

(2008) 07 AHC CK 0064
In the Allahabad High Court
In Re: J.K. Cement Ltd.

Date of Decision : 11-07-2008

Acts Referred:

COMPANIES ACT, 1956 — Section 391, 393

Citation : (2009) 90 SCL 151

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—Heard Shri R.P. Agrawal, learned Counsel appearing for the applicant companies.

2. A joint application u/s 391(1) read with Section 393 of the Companies Act has been filed by (1) J.K. Cement Limited (2) Jaykaycem Limited seeking the following reliefs-

1. to call the meetings of the equity shareholders and the creditors of the transferee-company to be held at Merchants Chamber of U.P., 14/76, Civil Lines, Kanpur, on such date and time as this Hon"ble Court may deem fit and proper;
2. to dispense with the meeting of shareholders of the transferor-company;
3. to appoint chairman for the meetings to be so held;
4. to fix the quorum for the meetings to be so held and the procedure to be followed at such meetings including voting by proxy;
5. to specify the time within which the chairman of the meetings shall report to this Hon"ble Court the result of the meetings;
6. to direct for publication of notices of the meetings in the newspapers as proposed in para 21 or in such other newspapers as this Hon"ble Court may deem fit;
7. to direct dispatch of notices by post under UPC;

and/or pass such other and further orders or directions in the matter as this Hon"ble Court may deem fit and proper in the circumstances of the case.

3. It may be mentioned here that under the provisions of the Companies Act, a scheme of amalgamation has to be done under the supervision of this Court. Section 391 of the Act specifically providing for convening a meeting of shareholders and creditors of companies for considering the scheme of amalgamation in the presence of an independent chairman, to be nominated by the Court. It has been stated that entire paid-up share capital of transferor-company (Jaykaycem Limited) is owned by the transferee-company J.K Cement Limited) and the fact that the board of directors have already approved the proposed scheme of amalgamation, no meeting of shareholders of the transferor-company is required to be convened. In this view of the matter, the meeting of the shareholders of the transferor-company is dispensed with for the time being, subject to any objection by anyone in future.

4. Taking into consideration the submissions made by Shri R.P. Agrawal, advocate, it is directed hereby that a meeting of (1) Equity Shareholders of J.K. Cement Ltd. (transferee-company), (2) of the creditors of transferee-company and (3) the creditors of Jaykaycem Limited (transferor-company) be held at Merchants Chamber of U.P., 14/76, Civil Lines, Kanpur. All these meetings shall be held on 6-9-2008 (Saturday). The meeting of the creditors of Jaykaycem Limited shall take place at 11-00 A.M. and of the J.K. Cement creditors shall take place at 12-00 noon. The meeting of J.K. Cement shareholders shall take place at 1-00 P.M.

5. Shri Rajiv Chaddha (Mob. No. 9935214193), Chamber No. 84 and Shri Chandan Kumar (Mob. No. 9415443327), Chamber No. 163 are appointed as chairman and alternate chairman of the meeting of the creditors of Jaykaycem to be held at 11-00 A.M.

6. Shri Rishi Raj Kapoor (Mob. No. 9415310286) and Shri Mahesh Narain Singh (Mob. No. 9415235733), Chamber No. 41 are appointed as Chairman and alternate chairman of the meeting of the creditors of J.K. Cement which shall take place at 12-00 noon.

7. Shri Nikhil Agarwal (Mob. No. 9415009142) and Shri R.K. Garg (Mob. No. 9935284240), Chamber No. 84 are appointed as chairman and alternate chairman of the meeting of the shareholders of the J.K. Cement which shall take place at 1-00 P.M.

8. The notices of the meeting shall also be published in daily English newspaper (1) Economic Times published from Delhi, (2) times of India published from Lucknow and (3) Hindi daily newspaper Amar Ujala published from Kanpur, giving full details of the meetings, place and time of convening meetings.

9. Each chairman and alternate chairman of the creditors meeting shall be paid Rs. 25,000. They shall be paid Rs. 25,000 for each meeting with an additional amount 20 per cent of their fees as incidental expenses. The chairman and alternate chairman of the shareholders meeting shall be paid Rs. 40,000 and Rs. 30,000 for the meeting with an additional amount of 20 per cent of their fees as

incidental expenses. The applicants shall make their travel arrangements by taxi and stay at a proper guest house or hotel on their request.

10. 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 amalgamation 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 company.

11. The Court, however, will have discretion to record satisfaction with regard to the majority of shareholders of the company approving the scheme of arrangement.

12. The quorum of the meetings shall be such as provided in the Articles of Association. The same quorum shall be applicable for creditors' meeting as well.

13. 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 concerned company at its registered office not later than 48 hours before the meetings.

14. The chairmen shall report to the Court the result of the meetings on or before 15-9-2008. The report shall be verified by the affidavit of chairman.