
(2012) 10 GUJ CK 0048
In the Gujarat High Court

Case No : Company Petition No. 80 of 2012 in Company Application No. 120 of 2012

In Re: Reliance Jamnagar Infrastructure Limited

Date of Decision : 08-10-2012

Acts Referred:

Companies Act, 1956 — Section 391, 391(1), 391(2), 392

Citation : (2013) 112 CLA 234

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : S.N. Soparkar and Mr. R.S. Sanjanwala, with Mr. Dilip L. Kanojiya, for the Appellant; P.S. Champaneri, learned Assistant Solicitor General of India for Respondent(s) : 1, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Smt. Justice Abhilasha Kumari

1. This petition under Sections 391 to 394 of the Companies Act, 1956 has been preferred by Reliance Jamnagar Infrastructure Ltd. the Transferor Company, for sanction of the Scheme of Amalgamation of the Company with Reliance Industries Ltd. (the Transferee Company) whereby the entire businesses and the undertaking of the Transferor Company are to be transferred to, and vested in, the Transferee Company, in terms of the said Scheme of Amalgamation. The details of Incorporation of the petitioner Transferor Company and its latest Audited Annual Accounts as on 31-3-2011, as well as the authorized Share Capital and the issued, subscribed and paid-up Share Capital of the Petitioner Company have been enumerated in the petition. The objects of the Petitioner Company, as set out in its Memorandum of Association, have also been mentioned. It is stated that the Petitioner Company is carrying on the business of promoters, developers, builders, suppliers, creators, operators, owners, contractors, organizers of all and any kind of infrastructure facilities and services including, but not limited to Special Economic Zones, etc. The Petitioner Company is stated to be presently developing and operating a Special Economic

Zone in Jamnagar ("Jamnagar SEZ") and related infrastructure facilities.

2. The details of Reliance Industries Ltd. ("RIL" for short), the Transferee Company, have been given in the petition. The latest Audited Annual Accounts of the Transferee Company as on 31-3-2011, its authorised Share Capital and the issued, subscribed and paid-up Share Capital have also been stated. The objects of the Transferee Company, as set out in its Memorandum of Association, have also been detailed in the petition. It is stated that the Transferee Company is India's largest Private Sector Enterprise, with businesses in the energy and materials value chain and is a Fortune Global 500 Company. The activities of the Transferee Company span exploration and production of Oil and Gas, petroleum refining and marketing, petrochemicals (polyester, fiber intermediates, plastics and chemicals) and textiles.

3. The Petitioner Transferor Company is a wholly owned Subsidiary of the Transferee Company. The petitioner Transferor Company has its Registered Office at Jamnagar, Gujarat, whereas the Registered Office of the Transferee Company is in the State of Maharashtra.

4. The circumstances, reasons and grounds that have necessitated the Scheme of Amalgamation have been set out in paragraph 7 of the petition. It is stated that some major benefits would accrue from the proposed Scheme of Amalgamation, which are as under:

(a) The Transferor Company is the Developer of the operating SEZ in Jamnagar and the Transferee Company is operating a SEZ Unit in the SEZ.

(b) Thus, the present activities and business of the Transferor Company can be conveniently combined with the business of the Transferee Company.

(c) The amalgamation will achieve economy, better administration and efficiency of operation thereby resulting in greater profitability for the amalgamated Company.

(d) The amalgamation will improve organizational capability arising from the pooling of human capital that have diverse skills, talent and vast experience with respect to development, operation and maintenance of infrastructure facilities.

(e) Greater integration and greater employees strength and flexibility for the amalgamated entity, which would result in maximising overall shareholder value, and will improve the competitive position of the combined entity.

(f) The Scheme will result in achieving synergies and economics of scale by reducing duplication of costs and improving administrative and operational efficiency.

(g) Integrating and combining the businesses of both Companies will lead to greater and optimal utilization of available resources. The amalgamation would, therefore, enable the Transferee Company to increase value realization of its operations. The object of amalgamation is to effect internal economies and

optimize profitability.

