

(2005) 07 AHC CK 0201
In the Allahabad High Court

**In Re: Mirza Tanners Limited
In Re: Leather Trends Private Limited**

Date of Decision : 11-07-2005

Acts Referred:

Companies Act, 1956 — Section 391, 393, 394

Citation : (2005) 07 AHC CK 0201

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Judgement

S.P. Mehrotra, J.—The aforesaid Company Application by summons as provided in Rule 67 of the Companies (Court) Rules, 1959 has been filed under Sections 391/394 of the Companies Act, 1956 jointly by Mirza Tanners Limited, having its Registered Office at 14/6, Civil Lines, Kanpur-208001 (hereinafter also referred to as "the Transferee Company") and Leather Trends Private Limited, having its Registered Office at 14/6, Civil Lines, Kanpur-208001 (hereinafter also referred to as "the Transferor Company"). The said two Companies have hereinafter been jointly also referred to as "the Applicants-Companies".

2. It appears that a Scheme of Amalgamation is proposed for the amalgamation of the Transferor Company (Leather Trends Private Limited) with the Transferee Company (Mirza Tanners Limited.).

3. By the order dated 11th March, 2005 passed on the aforesaid Company Application, the following meetings were directed to be held in respect of the Transferee Company (Mirza Tanners Limited) on 7th May, 2005 at the time and place indicated in the said order dated 11th March, 2005:

1. Meeting of the Shareholders/Members of the Transferee Company.
2. Meeting of the Secured Creditors of the Transferee Company.
3. Meeting of the Unsecured Creditors of the Transferee Company.

Sri Pankaj Mittal, Advocate was appointed as the Chairman of the aforementioned meetings in respect of the Transferee Company.

Sri Pankaj Mittal has filed on 21st April, 2005, an affidavit, sworn on 21st April

2005, designated as "Affidavit of Service", as per the provisions of Rule 76 of the Companies (Court) Rules, 1959. The said Affidavit of Service has been numbered as No. 91259 of 2005.

4. The said Affidavit of Service filed by Sri Pankaj Mittal contains averments, inter-alia, reporting compliance of the directions given in the said order dated 11th March, 2005 regarding publication of the separate advertisements convening the aforesaid meetings in respect of the Transferee Company in the newspapers mentioned in the said order dated 11th March, 2005, as also regarding dispatch of notices convening the aforesaid meetings along with the relevant documents by pre-paid letter post under Certificate of Posting addressed to each of the Share-holders/Members of the Transferee Company, each of the Secured Creditors of the Transferee Company and each of the Unsecured Creditors of the Transferee Company, as the case may be.

5. Along with the Affidavit of Service, relevant extracts of the newspapers Hindustan Times dated 8th April 2005, Economic Times dated 8th April, 2005 and Dainik Jagran dated 8th April, 2005 have been filed as Annexures 1, 2 and 3, respectively to the Affidavit of Service.

6. Further, a copy of the notice convening the aforesaid meeting of the Equity Shareholders/Members of the Transferee Company along with the Explanatory Statement u/s 393 of the Companies Act, 1956 and a form of Proxy despatched to each Share-holder/Member of the Transferee Company, has been filed as Annexure 4 to the said Affidavit of Service.

7. Further, a copy of the notice convening the aforesaid meeting of the Secured Creditors of Transferee Company along with the Explanatory Statement u/s 393 of the Companies Act, 1956 and a form of Proxy despatched to each Secured Creditor of the Transferee Company, has been filed as Annexure 5 to the said Affidavit of Service.

8. Again, a copy of the notice convening the aforesaid meeting of the Unsecured Creditors of the Transferee Company along with the Explanatory Statement u/s 393 of the Companies Act, 1956 and a form of Proxy despatched to each Unsecured Creditor of the Transferee Company, has been filed as Annexure 6 to the said Affidavit of Service.

9. It is, inter-alia, averred in paragraph 6 of the Affidavit of Service that the Original Certificates of Posting evidencing dispatch of the aforesaid notices to the respective Shareholders/Members, Secured Creditors and Unsecured Creditors of the Transferee Company are left in the custody of the Transferee Company with undertaking to produce the same before this Court, if required, at any stage of the proceedings in the case.

10. Original acknowledgment/undertaking dated 19th April, 2005, stated to be signed by Sri S.K. Bajpai, Company Secretary of the Transferee Company, has been filed as Annexure 7 to the said Affidavit of Service.

11. During the course of arguments, Sri R.P. Agarwal, learned Counsel for the Applicants-Companies has stated that the aforesaid original Certificates of Posting as well as other documents will be filed before the Court along with an affidavit before the date fixed for hearing on the Company Petition referred to hereinafter.

12. It further appears that pursuant to the directions given in the said order dated 11th March, 2005, the aforementioned meetings in respect of the Shareholders/Members, Secured Creditors and the Unsecured Creditors of the Transferee Company were held.

Sri Pankaj Mittal, Chairman of the aforementioned meetings, has filed on 17th May, 2005, an Affidavit, sworn on 17th May, 2005, as per the provisions of Rule 78 of the Companies (Court) Rules, 1959.

