

(2005) 08 RAJ CK 0002
In the Rajasthan High Court
Case No : Company Application No. 50 of 2005
In Re: Shyam Telecom Ltd.

Date of Decision : 22-08-2005

Acts Referred:

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

Citation : (2005) 64 SCL 622

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Paras Kuhad, for the Appellant;

Judgement

S.K. Keshote, J.—The applicants have filed this application under Sections 391 and 394 of the Companies Act, 1956 (hereinafter shall be referred to as "the Act, 1956") for a direction of the Court as to the method of convening, holding and conducting the meetings of the shareholders and creditors of the respective applicant companies, as to the notices and advertisements to be issued, for the purpose of considering arid, if thought fit, approving, with or without modification, the scheme of arrangement proposed between Shyam Telecom Limited, Shyam Telecom Manufacturing Limited, Shyam Telelink Limited and Shyam Basic Infrastructure Private Limited.

2. Shyam Telecom Ltd. (hereinafter shall be referred to "the applicant company No. 1") is a company duly incorporated under the Act, 1956 on 3-7-1992; it was originally incorporated with its registered office at Delhi and subsequently the registered office was changed from Delhi to Rajasthan at B2-D, Shiv Marg, Bani Park, Jaipur.

3. The position of authorized, issued, subscribed and paid-up capital of the applicant-company No. 1 as on 31 -3-2004 is detailed out in para No. 3 of the application.

4. The main objects of the applicant-company No. 1, as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 5 of the application. The copy of the latest audited annual accounts of the applicant-

company No. 1 for the year ended on 31-3-2004 has been submitted as Annexure-C to the application.

5. Shyam Telecom Mfg. Ltd. (hereinafter shall be referred to "the applicant company No. 2") was originally incorporated as M/s. Shyam Telecom Infrastructure Projects Limited on 14-2-1996; subsequently its name was changed to the present name and a fresh certificate of incorporation was issued by the Registrar of Companies NCT of Delhi and Haryana; subsequently the Registered Office of the applicant No. 2 was changed from Delhi to Jaipur at B2-D, Shiv Marg, Bani Park, Jaipur.

6. The position of authorized, issued, subscribed and paid-up capital of the applicant-company No. 2 as on 31 -3-2004 is detailed out in para No. 8 of the application.

7. The main objects of the applicant-company No. 2, as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 10 of the application. The copy of the latest audited annual accounts of the applicant-company No. 2 for the year ended on 31-3-2004 has been submitted as Annexure-E to the application.

8. Shyam Telelink Ltd. (hereinafter shall be referred to "the applicant company No. 3") was initially incorporated under the Act, 1956 on 20-4-1995 in the name of Shyam Telelink Network (India) Limited, the name of the applicant-company No. 3 was changed from Telelink Network (India) Limited to the present name and a fresh certificate of incorporation was issued on 3-4-1998. The registered office of the applicant-company No. 3 was also changed from Delhi to Jaipur at B2-D, Shiv Marg, Bani Park, Jaipur.

9. The position of authorized, issued, subscribed and paid-up capital of the applicant-company No. 3 as on 31-3-2004 is detailed out in para No. 13 of the application.

10. The main objects of the applicant-company No. 3, as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 15 of the application. The copy of the latest audited annual accounts of the applicant-company No. 3 for the year ended on 31 -3-2004 has been submitted as Annexure-G to the application.

11. Shyam Basic Infrastructure Projects (P.) Ltd. (hereinafter shall be referred to "the applicant company No. 4") was initially incorporated as Shyam Basic Infrastructure Projects Limited on 14-2-1996; later on it was converted into Private Limited Company and consequently a fresh certificate of Incorporation, dated 25-9-1998, was issued to it. The applicant-company No. 4, vide certificate of registration, dated 4-1-2003, has also been registered with Reserve Bank of India as non-banking financial company. The registered office of the applicant-company No. 4 was also changed from Delhi to Rajasthan at B2-D, Shiv Marg, Bani Park, Jaipur.

12. The position of authorized, issued, subscribed and paid-up capital of the applicant-company No. 4 as on 31-3-2004 is detailed out in para No. 18 of the application.

13. The main objects of the applicant-company No. 4, as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 20 of the application. The copy of the latest audited annual accounts of the applicant-company No. 4 for the year ended on 31-3-2004 has been submitted as Annexure-I to the application.

