

(2008) 07 RAJ CK 0041

In the Rajasthan High Court

Case No : Company Petition No"s. 3 and 4 of 2008 and Company Application No. 38 of 2007

In Re: Rachna Creations (P.) Ltd.

Date of Decision : 25-07-2008

Acts Referred:

COMPANIES ACT, 1956 — Section 394

Citation : (2009) 89 SCL 299

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Goyal Fashions Private Limited (in short Transferee-Company) filed Company Petition No. 3 of 2008 and Archna Creations Private Limited (Transferor-Company No. 1) Ashish apparels Private Limited (Transferor-Company No. 2) Shubham Exports Private Limited (Transferor-Company No. 3) Anupam Export Private Limited (Transferor-Company No. 4) (in short Transferor-Companies 1 to 4) filed Company Petition No. 4 of 2008 for confirmation of Scheme of Arrangement/Amalgamation of Transferor-Companies 1 to 4 with Transferee-Company.

2. M/s. Rachna Creations (P.) Ltd. (Transferor-Company No. 1) was incorporated under the provisions of the Companies Act on December 11, 1987 having its registered office at 24, Goyal House, Ajmer Road, Jaipur. The authorised share capital of the Transferor-Company No. 1 as on 31-3-2007 was 5000 Equity Shares of the value of Rs. 100 each (Total Rs. 5,00,000). Issued, Subscribed and paid up Share capital (1000 equity shares of Rs. 100 each (Total Rs. 1,00,000). M/s. Ashish Apparels Private Limited (Transferor-Company No. 2) was incorporated under the provisions of the Companies Act on 11 -12-1987 having its registered office at 24, Goyal House, Ajmer Road, Jaipur. The authorised share capital of the Transferor-Company No. 2 as on 31 -3-2007 was 5000 equity shares of the value of Rs. 100 each (Total Rs. 5,00,000). Issued, Subscribed and paid up Share capital (1000 equity shares of Rs. 100 each (Total Rs. 1,00,000).

M/s. Shubham Exports Private Limited (Transferor-Company No. 3) was incorporated under the provisions of the Companies Act on 16-6-1989 having its registered office at 24, Goyal House, Ajmer Road, Jaipur. The authorised share capital of the Transferor-Company No. 3 as on 31-3-2007 was 5000 Equity Shares of the value of Rs. 100 each (Total Rs. 5,00,000). Issued, Subscribed and paid up Share capital (1000 equity shares of Rs. 100 each (Total Rs. 1,00,000). M/s. Anupam Exports Private Limited (Transferor-Company No. 4) was incorporated under the provisions of the Companies Act on 15-6-1989, having its registered office at 24, Goyal House, Ajmer Road, Jaipur. The authorised share capital of the Transferor-Company No. 4 as on 31-3-2007 was 2000 Equity Shares of the value of Rs. 100 each (Total Rs. 2,00,000). Issued, Subscribed and paid up Share capital (1000 equity shares of Rs. 100 each (Total Rs. 1,00,000). M/s. Goyal Fashions Private Limited (Transferee-Company) was incorporated under the provisions of the Companies Act on 6-3-1981 having its registered office at 24, Goyal House, Ajmer Road, Jaipur. The authorised share capital of the Transferee-Company as on 31-3-2007 was 24,000 Equity shares of the value of Rs. 100 each (Total Rs. 24,00,000). Issued, Subscribed and paid up Share capital (10000 equity shares of Rs. 100 each (Total Rs. 10,00,000). The Board of Directors of the petitioner Transferor Companies 1 to 4 have in their respective Boards meetings held on 4/5-4-2007 approved the proposed amalgamation and further by resolutions passed in their meetings held on 15/16-11-2007 extended the effective date of scheme of arrangement/amalgamation upto 31-12-2008. This Court vide order dated 28-9-2007 passed in Company Application No. 38 of 2007 filed by petitioner Transferee-Company directed for convening meeting of the equity shareholders and unsecured creditors. In the meetings convened on 27-11-2007 of the equity shareholders and unsecured creditors present in the said meeting, none have voted against the said compromise or arrangement.

3. In S.B. company Application No. 37 of 2007 filed by Transferor-Companies 1 to 4, this Court on 7-9-2007 directed for convening meetings of the respective equity shareholders and unsecured creditors on 19/20-11-2007 and in the meetings convened by the order of this Court the members present none have voted against the said compromise or arrangement and the same was approved and agreed to.

4. Transferee Company and Transferor Companies 1 to 4 filed the above company petitions before this Court and this Court issued notice on 16-5-2008 and also directed for publication of the notice in Rajasthan Patrika (Hindi) (Jaipur-Edition) and Times of India (English) Delhi Edition.

5. In response to the notice, the Regional Director filed his affidavit in both these petitions and it was submitted that as per Clause 8(a) of Part III of the Scheme of Amalgamation all the employees of the Transferor-Companies shall become the employees of the Transferee-Company without any break and interruption in their services upon sanctioning of the scheme of amalgamation by this Court. The Transferee -Company and the Transferor Companies 1 to 4 may be asked to

furnish an undertaking that they shall comply with the accounting treatment as prescribed under Accounting standard 14 i.e., Accounting for Amalgamation issued by the Institute of Chartered Accountants of India. The Official Liquidator also filed report stating that as per the report of Shri N.C. Jain, Chartered Accountant, that the affairs of the Transferor Companies 1 to 4 have not been conducted in a manner prejudicial to interest of the members and creditors and he has no objection if upon sanctioning of the scheme of merger, the Transferor-Companies 1 to 4 are ordered to be dissolved within the meaning of Section 394(1)(iv) of the Companies Act. The Transferor-Companies 1 to 4 and Transferee Company published the notice of the respective petitions in the English News Paper Times of India, New Delhi dated 5-6-2008 and in the Rajasthan Patrika of Jaipur Edition it was published on 4-6-2008. Copies of the publication of notice in the news papers have also been filed. Nobody raised any objection in pursuance to the publication of the notice of these petitions in the news papers.

6. I have heard the learned Counsel and the Official Liquidator and scanned the material on record, Official Liquidator's conclusion in the report, is that the affairs of the Transferor-Companies 1 to 4 have not been conducted in a manner prejudicial to the interest of the members and creditors. I have also examined the scheme of amalgamation and found nothing prejudicial to the interest of the Transferor-Companies 1 to 4 and Transferee-Company. It appears from the record that the Transferor-Companies 1 to 4 are sister concern of the Transferee-Company having common registered office at 24 Goyal House, Ajmer Road, Jaipur. In view of the fact that the Regional Director and the Official Liquidator have no objection if the Transferor-Companies 1 to 4 are amalgamated with the Transferee-Company. I accordingly sanction the scheme of merger as set out in the company petitions.

7. These company petitions are accordingly allowed. The scheme of amalgamation filed with the company petitions is approved as per the prayer Clause 1 of the petition No. 3 of 2008 and prayer Clauses 1 and 2 of the petition No. 4 of 2008. The Official Liquidator shall be entitled to Rs. 2,500 each from the Transferee-Company and the Transferor-Companies 1 to 4.