Registrar of Companies with the registration fee/filing fee.

(d) The Companies Act does not specifically exempt the transferee company on account of the scheme of arrangement from payment of registration fee for increase of its authorised capital pursuant to the scheme of amalgamation. Hence, if the transferee company is allowed to increase its authorised capital by clubbing the authorised capital of the transferor company without any further Act or deed as contemplated in the scheme, it will be not only against the provisions of the Companies Act, 1956, but it will also involve substantial loss to the Central Government revenue.

(e) The authorised capital of the transferor company to that of the transferee company cannot be a part of the scheme since Section 97 of the Companies Act, 1956, is only a procedural compliance requiring payment of registration fee with the Registrar of Companies and which does not require any permission of this hon'ble court.

5. I further submit that since the foreign body corporates. are the shareholders of the transferor companies, the transferee company has to comply with the requirements of the Foreign Exchange Management Act, 1999 and the Reserve Bank of India Act, 1934, if any, for allotment of shares to the shareholders of the transferor companies under the scheme.

6. As regards the first objection of the Regional Director on the clubbing of two notional limits, the said issue is covered by the Division Bench of this Court in The Regional Director, Ministry of Company Affairs and The Registrar of Companies Vs. Cavin Plastics and Chemicals (P) Ltd., , the Division Bench after

referring to various judgments on such objections, has held as follows:

12. We have also gone through the decision of the Calcutta High Court in *Areva T and D India Ltd., In re* [2007] 138 Comp Cas 834, relied upon by the appellant. In the said judgment, the Calcutta High Court has held that the right to increase its paid-up capital to its authorised limit, is a right unique to each company and incapable of being transferred, just as the fee paid for registration of the company is also incapable of being transferred and, consequently, a separate fee would be payable u/s 95 read with Section 97 of the Act. We are unable to agree with the reasoning of the learned single judge. The issue is not whether the fee, which is already paid by the transferor company would automatically be transferred to the transferee company. But, what is intended by Section 391 of the Act is to reconstitute the company without the company being required to make a number of applications under the Companies Act for various alterations which may be required in its memorandum and the articles of association for functioning as a reconstituted company under the scheme. Not only is Section 391 of the Act a complete code in itself, but it is intended to be in the nature of a "single window clearance".

7. As far as the second objection regarding the application of the transferor company complying with the requirements of the FEMA and RBI Act for allotment of shares to the shareholders of the transferor companies is concerned, it is made clear that it is for the transferee company to comply with the said requirement in accordance with the said provisions of the Act.

8. That apart, the Regional Director has stated that clause 9 of the Scheme, protects the interest of all the employees of the transferor companies and clause 14 of the scheme provides for dissolution of the transferor companies without winding up, upon amalgamation.

9. The official liquidator has also filed his report along with the report of the chartered accountant. The report, of the chartered accountant states that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to public interest and they do not come across any act of misfeasance by the directors attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said chartered accountant. In the absence of any inference that the affairs of the transferor company were being conducted in a manner prejudicial to the interest of its members or public interest, and in the absence of any comments that the affairs of the transferor companies was conducted in a manner prejudicial to its members, the official liquidator has filed his report before this Court for orders.

10. However, in the report, the official liquidator has referred to some observations of examining the balance-sheet of the transferor company as on March 31, 2008, which are as follows:

(a) Sundry debtors considered doubtful--Rs. 1,91,99,000 under this head of account details of names of parties from whom debts are due, date of debt/loan amount of debt, nature of transactions, involved, purpose of transaction whether the parties include directors/their relatives/firms/private companies in which the company directors are directors/or their relatives are partners, rate of interest, terms and conditions of loan, steps taken to recover the debt before making provisions are not furnished.

(b) The copy of the valuation report is not furnished to the official liquidator for verification.

(c) The company has given unsecured loan to the tune of Rs. 72.38 crores details such as names of parties to whom the loan was given, amount of loan, date of loan, terms and conditions, purpose of loan, details of interested parties such as directors or their relatives/or firms or private companies to whom such loan was given, steps taken to recover the loan are not furnished.

(d) Regarding related party transaction it is not clear if provisions of Sections 297(1), 299 and 301 are complied with.

11. In the affidavit filed in support of the said statement, the authorised signatory of the transferor company has filed the reply affidavit answering each and every one of the said observations made by the official liquidator. The said affidavit is recorded and it shall form part of the record.

12. In respect of the statement filed by the official liquidator regarding the share exchange ratio, as submitted by Mr. K. Ramasamy, learned Counsel for the petitioners that the issue has already been dealt with by the judgment of the Andhra Pradesh High Court reported in [1997] 89 Comp Cas 285 (Nav Chrome Ltd., In re), wherein it was held as follows (headnote):

Held, (i) that it was well-settled that the official liquidator had no say in the share-exchange ratio, when the shareholders of the companies had approved of it.

(ii) That the condition as to the lock-in period was stipulated at the time of public issue and was no longer relevant.

(iii) That apart from the fact that the official liquidator was only concerned with certifying under proviso to Section 394 of the Companies Act, 1956, that the affairs of the transferor company did not appear to have been conducted in any manner prejudicial to the interests of its members or that of public interest, even on the merits, the Companies Act did not require any notice to the creditors of the transferor company. The proposal of amalgamation was widely advertised in newspapers and no creditor either secured or unsecured had filed any objection in the court. Further, the creditors of the transferor company would not be prejudiced in any way as they would have a financially stronger company as their debtor.

13. I have perused the scheme filed in the company petitions. The scheme states that there is no objectionable feature in the scheme of amalgamation which is detrimental either to the employees of the transferor company or of the transferee company. The said scheme is not violative of any statutory provisions. The scheme is fair, just, sound and is not against any public policy or public interest. No proceedings are pending under Sections 231 - 237 of the Companies Act, 1956. All the statutory provisions are complied with.

14. Consequently, there shall be an order approving the scheme of amalgamation of the first transferor company M/s. Convansys (India) P. Ltd., the petitioner in C.P. No. 152 of 2009; the second transferor company M/s. FCG Softward Services (India) P. Ltd., the petitioner in C.P. No. 153 of 2009 with the transferee company, M/s. Computer Sciences Corpn. India P. Ltd., the petitioner in C.P. No. 154 of 2009, as provided in annexure G in these company petitions, with effect from April 1, 2009, as the procedure laid down under Sections 391 and 394 of the Companies Act, 1956, are duly complied with. The petitions are allowed.

15. Taking note of the report by the chartered accountant as enclosed by the official liquidator, in terms of the order passed by this Court, both the transferor companies shall stand dissolved without winding up.

16. The learned Senior Central Government Standing Counsel is entitled to a fee of Rs. 2,500 for each petition from the transferee company.