

(2006) 08 AHC CK 0030
In the Allahabad High Court
In Re: Jaypee Greens Ltd.

Date of Decision : 08-08-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 391, 394, 394A

Citation : (2006) 134 CompCas 542 : (2007) 74 SCL 118

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—The company petition seeks to confirm the scheme of amalgamation, under Rule 79 of the Companies (Court) Rules, 1959, of Jaypee Greens Limited, the transferor company with Jaiprakash Associates Limited, the transferee company. The full description of the companies is given in the array of parties.

2. A company application No. 10 of 2006 was filed on April 19, 2006, proposing a scheme of amalgamation annexing therewith the board resolutions of both the companies. By order dated April 19, 2006, the transferee company was directed to convene separate meetings of equity shareholders and creditors, and the transferor company to convene the meeting of its creditors to consider the proposed scheme of amalgamation. By the same order dated April 19, 2006, the meetings of the preference and equity shareholders of the transferor company were dispensed with on its application annexing therewith the affidavits of consent of each of the shareholders of the company to the proposed scheme.

3. An application filed by a person claiming to be the workman on May 24, 2006, was rejected on May 26, 2006.

4. Jaypee Greens Ltd., the transferor company incorporated on November 15, 1995, has an issued, subscribed and paid up share capital of Rs. 77,05,15,400 (including redeemable preference shares) out of authorised share capital of Rs. 8,000 lakhs. It is engaged in hospitality and real estate business with assets of Rs. 748.95 lakhs. Jaiprakash Associates Ltd., the transferee company was

incorporated on November 15, 1995. It has an issued, subscribed share capital of Rs. 1,76,21,69,810 out of the authorized equity capital of Rs. 98,000 lakhs and is engaged in the business of civil engineering and development, manufacture and marketing of cement and hospitality with assets of Rs. 4,92,170 lakhs. The scheme proposes to pool in resources, synergies the activities for effective management and growth. The proposed share exchange ratio is one equity share of the transferee company for two equity shares of the transferor company.

5. The chairmen appointed for the meetings have submitted their report. The notices were published in daily newspapers The Times of India (English) published from Delhi and Mumbai. The Economic Times (English) published from Delhi and Mumbai and Dainik Hagan (Hindi) published from Delhi and NOIDA, and the notices were sent to each of the equity shareholders and creditors of the transferee company and creditors of the transferor company.

6. Shri S. D. Singh, chairman for the meeting of the equity shareholders of Jaiprakash Associates Limited, the transferee company has filed his report dated June 6, 2006, with the result of the meeting supported by his affidavit dated June 6, 2006. He has verified that the meeting of the equity shareholders of the transferee company was duly held at the time and place as directed by this Court vide order dated April 19, 2006. He has reported that the meeting was attended in person or by proxy by 558 shareholders, in the aggregate holding 8,33,23,315 equity shares of the paid up value of Rs. 83,32,33,150 thus representing 43.47 per cent, of the total paid up equity capital of Rs. 191,69,94,760. He has further reported that the scheme of amalgamation was approved without any modification by the majority of the equity shareholders present and voting in number and by 99.12 per cent, in terms of value.

7. Shri Vivek Chaudhary, chairman for the meeting of the creditors of Jaiprakash Associates Limited., the transferee company has filed his report dated June 6, 2006, about the result of the meeting, supported by his affidavit dated June 6, 2006. He has verified that the meeting of the creditors of the transferee company was duly held at the time and place as directed by this Court vide order dated April 19, 2006. The said meeting was attended in person or by proxy by 663 creditors, in the aggregate representing the debt of Rs. 2782,37,37,983.24 thus representing 53.92 per cent, of the total debts of Rs. 5160,09,04,266.79 owed by the transferee company. He has reported that the scheme of amalgamation was approved without any modification by the majority of the creditors present and voting in number and by 100 per cent. in terms of value.

8. Shri Ajay Bhanot, chairman for the meeting of the creditors of Jaypee Greens Limited., the transferor company has filed his report dated June 6, 2006, about the result of the meeting supported by his affidavit dated June 6, 2006. He has verified that the meeting of the creditors of the transferor company was duly held at the time and place as directed by this Court vide order dated April 19, 2006. The said meeting was attended in person or by proxy by 256 creditors, in the aggregate representing the debt of Rs. 138,37,94,711.88 thus representing

40.79 per cent. of the total debts of Rs. 339,22,26,966.65 owed by the transferor company. He has reported that the scheme of amalgamation was approved without any modification by the majority of the creditors present and voting in number and by 99.98 per cent. in terms of value.

9. The court is satisfied that the meetings were convened in accordance with the law, and were attended by the requisite quorum fixed by the court and further that the resolutions were passed by the majority of equity shareholders and creditors of the transferee company and the creditors of the transferor company.

10. The confirmation petition was directed to be advertised in same newspapers. An affidavit of service is filed by the assistant general manager and company secretary of the transferor company stating that the petition has been duly published on July 8, 2006, in all the three newspapers and that the copies were sent to the official liquidator U.P. at Allahabad and the Regional Director, Company Affairs, Northern Region, NOIDA.

