

(2000) 12 MAD CK 0078

In the Madras High Court

Case No : Company Application No. 2528 of 2000

In Re: Ne Plus Technologies Pvt. Ltd.

Date of Decision : 08-12-2000

Acts Referred:

Companies Act, 1956 — Section 391

Citation : (2002) 112 CompCas 376 : (2001) 1 LW 660

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : Krishna Srinivas, of S. Ramasubramaniam and Associates, for the Appellant;

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—This application is filed to dispense with the holding of the meeting of the equity shareholders and the creditors of the applicant-company.

2. The applicant has stated that there is a proposal for a scheme of amalgamation to merge the applicant-company with one Opus Software Solutions Private Limited, Mumbai. According to the applicant, the scheme of amalgamation was approved by the board of directors and shareholders of Opus Software Solutions P. Ltd., Mumbai. According to the applicant, there are only six equity shareholders in the applicant-company and all the shareholders have read the copy of the scheme of amalgamation and granted their approval and consent to the scheme of amalgamation. The consent letters of all the equity shareholders of the applicant-company (transferor-company) giving their consent for the proposed scheme of amalgamation of the applicant-company with Opus Software Solutions P. Ltd., have also been filed. They have also expressed their consent for dispensing with the holding of a meeting of the shareholders of the applicant-company.

3. Learned counsel appearing for the applicant submitted that in the case of the transferee-company, viz., Opus Software Solutions P. Ltd., the High Court of Bombay in C. A. No. 663 of 2000, by order dated November 22, 2000, has

dispensed with the meeting of the equity shareholders in view of the consent given by all the shareholders of the transferee-company. Learned counsel referred to the order of this court in C. A. Nos. 2225 and 2226 of 1997, dated August 30, 1997 and also the order of this court in C. P. Nos. 44 and 46 of 1993 dated August 27, 1993. Learned counsel also referred to the decision of a Division Bench of the Delhi High Court in Mazda Theatres Pvt. Ltd. v. New Bank of India Ltd. ILR [1975] Del. 1 and submitted that where the consent of shareholders is given, it is not necessary to direct the holding of a meeting of the shareholders. Learned counsel submitted that in view of the fact that there are only six shareholders and since all of them have given consent for the proposed scheme of amalgamation and the Bombay High Court has already dispensed with the holding of the meeting of shareholders of the transferee-company, the holding of a meeting of the equity shareholders of the applicant-company to consider the scheme of amalgamation has become an empty formality and, therefore, the meeting of the equity shareholders should be dispensed with.

4. I have carefully considered the submissions of learned counsel appearing for the applicant-company. Section 391 of the Companies Act, 1956, provides that where a compromise or arrangement is proposed between a company and its creditors, the court may, on the application of the company, order a meeting of the creditors or class of creditors or the members or class of members to be called, held and conducted in such manner as the court may direct. Though Section 391 of the Companies Act employs the expression, "may", the expression has to be construed in the sense that the court has the full discretion to call for the meeting of the shareholders or refuse to call for a meeting and it is only in that sense the expression "may" in Section 391 of the Act has been employed.

5. In my view, the object of holding of a meeting of the shareholders is to ascertain their collective view either in favour of or against the scheme of amalgamation and any individual decision arrived at by the shareholders prior to the filing of the petition for the sanction of the scheme of amalgamation is not a ground to contend that the meeting of the shareholders should be dispensed with on the ground that the shareholders have already given their consent for the scheme. It is the general rule under the company law that to arrive at a business decision, there must be a meeting of shareholders or directors, as the case may, in which a decision is taken as to the way in which the company should organise its business. When a company, instead of being wound up, is sought to be amalgamated with another company, it is essential that requisite number of the equity shareholders are present in the meeting and discuss the scheme of amalgamation and then, the collective decision is arrived at, which would be in the best interest of the company. I am of the view that the holding of meeting is insisted upon as any collective decision of the equity shareholders would be far different from the individual decision taken by the shareholders at their house or office. I am of the view that since it affects the entire structure and business of the company, it is essential that requisite number of equity shareholders should meet and discuss the proposed scheme of amalgamation and then arrive at a

collective decision. The meeting of the shareholders cannot be regarded as a mere empty formality. Therefore, the fact that the equity shareholders have given their consent is not sufficient to contend that this court should exercise its discretion in dispensing with the holding of meeting of the shareholders.

6. The Karnataka High Court in *B. V. Gupta v. Bangalore Plastics* (C. A. No. 1676 of 1981, decided on August 19, 1981) which was applied in *S. M. Holding Finance P. Ltd. v. Mysore Machinery Manufacturers Ltd.* [1993] 78 Comp Cas 432 has held that ordinarily the convening of a meeting is a must and the discretion to dispense with such meeting should be exercised only in exceptional circumstances. The decisions relied upon by learned counsel for the applicant were rendered with reference to the facts of those cases and I have also found that there is no uniform rule in this matter as this court in a number of cases has called for meetings of shareholders where there are less number of shareholders and it cannot be stated as a general and invariable rule that where the numbers of shareholders are less and where all of them have given their consent, this court must exercise its discretion directing not to convene the meeting of the shareholders.

7. Accordingly, this application filed to dispense with the holding of the meeting of the shareholders as well as the creditors of the applicant-company is rejected.