

(2007) 01 RAJ CK 0027
In the Rajasthan High Court
In Re: Om Metals Infraprojects Ltd.

Date of Decision : 19-01-2007

Acts Referred:

COMPANIES ACT, 1956 — Section 16, 391, 394, 43A, 94

Citation : (2009) 150 CompCas 666 : (2007) 78 SCL 14

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—The petitioners have filed this petition under Sections 391 and 394 of the Companies Act, 1956 (hereinafter shall be referred to as the "Act of 1956") for sanctioning the scheme of amalgamation between the petitioner and the petitioner companies No. 1 to 6.

2. The petitioner Transferee Company was originally incorporated on 22-12-1971 in the name of "Om Metals Pvt. Ltd." which was changed to "Om Metals and Minerals Pvt. Ltd." on 27-2-1973. Thereafter the status of the petitioner transferee company was converted into a Public Limited A Company under the provisions of Section 43A of the Act (Deemed Public Company) with effect from 1-7-1989. Further the name of the petitioner Transferee Company was changed to Om Metals Ltd. on 31 -1-2005 which again came to be changed to the present name "Om Infraprojects Ltd." on 29-3 -2006. The petitioner Transferee company is a public limited company listed at the Bombay Stock Exchange. The company is mainly engaged in the business of providing turn key solutions for hydro mechanical equipment and steel fabrication, real estate projects and manufacture of industrial and Medical gases.

3. The position of authorized issued, subscribed and paid up capital of the petitioner transferee company as on 31-3-2006 is detailed out in para No. 3 of the petition.

4. The main objects of the petitioner transferee company as set out in the object clause of its Memorandum of Association have been detailed out in para No. 5 of the petition. The copy of the latest audited annual accounts of the petitioner transferee company for the year ended on 31-3-2006 has been submitted as

Annexure B to the petition.

5. Om Rajasthan Carbide Ltd. (hereinafter shall be referred as the petitioner Company No. 1) is a company duly incorporated under the Companies Act, 1956 as Om Rajasthan Carbide Ltd. on 26-4-1982 vide certificate of incorporation No. 2451 of 1982-83. The company was incorporated with its registered office in State of Rajasthan.

6. The position authorized issued, subscribed and paid up capital of the petitioner company No. 1 as on 31-3-2005 is detailed out in para No. 8 of the petition.

7. The main objects of the petitioner company No. 1 as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 10 of the petition. The copy of the latest audited annual accounts of the petitioner company No. 1 for the year ended on 31-3-2005 has been submitted as Annexure D to the petition.

8. Jupiter Manufacturing Company Pvt. Ltd. (hereinafter shall be referred as the petitioner Company No. 2) is a company duly incorporated under the Companies Act, 1956 having its registered office situated at Om Tower Church Road. M.I. Road, Jaipur.

9. The position authorized issued, subscribed and paid up capital of the petitioner company No. 2 as on 31-3-2005 is detailed out in para No. 12 of the petition.

10. The main objects of the petitioner company No. 2 as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 14 of the petition. The copy of the latest audited annual accounts of the applicant company No. 2 for the year ended on 31 -3-2005 has been submitted as Annexure F to the application.

11. Om Structural (India) Pvt. Ltd. (hereinafter shall be referred as the petitioner Company No. 3) is a company duly incorporated under the Companies Act, 1956 as Om Structural (India) Pvt. Ltd. on 13-10-1978 vide certificate of incorporation No. 1820 of 1978-79. The company was incorporated with its registered office in State of Rajasthan.

12. The position authorized issued, subscribed and paid up capital of the petitioner company No. 3 as on 31-3-2005 is detailed out in para No. 16 of the petition.

13. The main objects of the petitioner company No. 3 as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 18 of the petition. The copy of the latest audited annual accounts of the petitioner company No. 3 for the year ended on 31-3-2005 has been submitted as Annexure I to the application.

