

(2005) 07 KAR CK 0056

In the Karnataka High Court

Case No : Company Petitions No. 15 and 16 of 2005

In Re: Hindhivac Private Limited and Another

Date of Decision : 04-07-2005

Acts Referred:

Companies Act, 1956 — Section 17, 391, 391 (2), 394

Citation : (2005) 128 CompCas 266 : (2005) ILR (Kar) 4523 : (2005) 4 KCCR 255 SN : (2006) 71 SCL 423

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : A. Murali AZB and Partners, for the Appellant;

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—In both these petitions, petitioners seek sanction of the scheme of amalgamation, Annexure-A. Hence, these petitions are clubbed, heard together and are being disposed of by this common order.

2. The petitioner in Company Petition No. 15/05 is M/s Hindhivac Private Limited (for short the "transferee company"), a company, incorporated on 26.3.2001 under the Companies Act, 1956, for short "Act", having its registered office at Site No. 17. Phase 1, Peenya Industrial Area, Bangalore-58.

3. The main objects of the transferee company is to carry on business to take over the vacuum systems and pumps division of the company known as M/s Hind High Vacuum Company Private Limited together with its assets and liabilities under a scheme of amalgamation, amongst other objects set out in the Memorandum of Association, Annexure-B.

4. The authorised share capital of the transferee company is Rs. 2,00,00,000/- (Rs. two crores only) divided into 2,00,000 equity shares of Rs. 10/- each, while issued, subscribed and paid up share capital of Rs. 1,23,08,270/- (Rs. One crore twenty three lakh eight thousand two hundred and seventy) divided into 12,30,827 equity shares of Rs. 10/- each fully paid up.

5. The latest audited Balance Sheet, Annexure-C, made up to 31.3.2004, duly

certified by the auditors of the Transferee Company discloses its assets and liabilities. The Board of Directors of the transferee company approved and adopted the scheme of amalgamation, Annexure-A, whereunder M/s Hind High Vacuum Company Private Limited, a company incorporated on 9.4.1965, under the Act (for short the "transferor company") having its registered office at Site No. 17, Phase 1, Peenya Industrial Area, Bangalore-58 is proposed to be merged with the transferee company subject to confirmation by this Court. The vacuum system and pumps division of the transferor company was demerged and taken over by the Transferee company under a scheme of arrangement, which received the sanction of this Court by Order dt. 2.7.2002 in Company Petitions 16 and 17 of 2002. The transferee Company made an application in C.A. No. 924/04 seeking permission of this Court to convene and hold the meeting of its shareholders and creditors to consider the scheme of amalgamation, Annexure-A. This Court, by order dt. 19.11.2004 and 17.12.2004 allowed the applications and granted permission as sought for. Accordingly, meetings of the shareholders and creditors of the transferee company were convened and held on 17.1.2005, at its registered office. All the shareholders and creditors of the transferee company, who attended the meeting, unanimously approved the scheme of amalgamation, Annexure-A, as is evident from the report of the Chairman, Annexure-G. The transferee company has presented this Company petition seeking the imprimatur of this Court for the scheme of amalgamation, Annexure-A.

6. The petitioner company in CO.P. 16/04 is M/s Hind High Vacuum Company Private Limited, the transferor company.

7. The main objects of the Transferor company is to carry on business of manufacture of scientific instruments, industrial apparatus, etc., amongst other objects as set out in Memorandum of Association, Annexure-B.

8. The authorised share capital of the transferor company is Rs. 3,00,00,000 (Rs. three crore) divided into 30,00,000 equity shares of Rs. 10/- each, while the issued, subscribed and paid up capital is Rs. 1,32,33,780/- (Rs. One crore thirty-two lakh thirty three thousand seven hundred and eighty only) divided into 13,23,378 equity shares of Rs. 10/- each fully paid up.

9. The transferor company has produced the balance sheet at Annexure-C, made up to 31.3.2004 duly certified by the auditors of the Transferor company discloses its assets and liabilities.

10. The Board of Directors of the Transferor Company in its meeting held on 14.10.2004 approved and adopted the scheme of amalgamation, Annexure-A by which the Transferor Company is proposed to be merged with the transferee company subject to the confirmation by this Court.

