(2009) 01 P&H CK 0161

In the Punjab And Haryana At Chandigarh

In Re: Punjab Tractors Ltd.

Date of Decision : 16-01-2009

Acts Referred:
COMPANIES ACT, 1956 — Section 235, 236, 237, 238, 239

Citation : (2009) 91 SCL 9

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—This application has been filed under Sections 391 - 394 of the Companies Act, 1956 for sanctioning and approval of the Scheme of Amalgamation between the Punjab Tractors Limited having its office at Phase IV, Industrial Area, S.A.S. Nagar (Mohali), Punjab and M/s Mahindra and Mahindra Limited, Gateway Building, Apollo Bunder, Mumbai-400001. The application has been filed at the instance of Punjab Tractors Limited called the transferor company pursuant to the decision of Shareholders'' meeting.

2. From the reading of petition and with reference to the documents, it is clear that the transferor company had been incorporated on 27-6-1970. M/s Mahindra and Mahindra Limited (called the transferee company or M&M) had acquired 63.33 per cent stake in the transferor company through a negotiated deal while 1.31 per cent stake had been held by Mahindra Holdings & Finance Limited (MHFL), the wholly owned subsidiary of M&M, which had been subsequently amalgamated with M&M with effect from 11-8-2008. As on date of the application, M&M held 64.64 per cent of the equity share capital of the petitioner-Company. The authorised capital of the transferor company was Rs. 75 crores and the issued, subscribed and paid capital was Rs. 60,75.57 lakhs consisting of 6,07,55,700 equity shares of Rs. 10 per share. Out of the above, 3,92,70,165 equity shares had been held by the transferee company.

3. The main object of the petitioner-Company was engagement in the business of manufacture tractors. The Memorandum of Association makes provision "to amalgamate with any other company having objects altogether or in a part similar to those of this company." The transferee-company had been

incorporated in Mumbai on 2-10-1945 in the name of Mahindra and Mohammed Limited subsequently changed to Mahindra & Mahindra Limited (M&M) with effect from 13-1-1948. The M&M Company was engaged in the business of manufacture and sale inter alia, of tractors, general purpose utility vehicles, light commercial vehicles and three wheelers. The Memorandum of Association of the transferee company also makes provision for amalgamating with any other company having objects altogether or in any part similar to those of the company.

4. The rationale of the Scheme of Amalgamation spelt out:

(i) Cost savings in terms of economies of scale, sourcing benefits, vendor rationalisation, more focused operational efforts, rationalisation, standardisation and simplification of business processes and productivity improvements;

(ii) The synergies that exist between the two entities in terms of similar products, processes and resources can be put to the best advantage of all stakeholders;

(iii) Greater size, scale, integration and greater financial strength and flexibility for the amalgamated entity;

(iv) Strengthening leadership in the industry, in terms of the asset base, revenues, product range, production volumes and market share; and

(v) The amalgamated entity will benefit from improved organizational capability and leadership, arising from the combination of people from PTL and M&M who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.

5. The salient features of the Scheme are:

4. Transfer and vesting of undertaking

4.1 Subject to the provisions of this Scheme as specified hereinafter and with effect from the appointed date, the entire business and the undertaking of the transferor company including all the debts, liabilities, duties and obligations of the transferor company of every description and also including, without limitation all the movables and immovable properties and assets of the transferor company comprising amongst others all freehold and leasehold land, all freehold and leasehold buildings, investments, vehicles, furniture and fixtures, computers, office equipment, permits, licences, authorisations, if any, rights and benefits of all agreements and all other interests, rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals, shall without any further act or deed, but subject to the charges affecting the same be transferred and/or deemed to be transferred to and vested in the transferee company as a going concern so as to become the assets and liabilities of the transferee company.

Provided always that the Scheme shall not operate to enlarge the security for any loan, deposit or facility availed of by the transferor company and the transferee company shall not be obliged to create any further or additional security therefore after the effective date or otherwise.

4.2 In respect of all the movable assets of the transferor company and the assets which are otherwise capable of transfer by physical delivery or endorsement and delivery, including cash on hand, shall be so transferred to the transferee company and deemed to have been physically handed over by physical delivery or by endorsement and delivery, as the case may be, to the transferee company to the end and intent that the property and benefit therein passes to the transferee company with effect from the appointed date.