14. Om Kothari Cement & Chemicals Pvt. Ltd. (hereinafter shall be referred as the petitioner Company No. 4) is a company duly incorporated under the Companies Act, 1956 as Om Kothari Cement and Chemicals Pvt. Ltd. on

17-8-1984 vide certificate of incorporation No. 3086 of 1984-85. The company was incorporated with its registered office in State of Rajasthan.

15. The position authorized issued, subscribed and paid up capital of the petitioner company No. 4 as on 31-3-2005 is detailed out in para No. 20 of the petition.

16. The main objects of the petitioner company No. 4 as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 22 of the petition. The copy of the latest audited annual accounts of the petitioner company No. 4 for the year ended on 31-3-2005 has been submitted as Annexure K to the petition.

17. S.A.H. Buildcon Pvt. Ltd. (hereinafter shall be referred as the petitioner Company No. 5) is a company duly incorporated under the Companies Act, 1956 as S.A.H. Buildcon Pvt. Ltd. on 17-12-1996 vide certificate of incorporation No. 17-012990 of 1996-97. The company was incorporated with its registered office in State of Rajasthan.

18. The position authorized issued, subscribed and paid up capital of the petitioner company No. 5 as on 31-3-2005 is detailed out in para No. 24 of the petition.

19. The main objects of the petitioner company No. 5 as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 26 of the petition. The copy of the latest audited annual accounts of the petitioner company No. 5 for the year ended on 31 -3-2005 has been submitted as Annexure M to the application.

20. Richa Builders Pvt. Ltd. (hereinafter shall be referred as the petitioner Company No. 6) is a company duly incorporated under the Companies Act, 1956 as Richa Builders Pvt. Ltd. on 17-12-1996 vide certificate of incorporation No. 17-012989 of 1996-97. The company was incorporated with its registered office in State of Rajasthan.

21. The position authorized issued, subscribed and paid up capital of the A petitioner company No. 6 as on 31-3-2005 is detailed out in para No. 28 of the petition.

22. The main objects of the petitioner company No. 6 as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 30 of the petition. The copy of the latest audited annual accounts of the applicant company No. 6 for the year ended on 31-3-2005 has been submitted as Annexure-0 to the petition.

23. The petitioner transferee company is mainly engaged in the business of providing turn key solutions for hydro mechanical equipment and steel fabrication, real estate projects and manufacture of Industrial and Medical gases. The petitioner Transferor Company-1, petitioner Transferor Company-2,

petitioner Transferor Company-3 and petitioner Transferor Company-4 are also engaged in the business of fabrication and erection of Dam Gates. These applicant Transferor Companies undertake the said business on job work basis only from and for the petitioner Transferee company. The petitioner Transferor Company-5 and petitioner Transferor Company-6 have some pieces of land, which have been given on lease of 11 1/2 years to the petitioner transferee company. The petitioner transferee company has constructed building over the said land for the purposes of carrying on its business of running and maintenance of Hotel.

24. It is stated that independent operation of all such companies leads to significant overlaps in the business plans and overheads and, hence the petitioner Transferee company will achieve operational efficiencies upon amalgamation. The petitioner transferee company filed applications along with the copy of scheme of amalgamation to the Bombay Stock Exchange. The Bombay Stock Exchange issued no objection certificate in favour of the petitioner transferee company. The petitioner transferor companies and petitioner transferee company in their respective Board meetings have approved the scheme of amalgamation. The approved scheme of Amalgamation is enclosed as Annexure P with the petition.

25. The petitioner Transferee Company and the petitioner Transferor Companies No. 1 to 6 filed company application before this Court, which was registered as Company Application No. 21 of 2006. On this application on 2-6-2006 this court directed holding of meetings of shareholders, secured creditors, and unsecured creditors of the transferee company on 15-7-2006 and in relation to transferor companies No. 1 to 6 it was directed that there is no need to hold meetings. The notice of the meetings were published in the daily News Paper Times of India (New Delhi Edition) and Dainik Bhaskar Jaipur Edition on 20-6-2006 and 16-6-2006.

