

(2008) 09 AHC CK 0071
In the Allahabad High Court
In Re: Kothari Products Ltd.

Date of Decision : 16-09-2008

Acts Referred:

Companies Act, 1956 — Section 391, 394

Citation : (2009) 150 CompCas 823 : (2009) 91 SCL 104

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Shri R.P. Agarwal, learned Counsel for petitioner companies. The Official Liquidator, U.P. as well as Regional Director, Northern Region, Ministry of Corporate Affairs, Noida have filed their reports.

2. These two Company Petitions, filed for confirming the "Scheme of Amalgamation" separately by the demerged and resulting companies under Sections 391 and 394 of the Companies Act, 1956, are listed for hearing after advertisements in the same newspapers in which the advertisements convening the meetings were carried out.

3. The Company Application No. 1 was filed on 15-1-2008 by Kothari Products Limited a Company incorporated under the Companies Act, 1956 having its registered office at "Pan Parag House" 24/19, The Mall, Kanpur-208 001, within the jurisdiction of this Court (hereinafter called as the demerged company), engaged in the business of production and sale of supari, tobacco pan masala, gutkha and beverages. It also has investments in shares and securities including real estate. The Company Application No. (2) of 2008 was also filed on same day, i.e., on 15-1-2008 by "Pan Parag India Limited", a Company incorporated under the Companies Act, 1956 having its registered office at "Pan Parag House" 24/19, The Mall, Kanpur 208 001, (hereinafter called as the resulting company). By a "Scheme of arrangement" the Kothari Products Limited proposes to demerge the Pan Masala Division, Beverages Division and Trading Division into "Pan Parag India Limited".

4. On 21-1-2008, the Court called for meetings of the shareholders and creditors of the demerged company to be convened at the Conference Hall of Hotel Little Chef, Civil Lines, Kanpur on 15-3-2008. The order provided:

Heard Sri R.P. Agarwal, learned Counsel for the applicant. This is an application under Sections 391 and 394 of the Companies Act for a direction to convene the meetings of equity shareholders and creditors of the applicant company for approving the proposed scheme of arrangement between the applicant company and its creditors, shareholders and promoters. Copy of the proposed scheme of arrangement in Annexure-1. To the application, which has been approved by Board of Directors of the applicant-company on 1-9-2007. Requisite information about the company and its affairs has been supplied in the application as well as scheme of arrangement in between the applicant Company and its creditors and shareholders. Let the meeting of the shareholders and creditors of the applicant company as proposed be held at 11.00 AM and 1.00 PM respectively at Conference Hall of Hotel Little Chef, Civil Lines, Kanpur on 15-3-2008. The notice shall be sent to the shareholders and creditors individually under certificate of posting and closing therewith an explanatory statement and form of proxy. The notices shall also be published in daily newspaper Times of India (English) and Dainik Jagaran (Hindi) published from Kanpur giving full details of the meetings, place and time of convening meetings. Sri Rohit Agarwal, and Sri Diptimar Singh (Mobile No. 9935214676) Advocates are appointed as Chairman and alternate Chairman of the meeting of the shareholders and Sri Vivek Prasad Mathur (Mobile No. 9415217849) and Sri Praveen Kumar (Mobile No. 9839387003) Advocates are appointed as Chairman and alternate Chairman of the meeting of the creditors. They shall be paid Rs. 30,000 for Chairman and Rs. 15,000 for alternate Chairman for the meeting with an additional amount of 20 per cent of their fees as incidental expenses. The applicant company shall make their travel arrangements by A.C. Ist Class and 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/person at least 21 clear days before the date appointed for the meetings, along with the scheme 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 creditors 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 applicants company. The quorum of the meetings, shall be such as provided in the articles of association. The same quorum shall be applicable for creditor's meeting as well. The Court, however, will have discretion to record satisfaction with regard to the majority of shareholders and creditors of the transferor and transferee company approving

the "Scheme of Arrangement". 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 authorised 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 24-3-2008. The report shall be verified by the affidavits of Chairman. List the matter on 28-3-2008.

Dated 21-1-2008.

5. By a separate order passed in Company Application No. (2) of 2008 an exemption was sought for holding the meeting on the ground that there is no creditors except Kothari Products Limited which itself is an applicant company and that all the seven shareholders have given their affidavits approving "Scheme of Amalgamation". The Court had, by an order of the same date dated 21-1-2008, exempted the meeting of the shareholders of the resulting company. The order reads as follows:

This petition is for the approving of the scheme of arrangement between Kothari Products Limited and Pan Parag India Limited. An exemption has also been sought for holding the meeting on the ground that there is no creditors except Kothari Products Limited which itself is an applicant and all the seven shareholders have given their affidavits approving the scheme of arrangement. The copy of the affidavits in original is as Annexure-9 to the petition. The Board of Director in its meeting held on 25-8-2007 at its registered office "Pan Parag House", 24/19, The Mall, Kanpur at 4.30 P.M. has resolved and approved the scheme of arrangement between Kothari Products Limited and Pan Parag India Limited for Demerger of Pan Masala Division Beverages Division & Trading Division of Kothari Products Limited into Pan Parag India Limited as per the provisions of Sections 391 to 394 of the Companies Act, 1956 upon the terms and conditions mentioned in the draft scheme of arrangement. The Board resolution is at page 40, Annexure-2 to the petition. The scheme of arrangement is as Annexure-1 to the petition. The resolution passed by the Board of Director of Kothari Products Limited is annexed as Annexure-2 to the Company Application No. 2 of 2008 filed by Kothari products Limited. In view of the above, since Kothari Products Limited is the only creditor who is applicant itself and all the seven shareholders filed the affidavits approving the scheme of arrangement, there is no need of holding the meeting. The holding of meeting is, therefore, exempted and this petition should be treated as company petition. List on 28-3-2008 for orders.