5. The Scheme of Amalgamation is annexed as Annexure-G to the petition.

6. The petitioner Company had filed Company Application No. 120 of 2012 u/s 391 of the Companies Act, 1956 ("the Act" for short) for directions. By order dated 03.04.2012 (Annexure-H) passed by this Court in the said application, the meetings of Equity Shareholders and Preference Shareholders and Secured Creditors were dispensed with, whereas, the meeting of Unsecured Creditors was ordered. The meeting of the Unsecured Creditors was held on 05.05.2012. Thirty, two Unsecured Creditors attended the meeting out of which twenty six have approved the Scheme of Amalgamation. The Chairman of the said Meeting has filed a Report dated 06.05.2012 which has been produced on record and has also filed an affidavit in support of the Report.

7. In the present petition, on 09.05.2012, this Court passed the following order:

IT IS ORDERED:

1. Leave under Rule 21 of the Companies (Court) Rules, 1959 is granted.

2. Petition admitted.

3. Petition is fixed for hearing and final disposal on 22.06.2012.

4. At least 28 clear days before the date fixed for hearing of the Petition, the Petitioner to serve the notice of hearing of petition to the Regional Director, Western Region, Ministry of Corporate Affairs, Registrar of Companies and Official Liquidator pursuant to Section 394A of the Companies Act, 1956.

5. At least 28 clear days before the date fixed for hearing of the Petition, the Petitioner to serve the notice of hearing of Petition on the concerned Registrar of Companies.

6. At least 10 clear days before the date fixed for hearing of the Petition, Petitioner to publish the notice of hearing of Petition in local newspapers, viz., "Indian Express", Ahmedabad edition, in English and in "Divya Bhaskar", Rajkot edition, in Gujarati, and in "Nobat", Gujarati daily.

7. Publication of the notice of the hearing of the Petition in the Gujarat Government Gazette is dispensed with.

8. Petitioner to file in the Registry an Affidavit of Service as per Rule 30 of Companies (Court) Rules, 1959.

8. Accordingly, Notices were served upon the Official Liquidator as well as the Regional Director. The Notices were also published in the English Daily Newspaper "Indian Express", Ahmedabad Edition, in the Gujarati Daily Newspaper "Divya Bhaskar", Rajkot Edition, and the Gujarati Daily Newspaper "Nobat".

9. The Official Liquidator has filed a Report which is to be found at page 177 of the paper book, wherein no objections have been raised against the prayers made in the petition.

10. Shri Kashmir Lal Kamboj, Regional Director, North Western Region, has filed an affidavit dated 25.07.2012, wherein it has been observed that the Transferee Company ought to have filed an application/petition in the High Court of Bombay which has jurisdiction over it. It has further been observed that the order of this Court dated 03.04.2012 passed in Company Application No. 120 of 2012, dispensing with filing of an application by the Transferee Company, is without jurisdiction. Apart from the above, the Regional Director has not raised any other objection.

11. In rejoinder to the said affidavit of the Regional Director, the petitioner has filed an affidavit dated 17.08.2012, dealing with the observations made by the Regional Director. It is stated in the said affidavit that Sections 391 to 394 of the Act do not oblige the Transferee Company, in a case such as the present one, to file appropriate proceedings seeking sanction of the Scheme. It is stated that the High Court dealing with the petition filed by the Transferor Company is entitled to examine the Scheme and requirement of filing proceedings under Sections 391 to 394 of the Act by the Transferee Company and is also entitled to dispense with such a requirement. It is further stated that in cases such as the present one, the concerned High Court exercising jurisdiction over the Transferor Company can adjudicate and declare upon the requirement of the Transferee Company to apply under Sections 391 to 394 of the Act and it is entitled to pass an order dispensing with the requirement. Thus, the High Court exercising jurisdiction can hold that an application or petition by the Transferee Company seeking sanction from the High Court having jurisdiction over it, is not necessary. In doing so, the concerned High Court would not be exercising jurisdiction over the Transferee Company but would be deciding an issue arising in the petition filed by the Transferor Company. Alternatively, it has been submitted in the affidavit that in a Scheme involving Amalgamation of a wholly owned Subsidiary Company with its holding Company, the Transferee Company is not: obliged to seek sanction. Certain decisions- of different High Courts have been relied upon and enumerated in support of the submission.