26. In the petition the transferee company averred that in the meetings of shareholders, secured creditors and unsecured creditors, all of them in separate meetings unanimously approved the scheme of amalgamation. In the meetings certain modifications in the name of the transferor company No. 2 and registered office of transferor companies 2 and 3 were also made. In these circumstances the petitioner Transferee Company filed the present company petition for approving the scheme of amalgamation.

27. This Court on 6-10-2006 issued notice of this petition to the Regional Director through Official Liquidator and the same was also directed to be published in the News papers. The said notices were published in the Daily News papers of Dainik Bhaskar, Times of India on 27-10-2006 and the news papers have been filed by the petitioner Company before this court also. After receipt of notice the Regional Director filed affidavit through official liquidator on 18-1-2007. In the affidavit it was pointed out that as per Clause 6.13(a) of the Scheme of Amalgamation all the employees of the Transferor Companies shall

become the employees of the Transferee Company without any break or interruption in their services. In relation to para 6.12 of the scheme of amalgamation it was averred that the C authorised share capital of a company can be increased only after following the procedures prescribed under the relevant provisions of the Companies Act, 1956 and payment of requisite fees to the Registrar of Companies and Stamp duty to the State Government. In these circumstances it was stated that the aforesaid clause may not be allowed by this Court. The official liquidator also filed report on 18-1-2007 and it was submitted that the affairs of the petitioner transferor companies No. 1 to 6 have not been conducted in a manner prejudicial to the interest of its members and creditors except the para 6.12 of the scheme. Certain communications sent by the official liquidator and received from the companies have also been enclosed with the report.

28. I have given my anxious consideration to the submissions advanced before me. The learned Counsel for the petitioner in support of the petition placed reliance on Juggilal Kamlapat Holding Ltd., In re [2006] 132 Comp. Cas. 237 : 60 SCL 40 (All.) and Hotline Hol Celdings (P.) Ltd. In re [2005] 127 Comp. Cas. 165 : 57 SCL 367 (Delhi).

29. The Regional Director in the affidavit referred para 6.12 of the Scheme stated that the Authorised Share Capital of a company can be increased only after following the procedures prescribed under the relevant provisions of the Companies Act, 1956 and payment of requisite fees to the Registrar of Companies and Stamp duty to the State Government. In such a situation Clause 6.12 may not be allowed to be incorporated in the Scheme.

30. Para 6.12 of the Scheme provides as under:

Upon the coming into effect of this Scheme, with effect from Appointed Date, the Authorised Share Capital of the Transferee Company shall stand enhanced by an amount of Rs. 2,16,00,000 (Two Crore and Sixteen Lakhs only) (being aggregate amount of Authorised Share Capital of the A Transferor Companies) and the Clause V of the Memorandum of Association shall without any further act, instrument or deed, resolution, be stand altered modified and amended pursuant to Sections 16 and 94 and other applicable provisions of the Act, in the manner set out below and be replaced.

31. In Hotline Hol Celdings (P.) Ltd's case (supra) it was indicated that in the case of merger where it was provided that the share capital of the transferor companies became the authorised capital of the transferee company, no fee to the Registrar of Companies or stamp duty to the State Government was payable.

32. In Juggilal Kamlapat Holding Ltd. 's case (supra) it was held that since the combined authorised capital of the transferee company did not exceed the authorised capital of all the three companies no further fees or stamp duty was required to be paid.

33. In view of the ratio indicated in the aforequoted judicial pronouncements, I find that the objection raised on behalf of the Regional Director merits no consideration.

34. In the aforesaid circumstances and having regard to the averments made in the petition and the materials placed on record and the affidavits filed by the Regional Director. North Region, Ministry of Company Affairs, NOIDA and the report of official liquidator, I am satisfied that the prayers (a), (b) (c) and (d) made in the petition deserve to be allowed but subject D to fulfilling the condition of enhancing the authorised capital after following the procedure under the Companies Act. Since I do not find any legal impediment to the grant of sanction to the scheme of amalgamation, I hereby sanction the same. Costs of Rs. 2,500 to the Official Liquidator to be paid by the petitioner Company within two weeks from today. Certified copy of this order may be filed with the Registrar of Companies within 14 days from this date.