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(2008) 09 AHC CK 0014

In the Allahabad High Court

In Re: Jagran TV (P.) Ltd.

Date of Decision : 23-09-2008

Acts Referred:
COMPANIES ACT, 1956 — Section 391, 392, 393, 394, 394A

Citation : (2009) 150 CompCas 532 : (2009) 90 SCL 138

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Shri Sambhu Chopra, learned Counsel for the petitioners. Shri V.K. Kain, the Company Prosecutor appears for the Official Liquidator and has placed on record the representation/affidavit of Shri Dhan Raj, Regional Director, Northern Region, Ministry of Corporate Affairs u/s 394A of the Companies Act, 1956.

2. The confirmation petition seeks approval of the ''Scheme of Demerger'' of IBN 7 (demerged undertaking of M/s. Jagran TV Private Ltd.) to be merged with Global Broadcast News Limited (GBN) (General news and entertainment arm of the Network 18 Group).

3. The registered office of the Jagran TV Private Ltd. (the Demerged Company), is situated at 2, Sarvodaya Nagar within the jurisdiction of this Court. The registered office of BK Fincap Private Limited (the Transferor Company) is situate at 601, 6th Floor, Commercial Tower, Hotel Le Meridian, Raisina Road, New Delhi. The IBN18 Broadcast Limited (the Transferee-Company) has its registered office at 601, 6th Floor, Commercial Tower, Hotel Le Meridien, Raisina Road, New Delhi. The Transferor-Company and the Transferee-Company have their registered offices within the jurisdiction of Delhi High Court. It is stated that the petitions for considering the scheme on behalf of the Transferor-Company and the Transferee Company have been filed at Delhi High Court.

4. By order dated 22-5-2008 the Court called for the meeting of the equity shareholders, unsecured creditors and secured creditors of the demerged

company. The order dated 22-5-2008, provided:

Heard Sri Sambhu Chopra, learned Counsel appearing for the applicant company.

An application under Sections 391 - 393 of the Companies Act, 1956 (hereinafter referred to as "the Act") read with rules 67 and 87 of the Companies (Court) Rules, 1959 has been filed by Jagran T.V. Private Limited, having its registered office at 2, Sarvodaya Nagar, Kanpur (hereinafter referred to as "the applicant company") with a prayer that a meeting of the secured creditors of applicant company be convened under the supervision of this Court for considering and approving the scheme of demerger, as approved by the Board of Directors in its meeting held on 19-12-2007.

The salient feature of the scheme of demerger is that the applicant company is a subsidiary company of M/s. BK Fincap Private Limited having its Registered Office at 601, 6th Floor, Commercial Tower, Hotel Le Meridian, Raisina Road, New Delhi (hereinafter referred to as "the transferor-company"). The applicant company is engaged in operation of Hindi news channel by the name IBN7 and business of software operation and content development. The transferor-company is engaged in the business of making strategic financial investments in media and other businesses. There is another company, known as ibn18 Broadcast Limited, having its Registered Office at 601, 6th Floor, Commercial Tower, Hotel Le Meridian, Raisina Road, New Delhi (hereinafter referred to as "the transferee-company"). IBN7 News Undertaking is sought to be demerged into the transferee-company as also the merger of the transferor-company in to the transferee-company. The applicant company has sought dispensing of the meeting of equity shareholders and unsecured creditors on the ground that they have given their no objection to the proposed scheme of demergert/arrangement.

I have heard Sri Shambhu Chopra, learned Counsel appearing for the applicant company and have considered his submissions regarding dispensing with the meeting of the equity shareholder and unsecured creditors. The scheme of demerger/arrangement is to be supervised by this Court under the provisions of Sections 391 - 394 of the Act. Merely because the equity shareholders and unsecured creditors are few in numbers and have given their no objection, would not be sufficient criteria for dispensing the convening of the meeting under the supervision of the Court. Thus, the prayer for dispensing with the meeting of equity shareholder and unsecured creditors cannot he accepted.