12. This Court has heard Mr. S.N. Soparkar and Mr. R.S. Sanjanwala, learned Senior Advocates with Mr. Dilip L. Kanojiya on behalf of the petitioner and Mr. P.S. Champaneri, learned Assistant Solicitor General on behalf of the Central Government.

13. Mr. S.N. Soparkar, learned Senior Counsel for the petitioner, has made the following submissions:

(A) It is now well settled by a catena of decisions that in Schemes involving Amalgamation of a wholly owned subsidiary Company with its Holding Company, the Holding Transferee Company is not obliged to seek sanction under the

provisions of Sections 391 to 394 of the Act. I Where the Scheme does not envisage issuance of any Shares to the Transferee Company or does not involve any compromise or arrangement with the Shareholders or Creditors of the Transferee Company and when the net worth of both the Transferor and Transferee Company is positive and there is an excess of assets over liabilities, it is not necessary for the Transferee Company to initiate proceedings under Sections 391 to 394 of the Act. The Transferee Company is not even obliged to seek dispensation of the proceedings under Sections 391 to 394 of the Act as the said provisions are not attracted. The Transferee Company need not, in such a situation, approach the High Court having jurisdiction over it to seek dispensation of the proceedings under Sections 391 to 394 of the Act.

In support of the above submissions, reliance has been placed upon the following judgments.

(a) Bank of India Ltd. V. Ahmedabad Manufacturing & Calico Printing Co. Ltd., (1972) 42 CC 211 (Bombay High Court)

(b) In the matter of Sharat Hardware Industries P. Ltd. (1978) 48 CC 23 (Delhi High Court)

(c) Mahaamba Investments Ltd. V. IDI Ltd. (2001) 105 CC 16 (Bombay High Court)

(d) Nebula Motors Ltd., In re: 2003 (45) SCL 143 (Andhra Pradesh High Court)

(e) Andhra Bank Housing Finance Ltd., In re: (2004) 118 CC 295 (Andhra Pradesh High Court)

(f) Santhanalakshmi Investments P. Ltd., In re: (2006) 129 CC 789 (Madras High Court)

(g) ESL India Ltd., In re: (2009) 95 SCL 133
(Rajasthan High Court)

(B) That this Court has also accepted the proposition laid down in the above decisions, more particularly in the judgment of Delhi High Court in Sharat Hardware Industries P. Ltd. (Supra) and the judgment of the Bombay High Court in Mahaamba Investments Ltd. V. IDI Ltd. (Supra).

(C) That this Court has held in order dated 03-04-2012 passed in Company Application No. 120 of 2012 that separate proceedings by the Transferee Company, being the Holding Company, are not required to be taken out u/s 391 of the Act.

In support of this submission, reliance has been placed upon the following judgments.

(a) Jindal Agro Processing Pvt. Ltd., Company Application No. 249 of 2012, decided on 08.08.2012.