4.3 Such delivery and transfer shall be made on a date mutually agreed upon between the transferor company and the transferee company. However, such date of delivery shall be within thirty days from the effective date.

4.4 In respect of any assets of the transferor-company other than those mentioned in clause 4.2 above, including actionable claims, sundry debtors, outstanding loans, advances recoverable in cash or kind or for value to be received and deposits with the Government, semi-Government, local and other authorities and bodies and customers, the transferor company shall if so required by the transferee company, and the transferee company may, issue notices in such form as the transferee company may deem fit and proper stating that pursuant to the High Courts having sanctioned this Scheme between the transferor company and the transferee company u/s 394 of the Act, the relevant debt, loan, advance or other asset, be paid or made good or held on account of the transferee company, as the person entitled thereto, to the end and intent that the right of the transferor company to recover or realise the same stands transferred to the transferee company and that appropriate entries should be passed in their respective books to record the aforesaid changes.

4.5 The transfer of assets and liabilities pursuant to clause 4.1 above and the continuance of proceedings by the transferee company pursuant to clause 7 shall not affect any transaction or proceedings already concluded by transferor company on or before the appointed date or after the appointed date till the effective date to the end and intent that the transferee company accepts and adopts all acts, deeds and things done and executed by the transferor company in regard thereto, as if done and executed by the transferee company on behalf of itself.

4.6 With effect from the appointed date, all debts, liabilities, contingent liabilities, duties and obligations of the transferor company, as on the appointed date whether provided for or not in the books of accounts of the transferor company, and all other liabilities which may accrue or arise after the appointed date but which relates to the period on or upto the day of the appointed date shall, pursuant to the orders of the High Courts or such other competent authority as may be applicable u/s 394 and other applicable provisions of the Act, without any further act or deed, be transferred or deemed to be transferred to and vested in the transferee company, so as to become as from the appointed date the debts, liabilities, contingent liabilities, duties and obligations of the transferee company on the same terms and conditions as were applicable to the transferor company.

6. The Scheme provides that all the permanent employees of the transferor company shall from the effective date be engaged as the employees of the transferee company without any break in service and terms and conditions not less favourable than those on which they were previously engaged by the transferor company immediately preceding the effective date.

7. This Hon''ble Court vide its order dated 18-9-2008 dispensed with the requirement of holding of the meeting of the secured and unsecured creditors and directed that the meeting of the equity shareholders be convened by the petitioner/transferor company for the purpose of considering and if thought fit, approving with or without modifications, the Scheme of Amalgamation. The meeting of shareholders was accordingly held on 15-11 -2008 and Mr. Aman Chaudhary, Advocate was appointed by the Court to act as a Chairman. Out of the 338 votes, which were duly polled at the meeting, 337 equity shareholders voted in favour of the resolution and one equity shareholder voted against the resolution. Since 99.7041 per cent of the equity shareholders who cast valid votes, voted in favour of the resolution, resolution was passed on the basis of majority votes. It is reported that no investigation proceedings are pending under Sections 235 - 250 of the Companies Act and there is also no winding up proceedings against the petitioner-Company. The Senior Vice President-Finance and Company Secretary and Authorized Representative of the petitioner-company has filed the affidavit affirming the facts mentioned in the petition seeking for sanction of the Scheme. Notice to the Official Liquidator as well as Regional Director, Company Law Affairs, Noida issued and publications were also effected in the "Indian Express" and "Punjab Kesari, Chandigarh Edition as well as in the Official Gazette of Punjab Government. There are no objections to the Scheme except that AS 14 is directed to be observed . An undertaking affidavit has been given by the company in this regard.

8. Accordingly the order is passed approving the Scheme of Amalgamation as carried through in the resolution under the chairmanship of the person appointed by this Court subject to the sanctioning of Scheme by Bombay High Court. A certified copy of this order shall be filed with the Registrar of Companies within 14 days of the order in Form No. 41. The Scheme shall be binding upon all concerned including the shareholders of the petitioner/transferor company and the transferee company.