

(2003) 03 AP CK 0051

In the Andhra Pradesh High Court

Case No : Company Petitions No's. 150 to 152 of 2002

In Re: R.K.S. Motors Private Ltd.

Date of Decision : 28-03-2003

Acts Referred:

Companies Act, 1956 — Section 394, 397, 95, 97, 97(3)

Citation : (2004) 50 SCL 261

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : C. Kodanda Ram, for the Appellant;

Judgement

1. All the three petitions can be disposed of together conveniently. The petitioner in C.P. No. 150 of 2002 is the transferee company. The petitioners in C.P. Nos. 151 and 152 of 2002 are transferor companies. The above petitions are filed seeking sanction of the scheme of amalgamation u/s 394 of the Companies Act, 1956.

2. The transferee company was incorporated on 3-9-1985 with its registered office at Somaliguda, Hyderabad. The authorised capital of the company is Rs. 1,47,50,000 divided into 1,47,500 equity shares of Rs. 100 each. The issued, subscribed and paid-up capital of the company is Rs. 1,35,00,000 divided into 1,35,000 equity shares of Rs. 100 each. The main object of incorporating the company as set out in the Memorandum of Association annexed to the petition is to carry on the business of purchase and sale of mopeds, scooters, three wheelers, motor-cycles, lorries, bicycles and generally all kinds of vehicles of transport.

3. The petitioner in C.P. No. 151 of 2002 namely, the transferor company was incorporated on 19-1-1994 as Private Limited Company with its registered office at Ramkote, Hyderabad.

The authorised capital of the company is Rs. 50,00,000 divided into 50,000 equity shares of Rs. 100 each. The issued, subscribed and paid-up share capital of the company is Rs. 40,00,000 divided into 40,000 equity shares of Rs. 100

each. The main object of incorporating the said company as set out in the Memorandum of Association annexed to the petition, is to carry on business of leasing and hire purchase to acquire, provide on lease or to provide on hire purchase basis all types of industrial and office furniture, plant, equipment, machinery, vehicles, buildings and the real estates.

4. The petitioner in C.P. No. 152 of 2002, namely, the second transferor company was incorporated on 11-2-1991 with its registered office at Ramkote, Hyderabad. The authorised capital of the company is Rs. 25,00,000 divided into 25,000 equity shares of Rs. 100 each. The issued, subscribed and paid-up capital is Rs. 25,00,000 divided into 25,000 equity shares of Rs. 100 each fully paid. The main object of incorporating the company as set out in the Memorandum of Association annexed to the petition, is to carry on business of leasing and hire purchase to acquire, provide on lease or to provide on hire purchase basis all types of industrial and office furniture, plant, equipment, machinery, vehicles, buildings and real estates.

5. The transferee company has nine shareholders whereas each of the transferor companies has seven shareholders. The meetings of the shareholders and the creditors of the companies have been dispensed with in C.A. Nos. 816 and 817 of 2002 by an order dated 10-10-2002 by this Court. In accordance with the provisions contained in Section 391 of the Companies Act, the publication has been ordered to be made in newspapers and has been effected accordingly pursuant to the said orders. In response thereto, no objections whatsoever have been received from any corner for the proposed scheme. The Board of Directors of the transferee company and the Board of Directors of the transferor companies have at their respective meetings held on 5-4-2002 approved the scheme of arrangement.

6. The scheme, inter alia, provides that since the businesses of transferee and transferor companies are complementary to each other, the amalgamation of transferor companies with the transferee company will lead to greater consolidation of focus in business. Furthermore, the business operations would be more advantageously, conveniently and economically carried on if the scheme of amalgamation is approved and the market facilities could be utilised to the optimum extent. Furthermore, the operating costs would be reduced and the economies of scale would be leading to long-term competency and business synergy. The scheme further postulates that on and from the effective date, all the properties - assets and liabilities of the transferor companies would stand vested with the transferee company. The scheme further postulates that all the employees of the transferor companies shall be the employees of the transferee company without any interruption in service and on the basis of continuity of service.

7. Pursuant to the notice issued to the Registrar of Companies in accordance with Section 394A of the Companies Act, the Registrar of Companies filed common affidavit raising, inter alia, two objections, viz.:

(a) that the transferor company No. 1 and the transferee company shall be directed to modify the scheme suitably by making provisions for cancellation of equity investment held by the transferor company No. 1 in transferor company No. 2 upon amalgamation;

(b) that the transferor companies and the transferee company shall be directed to modify the scheme suitably by deleting the averments made under Clause 10 of the scheme, which is against the provisions of the Companies Act, 1956 and further direct the transferee companies to comply with the requirements under Sections 95 and 97 of the Companies Act, 1956 for the enhancement of the authorised capital.

8. The Official Liquidator attached to this Court filed a report stating, inter alia, that the affairs of the companies have not been conducted in a manner prejudicial to the interests of the members and to the public interest.