Let the meetings of the equity shareholders, unsecured creditors and the secured creditors of the applicant company be held at 11.00 A.M., 12.00 noon and 12.30 P.M. respectively at the registered office of the applicant company on 12-7-2008. The notice shall be sent to the shareholders and creditor individually under certificate of posting and enclosing therewith an explanatory statement and form of proxy. The notices shall also be published in daily newspaper Pioneer (English) published from Lucknow and Hindi daily newspaper Dainik Jagran published from Kanpur, giving full details of the meetings, place and time of convening meetings.

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Sri Dev Kant Pandey (Mobile No. 9415616397) and Sri Ashish Agrawal (Mobile No. 9415348632) are appointed as Chairman and alternate Chairman of the meetings of the equity shareholders and Sri Ashish Agrawal (Mobile No. 9415348632) and Shri Dev Kant Pandey are appointed as Chairman and alternate Chairman of the meeting of the unsecured creditors and Sri Dev Kant Pandey (Mobile No. 9415616397) and Shri Ashish Agrawal (Mobile No. 9415348632) are appointed as Chairman and alternate Chairman of the meetings of the secured creditors of the applicant company. They shall be paid Rs. 30,000 for Chairman and Rs. 20,000 for alternate Chairman for each meeting with an additional amount 20 per cent of their fees as incidental expenses. The applicant company shall make their travel arrangements by taxi and stay at a proper Guest House or Hotel on their request.

The notice convening aforesaid meetings shall be sent under the signatures of the Chairman at least 21 clear days before the date appointed for the meetings, along with the scheme of demerger and the statement as required to be furnished pursuant to Section 393 of the Companies Act, 1956 along with prescribed form of proxy, by pre-paid letter posted under certificate of posting, addressed to each of the shareholders/members and creditor of the company at their respective registered or last known address. In addition, at least 21 clear days before the date appointed for the meetings, as aforesaid advertisement convening the said meetings, and stating that copies of the scheme along with copies of the statement required to be sent u/s 393 of the Companies Act, 1956 and that the prescribed form of proxy can be obtained free of charge at the registered office of the applicant company.

The quorum of the meetings shall be one for the equity shareholders, five for the unsecured creditors'' and two for the secured creditors'' meetings. The Court, however, will have discretion to record satisfaction with regard to the majority of shareholders of the applicant company approving the scheme of demerger.

The voting by proxy shall be permitted provided that the proxies in the prescribed form duly signed by the person entitled to attend and vote at the meeting and in case of company or an association, by a duly authorized representative of such company/association are lodged with the applicant company at its registered office not later than 48 hours before the meetings.

The Chairman shall report to the Court the result of the meetings on or before 14-7-2008. The report shall be verified by the affidavits of Chairman.

List the matter on 15-7-2008.

5. The notices were sent to the shareholders and creditors. The reports of the Chairmen have been placed on record. Mr. Dev Kant Pandey, Chairman of the shareholders'' meeting has filed his affidavit stating that the meeting of the equity shareholders was duly convened on 12-7-2008 at registered office of the company. It is reported that there are only two shareholders of the petitioner company and that quorum was fixed as one member. Both the shareholders were

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present representing 1,34,58,950 equity shares. Both the shareholders were companies and as such they were represented by the authorised representative holding proxies. Both the shareholders passed the resolution approving the scheme without any dissent. The meeting of the unsecured creditors was also held on the same day on 12-7-2008. The meeting was presided by Shri Ashish Agrawal, Chairman of the meeting of unsecured creditors who has reported that 17 shareholders (sic) attended the meeting with a value of Rs. 83,89,47,793 representing 95.25 percent of the total value of the amount claimed. All the unsecured creditors present unanimously passed a resolution approving the scheme. The meeting of secured creditors was also held on the same day on 12-7-2008 at registered office of the company. It was attended by two persons representing value of the credit of Rs. 33,68,63,331, which is 99.38 per cent of the total value of the amount claimed by the secured creditors. Shri Dev Kant Pandey, the Chairman has reported that quorum of the meeting was two creditors. The quorum was complete and that both the secured creditors present unanimously passed a resolution approving the scheme.

6. The affidavits filed by Chairman has been placed on record and have satisfied the Court that the resolutions were carried out by holders of the entire equity shares and overwhelming majority of the unsecured and secured creditors.