(b) TML Industries Limited, Company Application No. 202 of 2011, decided on 09.02.2011

(c) Azure Knowledge Corporation Pvt. Ltd., Company Application No. 146 of 2010, decided on 14.06.2010

(d) Shilchar Electronics Limited, Company Application No. 619 of 2006, decided on 04.12.2006

(e) Banyan Chemicals Limited, Company Application No. 43 of 2004, decided on 19.02.2004

(f) Transpek Marketing Limited, Company Application No. 139 of 2004, decided on 27.04.2004

(g) Arvind Clothing Limited, Company Application No. 176 of 2005, decided on 11.05.2005

(h) Nirma Limited, Company Application No. 149 of 2010, decided on 13.05.2010

(D) That this Court has jurisdiction to hold, while deciding the proceedings for sanction initiated by the Transferor Company that there is no need for the Transferee Company, situated at Mumbai, to file any such proceedings. In the facts of the case the following directions were issued in Company Application, No. 120 of 2012 vide order dated 03.04.2012, filed by the petitioner Transferor Company:

14. Considering the averments made in paras 21 and 23 of the affidavit filed by Pradhyuman Ambalal Soni on behalf of the applicant as well as the affidavit filed by K. Sethuraman and considering the affidavit-cum-undertaking filed by the Transferee Company as well and more particularly, paras 6 and 7 of the said affidavit, the Transferee Company is not required to file a separate application/petition for obtaining sanction to the present Scheme

(E) That this Court, while issuing the above directions, was not exercising jurisdiction over the Transferee Company but, while exercising jurisdiction in the matter of Transferor Company, made a limited observation that on the facts of the case, a petition by the Transferee Company would not be necessary. It is a settled legal position that the High Court exercising jurisdiction over the Transferor Company can examine the Scheme as well as the requirement of making an application by the Transferee Company, therefore, the objections raised by the Regional Director are misconceived.

14. Mr. P.S. Champaneri, learned Assistant Solicitor General of India has submitted that the Transferee Company which is stated to be a 100% Holding Company of the petitioner Transferor Company, has its registered office in the State of Maharashtra, under the Jurisdiction of the High Court of Bombay. The Transferee Company has not filed an application or petition in the High Court having jurisdiction, which is mandatory as per the provisions of Section 391(1) of the Act, as per the judgment in the case of Kirloskar Electric Company Limited,

Re, (2002) 40 SCL 745 (Kar). It is further stated that even for availing an exemption from filing of a petition by the Transferor Company, an application is required to be made with a specific prayer before such High Court, otherwise the exemption cannot be availed. It is only the concerned High Court that can pass orders for dispensation of, or for convening the meetings of the members and Creditors. In the present case, the Transferee Company falls under the jurisdiction of the High Court of Bombay, therefore, it is only that Court which can pass appropriate orders. The Transferee Company has not held even a general meeting for passing a Special Resolution which is required to be passed and approved by the Shareholders of the said Company. As such, the Registrar of Companies, Mumbai would have no information of such Amalgamation on his record. It is contended that neither the Shareholders nor the Creditors nor the Registrar of Companies, Mumbai and Regional Director, Western Region, Mumbai are aware of the Amalgamation and any order passed in the present Scheme would not be binding on the Shareholders and Creditors of the Transferee Company. It is further submitted that if the Scheme of Amalgamation is allowed, it would become a binding precedent and would have impact on similar cases that may be filed in the future.

No other contentions have been raised on behalf of the Union Government.

15. Having heard learned counsel for the respective parties and upon consideration of the material on record, the following undisputed facts emerge:

- (1) That the petitioner is the wholly owned Subsidiary of Reliance Industries Ltd., the Transferee Company.
- (2) That the Scheme is for amalgamation of the petitioner Subsidiary Company with its Holding Company.
- (3) That the Scheme does not envisage issuance of any shares of the Transferee Company, therefore, the capital structure of the Transferee Company remains unaltered.
- (4) That the entire shareholding of the Petitioner Subsidiary Company would stand cancelled.
- (5) That Scheme does not involve any compromise or arrangement with the Shareholders or Creditors of the Transferee Company.
- (6) The Scheme provides for the transfer of all assets and liabilities of the Petitioner Subsidiary Company to the Transferee Holding Company.
- (7) That the net worth of the Transferee Company is positive; that it has an excess of assets over liabilities,
- (8) That the net worth of the Petitioner Subsidiary Company is positive; that it has an excess of assets over liabilities.