9. As can be seen from the Memoranda and Articles of Association of all the companies, annexed to the petitions, except the shareholders of the transferee and transferor companies, none else is interested or affected by the terms of the scheme of arrangement. The creditors of the transferee company are also not affected by the scheme in any way. All the shareholders have consented to the proposed scheme and for the increase in the share capital of the transferee company by issuing one share of the value of Rs. 100 of the transferee company at two shares of the value of Rs. 100 each of the transferor companies. Having regard to the objections raised by the learned Registrar of Companies, it is appropriate here to consider Sections 95 and 97 of the Companies Act. A perusal of both the provisions shows that in respect of consolidation of share capital or conversion of shares into stock, notice has got to be issued to the Registrar by the company within 30 days after such consolidation or conversion, in which event the Registrar shall record such notice and make necessary alterations in the Memorandum or Articles of Association. The default entails penal consequences under Sub-section (3) of the said section. Similarly, notice in the event of increase of share capital of the members shall be given to the Registrar of Companies within 30 days after passing of the resolution by the Board of Directors authorising the increase and upon receiving such notice, the Registrar shall include the particulars and class of shares affected and conditions if any subject to which the new shares are to be issued. The default on the part of the company again entails penal consequences under Sub-section (3) of Section 97 of the Companies Act. The object of Sections 95 and 97 of the Companies Act seems to be to keep the Registrar informed about the changes and to incorporate the same in the Memorandum or Articles of Association or both of the respective companies.

10. The present scheme of arrangement or amalgamation if it is sanctioned by this Court, the certified copy of the order of this Court is required to be filed before the Registrar within 30 days from the date of the order under Sub-section (3) of Section 394 of the Companies Act, for the purpose of its registration. The

object behind such intimation, which is required under law either u/s 95 or u/s 97 or u/s 394(3) of the Companies Act, appears to be one and the same. Again the default in not filing certified copy of the order of this Court before the Registrar within 30 days entails penal consequences. Well, when the certified copy of the order sanctioning the scheme by this Court is required to be filed before the Registrar for the purpose of its registration, there is no reason as to why it shall not be treated as notice to the Registrar as envisaged under Sections 95 and 97 of the Companies Act. Inasmuch as, as discussed hereinabove, the object being the same, the necessary changes that are required to be made in the concerned Register by the Registrar of Companies can be effected after receiving the certified copy of the order of this Court sanctioning the scheme. The sanction of the scheme by this Court has its own effect. It is not a mere act of the parties individually and volitionally. The scheme upon being sanctioned by this Court, it becomes operational by virtue of the orders passed by this Court. In other words, by operation of law, such changes would come into effect. Therefore, it has statutory genesis and statutory character, but not mere individual acts of the companies. In that view of the matter, no separate notice informing the Registrar u/s 95 or 97 of the Companies Act need be given, unlike the other cases which do not require the sanctions of the Court, in my considered view, inasmuch as the scheme is required to be sanctioned by this Court and such sanction is required to be registered with the Registrar of Companies by filing the certified copy of the order of this Court. Therefore, I am of the considered view that there has been no infraction of the provisions of Section 95 or 97 as the case may be, in any manner. I am reinforced in my above view by the judgment of a learned Single Judge of this Court in C.P. Nos. 149 and 150 of 2001 dated 4-1-2002. The learned Single Judge of this Court extracted a passage from the judgment of Delhi High Court in Telesound India Ltd., In re [1983] 53 Comp. Cas. 926 upon which reliance has been placed. The same passage may be profitably extracted hereunder, thus:

"Amalgamation of a company with another or an amalgamation of two companies to form a third is brought about by two parallel schemes of arrangements entered into between one company and its members and the other company and its members and the two separate arrangements bind all the members of the companies and the companies when sanctioned by the Court. Amalgamation is, therefore, an absorption of one company into another or merger of both to form a third, which is not a mere act of the two companies or their members but is brought about by virtue of a statutory instrument and to that extent has statutory genesis and character, and to that extent it is distinguishable from a mere bilateral arrangement to merge or join in a common endeavour, an undertaking or enterprise...." [Page 942]

11. Having regard to the same, the second objection raised by the learned Registrar of Companies merits no consideration. As regards first objection as to the cancellation of equity investment, the scheme shall be suitably modified by making it conditional by incorporating this objection.

12. Having regard to the fact that the Board of Directors of the respective companies have passed the necessary resolutions and having regard to the fact that except the shareholders of the respective companies, none else is interested and all the shareholders have given their consent and the affairs of the companies have not been conducted in any manner which is prejudicial to the interests of the members of the companies or public interest, and as the scheme has taken care of the interest of the employees of the companies, I am of the considered view, that the scheme shall have to be sanctioned, subject to one condition as raised by the learned Registrar of Companies in his common affidavit under Clause 4(a).

13. The company petitions are ordered accordingly, Certified copy of this order shall be filed within 30 days from the date of its receipt, for its registration. The order of this Court shall be drafted as per Form No. 42 with necessary modifications as indicated herein above in the scheme.