11. Shri Raghu Nayyar, who had appeared in person on July 4, 2006, and made certain objections to the proposed scheme of amalgamation, had not appeared to press his objections. An opportunity was given to him to make his submissions on the date when the confirmation petition comes up for hearing. Shri D.S. Tiwari, appears for him and states that Shri Raghu Nayyar has communicated him in person that he is not pressing his objections. In the circumstances, the objections of Shri Raghu Nayyar have not been taken into consideration.

12. The official liquidator has filed his Report No. 201 of 2006, dated August 2, 2006. In para. 19 of the report, he has verified that the affairs of the transferor company have not been conducted in the manner prejudicial to the interest of its members or to public interest and this Court may consider the petition for merger u/s 391/394 of the Companies Act, 1956, on the merits of the case.

13. The official liquidator has further stated that he is not submitting any report in respect of the objections of Shri Raghu Nayyar, in view of the letter dated July 26, 2006, received from him along with a copy of the affidavit dated July 27, 2006, informing that he has received requisite clarification from the transferor company and hence he does not want to pursue the objections.

14. Shri Rakesh Chandra, Regional Director, Northern Region, Ministry of Company Affairs, NOIDA, has filed his representation/affidavit dated August 1, 2006, u/s 394A of the Companies Act, 1956. In para. 4.1 of the said affidavit, he has raised objection about para 3.12(ii) of the scheme which provides that the authorised share capital of the transferor company shall stand transferred to and combined with the authorised share capital of the transferee company. His objection is that the authorised share capital of a company can be increased only after following the procedure prescribed under the relevant provisions of the Companies Act, 1956, and payment of requisite fees to the Registrar of Companies and stamp duty to the State Government.

15. Shri R.P. Agarwal submits that the Regional Director, Company Affairs has taken identical objections, which he has raised in Company Petition No. 26 of 2003, in the matter of Jaypee Cement Limited., in which the amalgamation was proposed and confirmed between Jaiprakash Industries Ltd. with Jaypee Cement Ltd. The court had overruled the objections by judgment reported in In Re: Jaypee Cement Limited, the relevant extract is as follows (page 874):

The second objection of the Central Government is with regard to another condition mentioned in para. 4.03(ii) of the scheme which provides that upon the merger authorised share capital of JPI shall stand combined with the authorised share capital of JPC. According to the Regional Director, this amounts to increase of the authorised capital of JPC, which cannot be done without paying the requisite fee/stamp duty to the Government. In reply to this objection, it was submitted on behalf of JPC that the fee/stamp duty is nominal and has a maximum limit which the JPC is prepared to pay. But, it was submitted that the requisite fee has already been paid on the authorised capital of JPI and merely because of its merger with JPC, there is no reason why the same fee should be paid again by JPC on the same authorised capital.

The submission has force and no good reason has been shown why the two merged companies should be required to pay duty again on the same authorised capital on which duty has already been paid by the JPI. Regarding the increase of authorised share capital by merger of the authorised capitals of the two companies, an order can be passed u/s 391 of the Companies Act itself. This has been done by the Bombay High Court in the case of Vasant Investment Corporation Ltd. v. Official Liquidator, Colaba Land and ill Co. Ltd. [1981] 51 CompCas 20 . The relevant part of the judgment is reproduced below:

The whole purpose of Section 391 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 articles of association for functioning as a reconstituted company under the scheme (vide Maneckchowk and Ahmedabad Manufacturing Co. Ltd. In re [1970] 40 CompCas 819 (Guj). The company is, therefore, not required to make a separate application under the Companies Act for alteration of its memorandum of association to show the new share capital. Such an alteration can be sanctioned under the scheme itself.

A similar view has been taken by the Bombay High Court in the case of PMP Auto Industries. Ltd., In re [1994] 80 CompCas 289 and by the Gujarat High Court in the case of Maneckchowk and Ahmedabad Manufacturing Co. Ltd. In re [1970] 40 CompCas 819 (Guj).

Therefore, both the objections of the Regional Director, Northern Region, Department of Company Affairs, Kanpur, are overruled.

16. Similar view has been taken by this Court in a number of cases, namely in Company Petition No. 17 of 2005 dated August 22, 2005, in the matter of

Juggilal Kamlapat Holding Ltd., In re [2006] 132 CompCas 237 and Company Petition No. 22 of 2005 vide judgment dated October 18, 2005, in Surya Commercial Enterprises Ltd., In re.

17. In view of the aforesaid legal position the objections of the Regional Director are not tenable. It is found that combined authorized capital of the amalgamated company does not exceed the authorized capital of the two companies, calling for any further fees or stamp duty or to follow separate procedure for such merger of authorized share capital.

18. No other person has filed any objections to the proposed scheme of amalgamation. I do not find that the scheme is against the interest of the shareholders, creditors, Central Government or against the public interest. The requisite statutory procedures with regard to amalgamation have been followed.

19. The company petition is allowed. The scheme of amalgamation (annexure 1 to the petition) is sanctioned and will come into effect from the appointed day, i.e., April 1, 2005, given in the scheme. The transferor company shall stand dissolved without winding up on filing a certified copy of the order of this Court with the Registrar of Companies, Kanpur. The office shall issue formal order in the prescribed form within two weeks.