14. Applicant-company No. 2 is a wholly owned and subsidiary of applicant-Company No. 1.

15. Applicant-company No. 3 is also wholly owned and subsidiary of applicant company No. 1.

16. Applicant-company No. 4 is a company incorporated with the object to promote and form other companies and associations for the execution of undertakings, works, projects in the telecom industry and to hold shares or other securities in the companies engaged in the telecom sector.

17. The applicant-company No. 1 is presently engaged in manufacture of telecommunications/transmission equipment through its wholly owned and subsidiary applicant-company No. 2.

18. Unified telephone services are carried on through another wholly owned subsidiary applicant-company No. 3. There is substantial divergence in the nature and requirements of operations and the growth avenues of the two activities relating to manufacture of telephone equipments and telephony services. The manufacturing operations also require management as well as financial support of applicant-company No. 1, in order to achieve substantial growth in its operations. The present structure of carrying on the business through its subsidiaries results in substantial duplicity in costs and also does not provide flexibility and complete liquidity to the shareholders of applicant-company No. 1. Also the benefit of the operations of the subsidiaries is not directly reflected in the performance of applicant-company No. 1 or the returns to the shareholders of applicant-company No. 1. Further applicant-company No. 1 is advised by its Banks and financial institutions that in order to generate further resources for its manufacturing business, it must reduce its liabilities to a certain level. Accordingly, it is proposed that the liabilities of applicant-company No. 1 to the tune of Rs. 200 crores be transferred to applicant-company No. 4 and correspondingly thereof the investments of applicant-company No. 1 in the equity shares of applicant-company No. 3 at par for an equivalent amount shall be transferred to applicant-company No. 4 at par.

19. The applicants submitted that a composite scheme of arrangement, pursuant to Sections 391 to 394 of the Act, 1956 has been arrived at, in its present form or with any modification(s) approved or imposed or directed by the shareholders

and/or creditors of applicant-company No. 1 or applicant-company No. 3 or by this Court. The composite scheme of arrangement has been reproduced in para No. 24 of the application.

20. Proposed scheme of arrangement, it is averred in para No. 25 of the application; would result in manufacturing and telephony services being carried on by two independent and separate listed companies. This would enable the management of the two companies to focus on their individual operations, result in reduction in overall costs of management and operations and permit strategic investors to invest in both the businesses directly. The proposed scheme of arrangement is also intended to achieve enhanced liquidity for the shareholders of applicant-company No. 1 in respect of both manufacturing operations and telephony services independently.

21. The proposed scheme of arrangement divided into four parts. The proposed scheme of arrangement also provides for various other matters consequential or otherwise integrally connected therewith.

22. The applicants, in their respective Board Meetings have approved the proposed scheme of arrangement. The applicant-company No. 1, being the listed company, submitted a scheme of arrangement to the National Stock Exchange and the Bombay Stock Exchange. The Bombay Stock Exchange has conveyed its no objection to the proposed scheme of arrangement vide its letter, dated 2-8-2005. However, the said no objection certificate requires the applicant-company No. 3 to comply with all the requirements of SEBI (DIP) Guidelines and listing agreement. The applicant-company No. 1 has also undertaken to the stock exchanges that it shall meet the requirement of keeping the non-promoters holding as required under SEBI (DIP) Guidelines by issuing further shares to the prospective investors.

23. The major benefits that will accrue from the proposed scheme of arrangement have been stated in para No. 29 of the application.

24. The details of number of Directors of the applicant-companies are given in para Nos. 30, 31, 32 and 33, respectively.

25. Having heard learned Counsel for the applicants, on perusal of the entire application and keeping in view the fact that the applicant-company Nos. 2 and 3 are wholly owned subsidiary units of applicant-company No. 1 and the entire share capital of applicant-company Nos. 2 and 3 is holding by applicant-company No. 1 and further that the applicant-company No. 1 is already a party to the scheme of arrangement, the holding of the meeting of the shareholders of applicant-company Nos. 2 and 3 is dispensed with.

26. Applicant-company Nos. 2 and 3 have creditors including secured and unsecured. The applicant-company No. 3 is only a confirming and endorsing party and that the creditors of this applicant-company are not affected by the scheme of arrangement. Thus the prayer made for dispensing with holding of the

meeting of the creditors of applicant-company No. 3 is also dispensed with.

27. Applicant-company No. 4 has seven shareholders. The shareholders of the applicant-company No. 4 have already given their consent to the proposed scheme of arrangement in writing and the same are collectively enclosed to the application as Annexure-S.