7. The confirmation petition was filed and was directed to be advertised in the same newspapers and affidavit annexing the newspapers advertising the petition on 22-8-2008 both in ''Pioneer'' (English) published from Lucknow and ''Dainik Jagran'' (Hindi) published from Kanpur has been placed on record.

8. The Regional Director, Northern Region, Ministry of Corporate Affairs, Noida in his affidavit has made following comments on the scheme:

That the Deponent further craves leave to submit that the individual assets and liabilities and the values thereof pertaining to "IBN7 News Undertakings" of the Demerged Company viz., M/s. Jagran TV Pvt. Ltd. to be transferred in the Transferee Company/Resulting Company viz., M/s. ibn 18 Broadcast Ltd. are not mentioned in the Scheme. Since Shareholders and Creditors of the Companies have approved the Scheme of Arrangement as such, it should have been part of the Scheme of Arrangement so that the details of individual assets and liabilities and the values thereof pertaining to "Demerged Undertaking" are known to the Shareholders and Creditors of the Transferor and Transferee-Companies.

That the Deponent further craves leave to submit that Para 9 of Section-D of the Scheme provide for the Accounting Treatment in respect of Scheme of Amalgamation, but there is no mention whether the Petitioner Companies have complied with the Accounting Standard-14 issued by the Institute of Chartered Accountants of India.

It is submitted that the Petitioner Company may be asked to furnish an undertaking that they shall comply with the accounting treatment as prescribed under Accounting Standard-14 i.e., ''Accounting for Amalgamation'' issued by the

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Institute of Chartered Accountants of India.

9. Shri Sambhu Chopra, learned Counsel for the petitioners has filed an affidavit giving details of the assets of the demerged company, which are to be transferred. These details were also furnished before the Regional Director. By a letter dated 12-9-2008, the Joint Director (Inspections) for the Regional Director, Northern Region has communicated to the Official Liquidator that details of assets and liabilities were submitted by the petitioner company in the process of correspondence with the companies. With regard to Accounting Standard-14 it is stated that it is applicable to "Accounting for Amalgamation" by the Institute of Chartered Accountants of India. In the present case the scheme does not provide for amalgamation. Shri Sambhu Chopra has also brought on record the order of the Delhi High Court dated 15-9-2008 confirming the Company Petition No. 201 of 2008 filed by Transferor and Transferee-Company approving the same scheme of arrangement.

10. The scheme provides for strengthening the business and commercial potential and other synergies of consolidated entity. The shareholders and the creditors have considered it fit and proper to consolidate the business under a single entity approved by them. The scheme provides that upon coming into effect of the scheme and in consideration of the demerger of the IBN7 News Undertaking in the Transferee-Company, the Transferee Company shall in accordance with clause 7.1 of the Scheme, issue and allot equity snares at par on a proportionate basis to each member of the demerged company holding equity shares on the specified date in the ratio of 24.23:100, and that in consideration of the merger of the Transferor-Company in Transferee-Company, the Transferee-Company shall without any further payment, issue and allot equity shares at par on proportionate basis to each member of the Transferor-Company holding equity shares on the specified date in the ratio of 1662.76:100. The scheme has been approved by the shareholders and creditors of the petitioner company and also by the shareholders and creditors of the Transferor and Transferee-Company and has been approved so far as Transferor and Transferee-Company are concerned by the Delhi High Court. The Court as such is not required to go into the merits or demerits of the scheme. It is sufficient to state here that scheme does not violate any of the provisions of law and is not in violation of the public interest or the interest of the shareholders or creditors of the company. With regard to Accounting Standard-14 a statement was given in Delhi High Court that since the Transferor-Company will merge into Transferee-Company, the Accounting Standard-14 will be followed. In the present case there is no amalgamation but demerger of the business of the petitioner company with the Transferee-Company.

11. No objection has been filed to the scheme of demerger. The company petition is allowed. The scheme so far as it provides for demerger of the demerged company within the jurisdiction of this Court, is sanctioned with 1-10-2007 as appointed date. The effective date will be the date on which the order of this

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Court will be filed in the office of the Registrar of the Companies. The office will draw formal order within four weeks to be filed with the Registrar of Companies within two weeks, thereafter.

12. List of assets and liabilities of the demerged company will be made part of the scheme.

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