16. In view of the objections raised by the Regional Director, this Court is called

upon to decide the following two issues:

(I) Whether, in a Scheme of Merger of a wholly owned Transferor Subsidiary Company with its Holding Company, the Holding Transferee Company is required to initiate separate proceedings under Sections 391 to 394 of the Companies Act, 1956 ?

(II) Whether the High Court considering the application/petition by the Transferor Company can observe that the Transferee Company is not required to file a separate application/petition for obtaining sanction to the Scheme of Amalgamation?

17. In order to decide the first issue, certain judicial pronouncements may be noted. In *Bank of India Ltd. V. Ahmedabad Manufacturing & Calico Printing Co. Ltd. (Supra)*, the High Court of Bombay has held that,

... It must follow that, if a scheme by way of transfer of undertaking does not affect the rights of the members or creditors of the transferee Company, as between themselves and the Company, or does not involve a reorganisation of the share capital of the transferee Company, no application by the transferee Company u/s 391 or section 394 would be necessary. This, in my opinion, is the clear position as it emerges on a careful analysis of the relevant statutory provisions.

18. In the matter of *Sharat Hardware Industries P. Ltd. (Supra)*, the petitioner Transferor Company, a wholly owned subsidiary Company of the Transferee Company had its registered office at Delhi whereas the Transferee Company, *M/s. Choudhari Metal Industries (P) Ltd.*, had its registered office in West Bengal. The Transferor Company had applied to the High Court of Delhi for sanction of the Scheme of Amalgamation whereby all its assets and liabilities were to be transferred to the Holding Transferee Company. The High Court of Delhi held as below:

I had noticed in the order dated 19th April, 1976, that a question had been urged before me whether the scheme had to be Sanctioned by the transferee-Company, *M/s. Choudhari Metal Industries (P) Ltd.*, as well as by the petitioner-Company. No doubt, the proposed scheme has been passed by the requisite majority of the shareholders of the petitioner- Company. In fact, it has been unanimously passed. The question which was raised was whether a similar requirement is necessary qua the shareholders of *M/s. Choudhari Metal Industries (P.) Ltd.*, i.e., the transferee-Company. I had noticed a decision of the Bombay High Court, *Bank of India Ltd. v. Ahmedabad Manufacturing & Calico Printing Co. Ltd. [1972]42 CC 211 (Bom)*, where this question had been analysed. It had there been noticed that in certain cases it would be necessary for the transferee-Company to get the proposed compromise or scheme sanctioned by the court before it would become binding on both companies. I also noticed that the transferor-Company (the petitioner) was a wholly-owned subsidiary Company of the transferee-Company and, therefore, it was not

necessary for the transferee-Company to approve the scheme....

(emphasis supplied)

19. In *Mahaamba Investments Ltd. V. IDI Ltd.* (Supra), the Bombay High Court has held that:

The question which arises on the office objection is covered by a decision of a learned single judge of this court in *Bank of India Ltd. v. Ahmedabad Manufacturing and Calico Printing Co. Ltd.* [1972] 42 CC 211 and by a judgment of a learned single judge of the Delhi High Court in the matter of *Sharat Hardware Industries P. Ltd., In re* [1978] 48 CC 23. The learned single judge of this court held as follows (page 219):

...if a scheme by way of transfer of undertaking does not affect the rights of the members or creditors of the transferee-Company, as between themselves and the Company, or does not involve a reorganisation of the share capital of the transferee-Company, no application by the transferee-Company u/s 391 or section 394 would be necessary.

