
(2011) 06 MAD CK 0025

In the Madras High Court

Case No : C.P. No's. 68 and 69 of 2011

In Re: Lifesize Communications India Private Limited and Logitech Engineering and Designs India Private Limited

Date of Decision : 15-06-2011

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2011) 105 CLA 133 : (2011) 166 CompCas 43 : (2011) 110 SCL 66

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : T.K. Bhaskar, for the Appellant; R. Sathiamoorthy, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Vinod K. Sharma, J.—The Petitioner, M/s. Life size Communications India Private Limited, in C.P. No. 68 of 2011 is the Transferor

Company and the Petitioner, Logitech Engineering & Designs India Private Limited in C.P. No. 69 of 2011, is the Transferee Company. These

Company Petitions are filed by the Petitioner companies to sanction Scheme of amalgamation, under Sections 391 to 394 of the Companies Act, 1956.

2. M/s. Life size Communications India Private Limited was incorporated on 18.08.2006 in the name and style of ""Life size Communications India

Private Limited"", under the provisions of the Companies Act with the Registrar of Companies, Coimbatore. The registered office of the transferor

company was, thereafter, shifted to Plot No. TS140, Block 2 & 9, Elnet Software City, Rajiv Gandhi Salai, Taramani, Chennai, with effect from

07.10.2010, vide resolution dated 22.12.2010.

3. The Board of Directors of the transferor and transferee companies approved and adopted the scheme of amalgamation to transfer and merge

the transferor company with transferee company. In C.A. No. 248 of 2011, this Court was pleased to pass an order, dispensing with the

convening, holding and conducting of the meeting of the equity shareholders of the Petitioner transferor company with liberty to file a company

petition for sanctioning scheme of amalgamation .

4. There are no secured creditors for the transferor company and a certificate to this effect by the Chartered Accountant was filed in C.A. No.

248 of 2011. It is also reported that no investigations are pending against the transferor company under Sections 235 to 251 or any other

provisions of the Companies Act, 1956. The unsecured creditors of the transferor company are in any way prejudiced by the scheme of

amalgamation.

5. On notice u/s 394A of the Companies Act, the Regional Director, Ministry of Corporate Affairs, Chennai, on behalf of the Central Government,

has filed an affidavit to the effect that it has no objection to the scheme, except the following:

4. I further submit that as per Part IV, Para 3.10 of the petition that upon the scheme becoming effective the authorized share capital of the

transferor companies shall be added to the authorized capital of the transferee company and the filing fee already paid by the Transferor companies

on their authorized share capital, shall be deemed to have been so paid by the Transferee Company on the combined Authorized share capital. The

above proposal is not acceptable and the transferee company is required to comply with the requirements of Section 97 of the Act by filing Form

No. 5 by remitting the required Registration fees for the increased Authorized Capital.

6. This objection deserves to be rejected, in view of the law, laid down by the Hon"ble Division Bench of this Court, in the case of The Regional

Director, Ministry of Company Affairs and The Registrar of Companies Vs. Cavin Plastics and Chemicals (P) Ltd., , wherein, this Court held as

under:

Held, dismissing the appeal, that the issue was not whether the fee which was already paid by the transferor company would automatically be

transferred to the transferee company. But, what was intended by Section 391 was to reconstitute the company without the company being

required to make a number of applications under the Companies Act for various alternations which might be required in its memorandum and the articles of association.

7. In the report filed by the Official Liquidator, it has been pointed out that there is no material to come to a conclusion that the affairs of the transferor company have been conducted in a manner prejudicial to the interests of its members or to public interest or there were any transactions to attract the provisions of Sections 542 and 543 of the Companies Act.

8. In C.A. No. 249 of 2011, this Court was pleased to pass an order dispensing with the convening, holding and conducting of the meeting of the equity shareholders and permitted the transferee company to file a company for sanctioning the scheme of amalgamation. There are no investigations pending against the transferee company under Sections 235 to 251 or any other provisions of the Companies Act, 1956.

9. For the reasons stated above, the company petitions are ordered, as the scheme of amalgamation will be for the benefit and interest of equity shareholders of the transferor and transferee companies.