6. The advertisements for holding meetings of the demerged company were carried out and that the meetings were held. Shri Rohit Agarwal, advocate, appointed as Chairman of the shareholders meetings, has filed his affidavit on 20-3-2008, stating therein that the meeting was attended by 46 shareholders in person and by 15 shareholders by proxy, representing in the aggregate

59,88,932 Equity Shares of the aggregate paid up value of Rs. 5,98,89,320 out of the total paid-up equity capital of Rs. 6,63,19,700 divided into 66,31,970 equity shares of Rs. 10 each. The meeting was thus attended by the shareholders representing 90.30 per cent of the total paid-up equity share capital. The shareholders unanimously resolved to approve the "Scheme of Arrangement".

7. Shri Vivek Prasad Mathur, appointed as Chairman of the creditors meeting of the demerged company, has also filed his affidavit on the same day on 20-3-2008 stating in para 3 that 63 creditors in person and 19 creditors by proxy, representing in the aggregate the dues of Rs. 4,88,83,140 out of the total outstanding dues of Rs. 8,75,41,191 as on 31-1-2008 and they were representing 55.84 per cent of the total outstanding dues, attended the meeting and unanimously resolved to approve the "Scheme of Arrangement".

8. It is reported that the quorum of the meeting was complete and that resolutions were put to vote and were carried out unanimously by the shareholders and creditors.

9. Shri Dhan Raj, Regional Director, Northern Region, Ministry of Corporate Affairs, Noida has filed his affidavit through the Official Liquidator. Shri V.K. Kain, Company Prosecutor is appearing on behalf of the Official Liquidator. In the affidavit of the Regional Director dated 2-5-2008, it is stated in paragraph 4 that individual assets and liabilities and the values thereof pertaining to "Pan Masala Division, Beverages Division & Trading Division" of the demerged company M/s. Kothari Products Ltd., is not mentioned in the scheme. The individual assets and liabilities and the values were not known to the shareholders and creditors. These however should be placed on record.

10. Shri R.P. Agarwal, appearing for the applicants-companies, has supplied assets and valuation to the Regional Director and that an affidavit was filed stating that these assets have been furnished and are known to the shareholders and creditors of both the demerged and resulting companies. The assets and liabilities of Kothari Products Limited demerged company, which are proposed to be transferred has been placed on record by the affidavits of Shri Raj Kumar Gupta, Company Secretary, Kothari Products Limited. This list shall be made part of the "Scheme of Arrangement".

11. The advertisement for confirming the scheme has been carried out in the same newspapers in terms of the orders of the Court, which have been placed on record by way of affidavit of service.

12. There is only one letter received by the Court from Shri Kishorechandra Vadilal Parikh, who claims to have 760 shareholders in Kothari Products Limited, He has raised objections in his letter dated 12-3-2008 addressed to the Court-stating that the Pan Parag business, proposed to be transferred to Pan Parag Limited by issuing a non-convertible preference share to be redeemed within 3 years, has assets of approximately Rupees Six Hundred Crores to be transferred

in 60 crores value preference shares i.e., only papers to a company of Rs. 5 crores paid up capital. The promoters of Pan Parag Ltd. are the main promoters of Kothari Products Ltd. According to him all the money will go to the promoters and minority shareholders will be given preference shares papers to be redeemed within three years. He further proposed reasonable terms such as the assets transferred to Pan Parag Ltd. be valued by independent valuers; the valuation of Pan Parag Brand may be ascertained. The value of future earnings capacity may be taken into consideration looking into the best performance and the Pan Parag Building, if valued properly will run into several crores and other immovable properties be proposed to be transferred to be made known to minority shareholders.

13. No one has appeared on behalf of Shri Kishorechandra Vadilal Parikh. He holds only 760 shares out of total paid up 66,31,970 equity shares of Rs. 10 each of the value of Rs. 6,63,19,700. His objections do not affect the validity and effectiveness of the scheme which has been approved by overwhelming majority. The scheme has been approved by 90.30 per cent majority of the shareholders.

14. The objections of the Regional Director have been removed. The list of assets and liabilities have been placed on record.

15. Since there is no proposal of amalgamation of the companies and as such Accounting Standard-14 i.e. "Accounting for Amalgamation" issued by the Institute of Chartered Accountants of India is not required to be followed. There is no objection to the scheme by any person. The scheme has been approved by the shareholders and creditors and that the Scheme does not violate any of the provisions of law, or public interest or the interest of the shareholders or the creditors.

16. Both the Company Petition are allowed. The Scheme of Arrangement proposing demerger of the assets of "Kothari Products Ltd." (demerged company) in "Pan Parag India Ltd." (resulting company) is confirmed and will come into effect from the appointed date given in the scheme. The office will issue formal order in the prescribed form within three weeks from today.