(emphasis supplied)

20. In *Nebula Motors Ltd.* (Supra), the Transferor Company had its Registered Office at Hyderabad whereas the Transferee Company had its Registered Office at New Delhi. The Transferor Company sought sanction from the High Court of Andhra Pradesh to the Scheme of Amalgamation u/s 394 read with Section 391 of the Act. A similar objection was raised by the Registrar of Companies in that case, as has been raised by the Regional Director in the present case, regarding the Transferee Company not having filed a separate application for sanction of the Scheme before the High Court having jurisdiction over it, in that case the High Court of Delhi. In this context, the High Court of Andhra Pradesh has held as below:

19. Having regard to the scheme envisaged under Chapter V of the Act, the Company Court is required to see in the first instance whether the procedure envisaged under Sections 391 and 394 of the Act has been followed or not and then to examine the scheme of amalgamation. The scheme would be the same invariably whereunder the proposed amalgamation of transferor Company with the transferee Company is contemplated. In the event of both the transferor Company and the transferee Company are coming within the territorial jurisdiction of two different High Courts and thereby necessitating both the companies to file separate petitions before the respective High Courts, both the courts would be examining the self-same scheme. After such examination, both the Courts may agree or may differ on the aspect of sanctioning the scheme. The probable question is that it required to be examined by the concerned High Court within whose territorial jurisdiction the transferee Company is situate so as to ultimately consider whether sanction can be accorded or not and, therefore, the High Court in whose territorial jurisdiction the transferee Company is situate

cannot validly express its view that such an application need be filed before the High Court within whose territorial jurisdiction the transferee Company is situate or not, is of no consequence inasmuch as the court can examine the scheme and for the limited purpose of seeing whether the scheme in any way affects the interests of the members or creditors of the transferee Company. For that limited purpose, in my considered view, the court within whose territorial jurisdiction, the transferor Company is situate can examine the scheme so as to see whether the transferee Company also needs to file a similar such application. Perhaps, the considerations may be the same for the court in whose territorial jurisdiction the transferee Company is situate and having regard to the same ultimately that court may sanction or may refuse to sanction the scheme but that is altogether a different aspect. For that limited purpose of seeing that such an application need be filed or not, the transferee Company can certainly examine the scheme and come to the conclusion.

(emphasis supplied)

21. In *Santhanalakshmi Investments P. Ltd. (Supra)* High Court of Madras has held that since the Transferor Company was a wholly owned subsidiary of the Transferee Company a single application at the instance of the Transferor Company would be sufficient and that there is no need for a separate petition by the Holding Company.

22. In *ESL India Ltd. (Supra)*, the High Court of Rajasthan has held, placing reliance upon *Bank of India Ltd. V. Ahmedabad Manufacturing & Calico Printing Co. Ltd. (Supra)* and *Sharat Hardware Industries P. Ltd. (Supra)* that the filing of a separate petition by the Transferee Company seeking sanction of the Scheme of Amalgamation under Sections 391 to 394 of the Act can be dispensed with in a petition by the Transferor Company.

23. From the principles of law laid down in the above-quoted judgments by various High Courts it emerges that where the Scheme of Amalgamation provides for the transfer of all the assets and liabilities of the Subsidiary Transferor Company to the Holding Transferee Company, and such transfer does not affect the rights of its Members or Creditors and does not involve a reorganization of the Share Capital of the Transferee Company, no separate application by the Transferee Company, u/s 391 or Section 394 of the Act, would be necessary. In the present case, the net worth of the Petitioner Transferor Company which is a Subsidiary Company of the Transferee Company, is positive. Undoubtedly, it has an excess of assets over liabilities. The Scheme provides for transfer of all assets of the petitioner Subsidiary Company to the Transferee Holding Company. There is no doubt that the net worth of the Transferee Company is positive and it has an excess of assets over liabilities. As the Scheme does not envisage issuance of any Shares of the Transferee Company, the capital structure of the Transferee Company would remain unaltered. Upon the Scheme being sanctioned, the entire shareholding of the Petitioner Subsidiary Company would stand cancelled. Further, the Scheme of Amalgamation does not involve

any compromise or arrangement with the Shareholders or Creditors of the Transferee Company.

24. In view of the above discussion, this Court is of the considered view that, in the present case, there is no requirement for the Holding Transferee Company to initiate separate proceedings under Sections 391 to 394 of the Act.

