

(2005) 09 MAD CK 0129

In the Madras High Court

Case No : Company Petition No. 151 of 2005

In Re: Santhanalakshmi Investments (P.) Ltd.

Date of Decision : 28-09-2005

Acts Referred:

Companies Act, 1956 — Section 17, 391, 392, 393, 394

Citation : (2006) 129 CompCas 789

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—This is an application made under Sections 391 to 394 of the Companies Act, 1956, seeking for an order of the Scheme of Amalgamation between M/s. Santhanalakshmi Investments Private Limited, the Transferor Company and M/s. E.I.D. Parry (India) Limited, the Transferee Company and the respective shareholders as found in Annexure "E" with effect from 1-5-2005, as determined in terms of the Scheme so as to bind all the shareholders and creditors of the petitioner-company and on the petitioner-company as well and consequently to order for dissolution of the petitioner-company without winding up.

2. Necessary legal formalities had been complied with as stipulated under Sections 391 to 394 of the Companies Act, 1956. As regards the holding of the meetings and filing of the applications are stated to have been duly complied with, after framing of the Scheme of Amalgamation.

3. When this application was taken up for sanction of the said Scheme of Amalgamation, a report had been filed by the Regional Director, Ministry of Company Affairs. In the said report, among other things, it is pointed out that the present application had been filed only by the Transferor Company, whereas the views of the Transferee company and its shareholders as well as Creditors about the Scheme are not known.

4. One other point raised is that the Transferee company does not have any

enabling provisions in its Memorandum and Articles of Association to carry on the business of the Transferor Company upon the Scheme becoming effective. It is then pointed out that such a situation may require an amendment of the Object Clause in the Memorandum and Articles of Association of the Transferee Company by complying with the provisions u/s 17 of the Companies Act, 1956.

5. Barring the above points raised, the report of the Regional Director states that Clause XI of the Scheme protects the interest of the employees of the Transferor Company in service and Clause XVIII of the Scheme provides for dissolution of the Transferor Company without winding up upon the Scheme becoming effective.

6. As far as the points raised by the Regional Director are concerned, learned counsel for the petitioner-Transferor Company contended that even at the time when the application was taken out for dispensing with the holding of the meeting of the shareholders, the very same issue came to be raised and it was held by this Court in the order dated 14-7-2005 in Company Application Diary No. 15193 of 2005 and it was held that since the Transferor Company is a wholly owned subsidiary of the Transferee Company, a single application at the instance of the Transferor Company would be sufficient and that thereafter, Company Application No. 960 of 2005 was entertained and the same came to be ordered on 21-7-2005.

7. That apart, reliance was also placed upon a learned Single Judge's decision of the Bombay High Court in *Mahaamba Investments Ltd. v. IDI Ltd.* [2001] 105 Comp. Cas. 16 : [2001] 33 SCL 383, wherein the same legal position had been set out.

8. Further, in the judgment of the Andhra Pradesh High Court in *Andhra Bank Housing Finance Ltd., In re* [2003] 47 SCL 513, a learned Single Judge has also held that the application for Scheme of Amalgamation can even be permitted at the instance of the Transferor Company, which is 100 per cent subsidiary of the Transferee Company and that there is no need to file a separate petition by the Transferee Company.

9. As far as the contention, namely that the objects of the Transferee Company do not have separate provision in the Memorandum of Association to carry on the business of the Transferor Company upon the Scheme becoming effective, I find from the Memorandum and Articles of Association of the Transferee Company that there is a specific provision in Clause III(B)(10) providing for investment of any monies of the Company in such investments as may be thought proper and to hold, sell or otherwise deal with such investment.

10. Further, a perusal of the Annual Report of the Transferee Company for the year 2004-05 and Schedule VI of the said report discloses that there was a large scale long-term as well as other investments in the shares, bonds etc.

11. Having regard to the above provision contained in the Memorandum and Articles of Association and the fact that the Transferee Company does deal with

the investments in pursuance of such provisions contained in its Articles, I am of the view that no further clause need be incorporated in the Articles in order to continue the very same activity of investments that was being carried on by the Transferor Company prior to the present Scheme of Amalgamation sought to be made.

12. In such circumstances, this application deserves to be allowed. Accordingly the Scheme of Amalgamation between the petitioner-company, namely M/s. Santhanalakshmi Investments Private Limited, the Transferor Company and M/s. E.I.D. Parry (India) Limited, the Transferee Company and their respective shareholders as per Annexure "E" hereto, is ordered with effect from 1-5-2005, which shall be binding on all the shareholders and creditors of the petitioner-company, the Transferor Company and the Transferee Company as well.

13. There will be a direction for payment of a sum of Rs. 5,000 (Rupees five thousand only) to the learned Additional Central Government Standing Counsel appearing for the Regional Director of the Ministry of Company Affairs, Mr. M.T. Arunan, by the Transferee Company and the same shall be paid within two weeks.