11. The Transferor Company made an application in CA No. 925/ 2004 to grant permission to convene and hold the meetings of shareholders and creditors to consider and approve the scheme of amalgamation, Annexure-A. Accordingly, this Court by orders dated 19.11.2004 and 17.12.2004 allowed the application

and granted permission as sought for. The Chairman's report, Annexure-G discloses that the meetings of both the share holders and creditors were held on the scheduled dates in compliance with the orders of this Court and that all the shareholders and the creditors who attended the meetings unanimously approved the scheme of amalgamation, Annexure-A.

12. Both these petitions were admitted and notices ordered on the Regional Director of Company Affairs, Chennai, while in CO.P. 16/05, notice, in addition, was ordered on the Official Liquidator. At the request of the Official liquidator, in his report in OLR 106/05, this Court appointed M/s Arun Kumar, Chartered Accountant, who in compliance of the order filed his report on 29.3.2005 opining that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of the public, shareholders or creditors. The Official Liquidator has filed OLR 452/05 stating that it has no objection for the sanction of the scheme of amalgamation.

13. The Regional Director of Company Affairs filed his report dt. 16.6.2005 stating that the objects of the transferor company does not contain any enabling provisions for amalgamation with another company and therefore, the transferor company is required to amend its memorandum of association to incorporate the said clause strictly in accordance with Section 17 of the Act.

14. The material on record discloses that pursuant to the order dt. 2.7.2002 in Company Petitions 16 and 17 of 2002 of this Court, a division of the transferor company was carved out and de-merged, into the transferee company, and a huge amount as stamp duty was paid for the transfer of immovable properties, which is said to be Rs. 10,26,500/-. The Board of directors of both the companies having opined that the merger of the companies would be beneficial and profitable to operate as a single unit instead of two different units and as the transferee company is a consistent profit making company, the companies and their respective factories situate in a common campus, inter-related and inter dependent on each other for their manufacturing activities, have proposed the scheme of amalgamation. It is also stated that in order to have synergy of operation and also avoid administrative overheads, they have decided to amalgamate into one unit, so that they can avail the advantage of large-scale operation. It is also said that the financial base of the amalgamated company would also be considerably enhanced. The name of the transferor company is sought to be retained by the new company, pursuant to the scheme of amalgamation. In view of all these advantages, it is stated that the scheme of amalgamation would be beneficial to the shareholder and creditors of the company.

15. The material on record further discloses that both the companies have convened the meetings of the share holders and the creditors in accordance with Section 391 of the Act and in terms of the orders passed by this Court in CA 924/04 and 925/04. The shareholders and the creditors of both the companies have unanimously approved the scheme of amalgamation, Annexure-A.

Therefore, the statutory requirement as contained in Section 391(2) of the Act is complied with. The auditor's report in so far as the transferor company is concerned, clearly discloses that the affairs of the company are not conducted in a manner prejudicial to the interest of the shareholders or the creditors. Despite publication of hearing of these petitions, none of the shareholders, creditors, employees or any other person have appeared before this Court to oppose the scheme of amalgamation. The report of the Official Liquidator discloses that he has no objection for according sanction.

16. Insofar as the objections raised by the Regional Director of Company Affairs is concerned, Sri-Rajaram, learned Central Government Counsel, submits that without specific power in the objects clause in the Memorandum of Association of the Transferor company and without an application u/s 17 of the Act, to amend the objects clause to incorporate the term of amalgamation, the scheme Annexure-"A" cannot be sanctioned.

17. Per contra the learned Counsel for the petitioners points out to Clause 32 of the Memorandum of Association, Annexure "B", of the Transferor company to contend that though the word "amalgamation" is not specifically stated therein, but the contents of the said clause does provide for disposal of the undertakings of the company, which includes amalgamation. In addition, learned Counsel submits that u/s 394(1)(iv) of the Act, empowers the Court to pass an order of dissolution, at the time of sanctioning a scheme of amalgamation of the transferor company, without winding up.