25. As regards the second issue regarding whether the High Court considering the application by the Transferor Company can observe that the Transferee Company is not required to file a separate application for approval of the Scheme, the High Court of Andhra Pradesh has held in *Nebula Motors Ltd.* (Supra) as below:

20. Having regard to the parameters enunciated by the Apex Court in *Miheer H. Mafatlal's* case (supra) the sanctioning Court has to consider that the scheme put up for sanction is backed up by the requisite majority vote as required by Section 391(2) of the Act; and that the said scheme is not violative of any provision of law and is not contrary to public policy; and that the members or creditors of the Company have acted bona fide and in good faith and have not coerced the minority in order to promote any interest adverse to the minority; apart from the indicia laid down by the Apex Court as to whether the scheme does affect the members or its creditors either because it involves reorganisation of the share capital or otherwise as laid down by the Bombay High Court in *Bank of India Ltd.* 's case (supra). For examining any of these parameters, the facts of the case and the proposed scheme of amalgamation are got to be seen. It is no doubt true that whether the rights of the members or any class of them or the creditors or any class of them of the transferee Company would in any way be affected under the proposed scheme, has to be seen by the sanctioning court within whose territorial jurisdiction the transferee Company is situate. However, on an examination of the scheme any of the two courts in whose territorial jurisdiction the transferor Company as well as the transferee Company are situate can consider whether the proposed scheme involves reorganisation of the share capital or otherwise. Well, in the proposed scheme, if such reorganisation of the share capital is not there and when the 100 per cent subsidiary Company is seeking to amalgamate with its holding Company where the scheme is not detrimental in any manner to the interests of the members or creditors of the transferee Company, in my considered view, that there is no need to examine the scheme by the court within whose territorial jurisdiction the transferee Company is situate. In that view of the matter, the sanctioning Court which has been approached by the transferor Company can just examine the scheme and see whether it does affect the rights of the members or creditors of the transferee Company as it either because it involves reorganisation of its share capital or otherwise and in the process the Court can certainly come to the conclusion that whether it is a case where the application is got to be presented before the Court for sanctioning of the scheme insofar as the transferee Company is concerned. Having regard to the same, I am of the considered view that it is not trenching

upon the jurisdiction of any other Court by the sanctioning Court which has been approached by the transferor Company and it is well within its purview.

(emphasis supplied)

26. In the present case, the material on record demonstrates that upon Amalgamation of the Petitioner Subsidiary Company, with the Holding, Transferee Company, no reorganisation of the share capital of the Transferee Company is involved. The Scheme, if sanctioned, would not be detrimental to the interests of the members or creditors of the Transferee Company or to the public interest at large. Further, the Regional Director has not made any observations in his affidavit, to this effect. In these circumstances this Court, while examining the application of the Transferor Company, can observe that there is no requirement for the Transferee Company to initiate separate proceedings.

27. This Court, in order dated 3-4-2012 passed in Company Application No. 120 of 2012 has already observed that the Transferee Company is not required to file a separate application/petition for obtaining sanction to the present Scheme. This order has not been challenged by the Regional Director, who has, never the less, chosen to raise an objection in this regard. As has already been held hereinabove, there is no requirement for the Transferee Company to take out separate proceedings for sanction of the Scheme of Amalgamation. While issuing directions in order dated 3-4-2012 passed in Company Application No. 120 of 2012, this Court was not exercising jurisdiction over the Transferee Company but was exercising jurisdiction in the matter of the Transferor Company. The observations made in the order are limited and based upon the facts of the case as presented in the petition of the Transferor Company. Having accepted the order of this Court the objection of the Regional Director in this regard, is untenable. Further if, on the basis of the stand taken by the Regional Director, a view is taken that this Court has no jurisdiction to decide the above requirement of taking out proceedings by Transferee Company or otherwise, then the Regional Director cannot request this Court to withhold proceedings of the Scheme of the Transferor Company on the ground of absence of separate proceedings by the Transferee Company in the High Court having jurisdiction, as even such a direction would be without jurisdiction.