28. It is not the final decision in the matter of approval of the scheme of arrangement. All the shareholders and the creditors of the applicant-companies shall have the opportunity to object it when the application comes for the approval of the scheme after the meeting. Thus the prayer made for dispensing with the meeting of the shareholders of the applicant-company No. 4 also deserves acceptance and ordered accordingly.

29. Similarly five unsecured creditors as on 31-3-2005 of the applicant-company No. 4 have also conveyed their no objection to the proposed scheme of arrangement; see Annexure-T to the application, and thus the prayer made for dispensing with holding of their meetings also deserves acceptance. Ordered accordingly.

30. Accordingly it is ordered that the separate meetings of the shareholders and unsecured creditors of the applicant-company No. 1 and secured and unsecured creditors of applicant-company No. 2, for the purpose of considering and if thought fit, approving, with or without modifications, the scheme of arrangement aforesaid, shall be convened and held, as per the following schedule:

_____	Name	Date & Time	Place	Shareholders of the 30th September, 2005
_____	Rajshree Hotels & applicant-company	Resorts Limited, New No. 1	10.30 A.M.	
_____	Sanganer Road, Opp. RIICO Industrial Area, Mansarovar, Jaipur	_____		

_____	Unsecured creditors	30th September, 2005	Rajshree Hotels & of the applicant-Resorts Limited, company No. 1	11.30 A.M.	New Sanganer Road, Opposite RIICO Industrial Area, Mansarovar, Jaipur	_____
-------	---------------------	----------------------	---	------------	---	-------

_____	Secured Creditors of 30th					
_____	September, 2005	Rajshree Hotels & the applicant-company	Resorts Limited, No. 2	12.30 Hrs.	New Sanganer Road, Opposite RIICO Industrial Area, Mansarovar, Jaipur	_____

_____	Unsecured Creditors	30th September, 2005				
_____	Rajshree Hotels & of the applicant- Resorts Limited, company No. 2	1.30 P.M.				
_____	New Sanganer Road, Opposite RIICO Industrial Area, Mansarovar, Jaipur.					

31. That at least 21 clear days before the days fixed for the meetings an advertisement convening the same and stating that copies of the said scheme of arrangement and of the statements required to be furnished, shall be furnished, pursuant to Section 393 of the Act, 1956 and forms of proxy can be obtained free of charge at the office of the applicant-company Nos. 1 and 2, respectively or from the office of their Advocates, be advertised once in the dailies, namely,

Hindi Newspaper "Rajasthan Patrika" (Jaipur Edition) and English Newspaper "Times of India" (Jaipur Edition).

32. That at least 21 clear days before the meetings to be held as aforesaid, a notice convening the said meetings at the place and time aforesaid, together with the copy of the said scheme of arrangement, a copy of the statement required to be sent u/s 393 of the Act, 1956, and the prescribed form of proxy, shall be sent by prepaid post under certificate of posting addressed to each of the shareholders and creditors, whose meetings are to be held, at the respective registered or last known addresses.

33. That the Advocates for the applicant-company Nos. 1 and 2 do, within the time as they consider necessary and at least within three days, file in Court the forms of the advertisement, the notices and statement to accompany the notices, and the same shall be settled by the Registrar of this Court.

34. That Shri Manoj Pareek, Advocate, Rajasthan High Court Bench, Jaipur, shall be the Chairman of the meetings of the shareholders, secured creditors and unsecured creditors to be held on 30-9-2005 as aforesaid. The applicant-company Nos. 1 and 2 shall deposit in the court or pay within one week from today an amount of Rs. 44,000 (Rs. 11,000 for each meeting) towards remuneration to the Chairman for presiding the meetings aforesaid. The applicant-company Nos. 1 and 2 shall also bear the expenses of conveyance of the Chairman for the said meetings.

35. That the Chairman appointed for the meetings through applicant-company Nos. 1 and 2, do issue the advertisement and send out the notices of the meetings referred to above.

36. That the quorum for the said meetings shall be as per the provisions of the Act, 1956.

37. That voting by proxy be permitted; provided that a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings, is filed with the applicant-company Nos. 1 and 2 at their registered office, aforesaid, not later than forty-eight hours before the meetings scheduled to be held.

38. That the value of each shareholder and creditor shall be in accordance with the books of the applicant-company Nos. 1 and 2 and, where the entries in the books are disputed, the Chairman shall determine the value for purposes of the meetings.

39. And, it is further ordered that the Chairman do separately report to this Court the result of the said meetings within seven days of the conclusion thereof, and the said reports shall be verified by his Affidavit.

40. With these directions the application accordingly stands disposed of.