18. It is relevant to extract the portion of the scheme Annexure "A" which reads:-

" 1. All the assets, properties, rights, interests and claims whatsoever of the Transferor Company and its entire undertaking viz., authorities, privileges, licences and rights in respect of property, moveable and immovable, tenancies, trade marks, fittings and fixtures, power connections, telephones telex, fax, cash balances, reserves, security deposits, refunds, outstanding balances, stocks, investments, licences including all the benefits and entitlements upto the effective date, accrued or earned, goodwill and other rights and interests of all descriptions in or arising out of such properties as may belong to or be in possession of the Transferor Company and all books and accounts, documents and records relating thereto shall, without further act or deed pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and vest in the Transferee company with effect from the Transfer Date so as to become the assets, properties, rights, interests and claims of the Transferee Company but subject nevertheless to all charges then affecting the same."

19. The Supreme Court in Ramdeo Rai Yadav Vs. State of Bihar, observed thus:-

"Reconstruction or "amalgamation" has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking; the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings.

There may be amalgamation either by the transfer of two or more undertakings to a new company, or by transfer of one or more undertakings to an existing company. Strictly, "amalgamation" does not cover the mere acquisition by a company of the share capital of another company, which remains in existence and continues its undertakings, but the context in which the term is used may show that it is intended to include such an acquisition. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity.

The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But undoubtedly when two companies amalgamate and merge into one the corporate entity of the transferor company loses its entity from the date of amalgamation as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation."

20. Section 17 of the Act, is an aid to the companies seeking amalgamation in terms of the scheme. Section 391 to 394 in Chapter V of the Act are of very wide amplitude so as to take into its fold compromise or arrangement including unconstruction. The legislature in its wisdom provided for such wide range of power to be exercised by this Court, since in matters of amalgamation conducive to the interest of shareholders, there should be no fetters. In short, the power of the companies to amalgamate may flow either from the objects in their memorandum or may be acquired by resort to Section 391 to 394 of the Act.

21. The contentions of Sri Raja Ram, must necessarily fail, since in the first place, Clause 32, of the Memorandum of Association sufficiently provides for reconstruction or amalgamation. Applying the meaning of the term "amalgamation" as observed by the Supreme Court in *Saraswathi Industrial Syndicate's* case (supra), the object Clause No. 32 appears to empower the company to amalgamate. Secondly, Section 17 of the Act, being only an aid to the companies seeking amalgamation, this Court in exercise of its statutory powers u/s 391 to 394 of the Act, while ordering dissolution of the transferor company without winding up, can also order the amalgamation without any specific power for amalgamation in the Memorandum of Association of the company.

22. The terms of the scheme of amalgamation, indicate that with effect from the said date, all debts, liabilities, dues and obligations of the transferor company and any accretions or additions or deletions thereto, after the appointed date shall without any further act or instrument or deed stand transferred or deemed to be transferred and vested in the Transferee company so as to become as and from that date, the debts, liabilities, dues and obligations of the Transferee Company. Upon the scheme being sanctioned and becoming finally effective, the Transferee Company shall allot 5 (five) equity shares of Rs. 10/- each credited as fully paid up of the transferee company to the equity shareholders of the

Transferor company, holding 6 (six) equity share of face value of Rs. 10/- each fully paid up. In this view of the matter, the interest of the shareholders is fully taken care.

23. All the employees of the transferor company, in service, on the effective date, shall become employees of the transferee company, on such date without any break or interruption in service and on the terms and conditions not less favourable than those subsisting with the transferor company. As already noticed supra, none of the employees of the transferor company have appeared before the Court to oppose the scheme of amalgamation. Thus, the interest of the transferor company is also taken care.

24. As the shareholders of both the companies have unanimously approved the scheme of amalgamation and agreed to the exchange ratio of shares mentioned supra, it is not open for this Court to sit in appeal over the value judgment of the equity share holders, who are supposed to be men of commerce and reasonable persons who are aware of their benefits and interest underlining the proposed scheme and who have agreed to the ratio and the scheme. In these circumstances, the petitioners have made out a case for sanction of the scheme of amalgamation, Annexure-A. Hence, the following:

ORDER

- i) The scheme of amalgamation, Annexure-A, proposed by the companies, the petitioners herein, is sanctioned and is binding on the petitioner companies, their shareholders and creditors.
- ii) The transferor company shall stand dissolved without there being an order of winding up.
- iii) The retention of the name of the Transferor company by the new company shall be subject to compliance with the provisions of the Act.
- iv) Office is directed to draw up a decree in Form No. 42.
- v) The petitioners are directed to serve a copy of this order on the Registrar of Companies within 30 days.

The petitions are, accordingly allowed.