13. Along with the said Affidavit, Sri Pankaj Mittal, Chairman of the aforementioned meeting of the Equity Shareholders/Members of the Transferee Company has filed his report dated 10th May, 2005 in respect of the said meeting of the Equity Share-holders/Members of the Transferee Company, as Annexure 1 to the said Affidavit.

14. Along with the said report dated 10th May, 2005 in respect of the aforementioned meeting of the Equity Shareholders/Members of the Transferee Company, a statement containing the names of the Equity Shareholders/Members of the Transferee Company who voted in favour of the proposed Scheme of Amalgamation at the said meeting, has been filed as Annexure- "A" to the said report dated 10th May, 2005.

15. Further, minutes of the said meeting of the Equity Shareholders/Members of the Transferee Company has been filed as Annexure "B" to the said report dated 10th May 2005.

16. Further, along with the said Affidavit of Sri Pankaj Mittal, Chairman of the aforementioned meeting of the Secured Creditors of the Transferee Company, he has filed his report dated 10th May, 2005 in respect of the said meeting of the Secured Creditors of the Transferee Company as Annexure 2 to the said Affidavit.

17. Along with the said report dated 10th May 2005, minutes of the said meeting of the Secured Creditors of the Transferee Company has been filed as Annexure "A" to the said report dated 10th May 2005.

18. Again, along with the said Affidavit of Sri Pankaj Mittal, Chairman of the aforesaid meeting in respect of the Unsecured Creditors of the Transferee Company, he has filed his report dated 10th May, 2005 in respect of the said meeting of the Unsecured Creditors of the Transferee Company as Annexure 3 to the said Affidavit.

19. Along with the said report dated 10th May 2005, a statement containing the names of the Unsecured Creditors of the Transferee Company who voted in

favour of the proposed Scheme of Amalgamation at the said meeting of the Unsecured Creditors of the Transferee Company has been filed as Annexure "A" to the said report dated 10th May, 2005.

Minutes of the said meeting of the Unsecured Creditors of the Transferee Company has been filed as Annexure "B" to the said report dated 10th May, 2005.

20. Further, a copy of the proposed Scheme of Amalgamation, which is stated to have been approved by the Shareholders/Members, the Secured Creditors and the Unsecured Creditors of the Transferee Company at their aforesaid respective meetings, has been filed as Annexure 4 to the said Affidavit of Sri Pankaj Mittal, Chairman of the aforesaid meetings held in respect of the Transferee Company.

21. During the course of arguments of Sri R.P. Agarwal, learned Counsel for the Applicants-Companies has stated that various documents concerning the aforesaid three meetings including Ballot papers, Proxies and Attendance record will be filed before the Court along with an Affidavit before the date for hearing fixed on the Company Petition referred to hereinafter.

22. Coming now to the Transferor Company (Leather Trends Private Limited), the said order dated 11th March 2005, inter-alia, directed for holding the following meetings in respect of the Transferor Company on 14th May, 2005 at the time and place mentioned in the said order dated 11th March, 2005:

1. Meeting of the Shareholders/Members of the Transferor Company.
2. Meeting of the Secured Creditors of the Transferor Company.
3. Meeting of the Unsecured Creditors of the Transferor Company.

Sri S.K. Kakkar, Advocate was appointed as Chairman for the purposes of conducting the aforementioned meetings in respect of the Transferor Company.

Sri S.K. Kakkar, Chairman of the aforesaid meetings in respect of the Transferor Company has filed an Affidavit, sworn on 21st April, 2005, designated as "Affidavit of Service", as per the provisions of Rule 76 of the Companies (Court) Rules, 1959. The said Affidavit of Service has been numbered as No. 91263 of 2005.

23. The said Affidavit of Service, inter-alia, contains averments regarding publication of separate advertisements in the newspapers convening the aforementioned meetings of the Shareholders/Members, the Secured Creditors and the Unsecured Creditors of the Transferor Company, as per the directions given in the said order dated 11th March, 2005, as also regarding dispatch of notices to each of the Shareholders/Members, each of the Secured Creditors and each of the Unsecured Creditors of the Transferor Company by pre-paid letter post under Certificate of Posting along with other documents, as per the directions given in the said order dated 11th March, 2005.

24. Along with the said Affidavit of Service, relevant extracts of the newspapers Hindustan Times dated 9th April 2005, Economic Times dated 9th April 2005 and Dainik Jagran dated 9th April, 2005 have been filed as Annexures 1, 2 and 3, respectively to the said Affidavit of Service.

25. Further, a copy of the notice convening the aforementioned meeting in respect of the Equity Shareholders/Members of the Transferor Company along with the Explanatory Statement u/s 393 of the Companies Act, 1956 and a form of Proxy despatched to each Share-holder/Member of the Transferor Company, has been filed as Annexure 4 to the said Affidavit of Service.

26. Again, a copy of the notice convening the aforementioned meeting of the Secured Creditors of the Transferor Company along with the Explanatory Statement u/s 393 of the Companies Act, 1956 and a form of Proxy despatched to each Secured Creditor of the Transferor Company, has been filed as Annexure 5 to the said Affidavit of Service.