28. Mr. P.S. Champaneri, learned Assistant Solicitor General of India has placed reliance upon a judgment of the High Court of Karnataka in *Kirloskar Electric Company Limited, Re*, (Supra) wherein a view has been taken that both the Transferor and Transferee Company must comply with the requirements of Section 391(1) of the Act by obtaining directions, inter alia, for holding the meeting of the Shareholders and Creditors of both the Companies and that the Transferee Company should comply with the statutory requirements as envisaged in Sections 391 to 394 of the Act otherwise the directions issued by the Court would not bind the Transferee Company, its members or Creditors.

29. This judgment has been rendered in a totally different fact situation. The

purport of the Scheme therein was to transfer the primary and valuable assets of the Company, including movable properties, to the Transferee Companies which were found to be merely paper Companies. The Court found that such a course of action was not in the public interest. Such a situation does not exist in the present case where the Scheme does not envisage issuance of any shares of the Transferee Company and the capital structure of the Transferee Company remains unaltered. In the present case the proposed Scheme does not involve any compromise or arrangement with the Shareholders or Creditors of the Transferee Company. It is clear from the material on record, and not denied by the Regional Director in his affidavit, that the net worth of the Petitioner Subsidiary Company is positive and it has an excess of assets over liabilities. Similarly, the net worth of the Transferee Company is positive and it has an excess of assets over liabilities. There is, therefore, no question of the Scheme being detrimental to the public interest.

30. Further, the judgment in *Kirloskar Electric Company Limited, Re, (Supra)* has been distinguished by the Karnataka High Court in *Vibank Housing Finance Ltd., In re (2006) 130 CC 705 (Karnataka)*. The relevant extract of the said judgment is reproduced below:

31. There is considerable force in the submission of learned senior counsel that the judgment in *Kirloskar Electric Co. Ltd.'s case (2003) 113 CC 670* is distinguishable on the facts, since that was not a case of amalgamation of a subsidiary company with its holding company. The holding company being the holder of 100 per cent. of shares of its subsidiary company, in the meeting of the shareholders of the transferor company convened as directed by this court u/s 391 of the Act, the very same shareholders of the transferee company having participated in the said meeting and approved the scheme of amalgamation, it cannot be said that the decision cannot bind the transferee company, its members and creditors. The board of directors of the transferee company in the meeting held approved and adopted the scheme of amalgamation exhibit E. The Reserve Bank of India permitted the transferee company to enter into a contract to take over its subsidiary. The scheme of transfer does not affect the rights of the members or creditors of the transferee company as between themselves and the company. No new shares are issued, there being no reorganization of the share capital of the transferor company. In these circumstances, I am of the considered opinion, that there is no need for the transferee company to file an application and a petition under sections 391 to 394 of the Act.

(emphasis supplied)

31. In view of the above, in the present factual scenario and in view of the judicial pronouncements referred to hereinabove, the judgment in *Kirloskar Electric Company Limited, Re, (Supra)* would not be applicable to the present case.

32. Viewed in the light of the factual and legal position as discussed hereinabove,

the stand taken by the Regional Director cannot be accepted. Under the circumstances, the objections raised by the Regional Director deserve to be rejected and the prayers made in the petition ought to be granted, as this Court is satisfied that the proposed Scheme of Amalgamation would be in the interest of the Transferor and Transferee Companies, their members and Creditors.

33. In view thereof, the prayers in terms of paragraph 30(a) to (k) are hereby granted. The petition is allowed, accordingly.

So far as the costs to be paid to Mr. P.S. Champaneri, learned Assistant Solicitor General of India, are concerned, the same are quantified at Rs. 7,500/- and may be paid to him.

Costs of Rs. 7,500/- be paid to the Office of the Official Liquidator in respect of the Transferor Company.