27. Further, a copy of the notice convening the aforementioned meeting of the Unsecured Creditors of the Transferor Company along with the Explanatory Statement u/s 393 of the Companies Act, 1956 and a form of Proxy despatched to each Unsecured Creditor of the Transferor Company, has been filed as Annexure 6 to the said Affidavit of Service.

28. It is, inter-alia, averred in paragraph No. 6 of the Affidavit of Service that the Original Certificates of Posting evidencing dispatch of the aforesaid notices to the respective Shareholders/Members, Secured Creditors and Unsecured Creditors of the Transferor Company are left in the custody of the Transferor Company with undertaking to produce the same before the Court, if required, at any stage of the proceedings in the case.

Original acknowledgment/undertaking dated 19th April 2005, stated to be signed by S.K. Bajpai, Authorised Officer of the Transferor Company, has been filed as Annexure 7 to the said Affidavit of Service.

29. During the course of arguments, Sri R.P. Agarwal, learned Counsel for the Applicants/Companies has stated that the aforementioned original Certificates of Posting as well as other documents will be filed before the Court along with an affidavit before the date fixed for hearing on the Company Petition referred to hereinafter.

30. It further appears that the aforementioned meetings of the Shareholders/Members, the Secured Creditors and the Unsecured Creditors of the Transferor Company were held pursuant to the directions given in the said order dated 11th March, 2005.

31. Sri S.K. Kakkar, Chairman of the aforementioned meetings in respect of the Transferor Company has filed on 19th May, 2005 an Affidavit, sworn on 19th May 2005, as per the provisions of Rule 78 of the Companies (Court) Rules, 1959.

32. Along with the said Affidavit, Sri S.K. Kakkar, Chairman of the aforementioned meeting of the Equity Shareholders/Members of the Transferor Company has filed his report dated 14th May, 2005 in respect of the said meeting of the Equity Share-holders/Members of the Transferor Company, as Annexure 1 to the said Affidavit.

33. Along with the said report dated 14th May 2005, a statement containing the names of the Shareholders/Members of the Transferor Company who voted in favour of the proposed Scheme of Amalgamation at the said meeting of the Equity Share-holders/Members of the Transferor Company, has been filed as Annexure "A" to the said report dated 14th May, 2005.

Further, minutes of the said meeting of the Equity Shareholders/Members of the Transferor Company has been filed as Annexure "B" to the said report dated 14th May, 2005.

34. Again, along with the said Affidavit, Sri S.K. Kakkar, Chairman of the aforementioned meeting of the Secured Creditors of the Transferor Company has filed his report dated 14th May, 2005 in respect of the said meeting of the Secured Creditors of the Transferor Company, as Annexure 2 to the said Affidavit.

Along with the said report dated 14th May 2005, minutes of the said meeting of the Secured Creditors of the Transferor Company has been filed as Annexure "A" to the said Report.

35. Further, along with the said Affidavit, Sri S.K. Kakkar, Chairman of the aforementioned meeting of the Unsecured Creditors of the Transferor Company has filed his report dated 14th May 2005 in respect of the said meeting of the Unsecured Creditors of the Transferor Company, as Annexure 3 to the said Affidavit.

36. Along with the said report dated 14th May 2005, a statement containing the names of the Unsecured Creditors who voted in favour of the proposed Scheme of Amalgamation at the said meeting of the Unsecured Creditors of the Transferor Company, has been filed as Annexure "A" to the said report.

37. Again, minutes of the said meeting of the Unsecured Creditors of the Transferor Company has been filed as Annexure "B" to the said report.

Copy of the proposed Scheme of Amalgamation, which is stated to have been approved by the Shareholders/Members, the Secured Creditors and the Unsecured Creditors of the Transferor Company at their respective meetings, has been filed as Annexure 4 to the said Affidavit of Sri S.K. Kakkar.

38. Pursuant to the aforementioned meetings in respect of the Transferee Company as also the aforementioned meetings in respect of the Transferor Company having been held, the Applicants-Companies as the Petitioners-Companies have jointly filed a Company Petition u/s 391/394 of the Companies Act, 1956 for sanction/confirmation of the proposed Scheme of Amalgamation,

as per the requirements of Rule 79 of the Companies (Court) Rules, 1959.

39. The said Company Petition, filed on 23rd May 2005, has been numbered as Company Petition No. 19 of 2005.

40. It is pertinent to note that Sri Pankaj Mittal, Chairman of the aforementioned meetings in respect of the Transferee Company submitted his reports along with his aforesaid Affidavit on 17th May 2005 while Sri S.K. Kakkar, Chairman of the aforesaid meetings in respect of the Transferor Company submitted his reports along with his aforesaid Affidavit on 19th May 2005.

41. Thus, the aforesaid Company Petition, filed on 23rd May 2005, was filed within 7 days of the filing of the Report by the Chairman as required under Rule 79 of the Companies (Court) Rules, 1959.

42. In view of the above, the present Company Application, namely, Company Application No. 2 of 2005 stands disposed of.