
(2005) 10 MP CK 0047

In the Madhya Pradesh High Court

Case No : Company Petition No. 14 of 2005

In Re: Siddharth Soya Products (P.) Ltd.

Date of Decision : 27-10-2005

Acts Referred:

Companies (Court) Rules, 1959 — Rule 78
Companies Act, 1956 — Section 391, 394

Citation : (2006) 69 SCL 28

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : R. Saboo, for the Appellant; Vinay Zelawat, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is a company petition filed by two companies known as M/s. Siddharth Soya Products Pvt. Ltd. (for short hereinafter called as transferee company) and M/s. Nobal Grain India Pvt. Ltd. (hereinafter called as transferor company). It is filed u/s 391, read with Section 394 of the Companies Act, for according sanction by the court for the Scheme of arrangement/amalgamation/merger whereby entire business of manufacturing, processing and refining Soyabean Oil Seeds and other vegetable oil and other business as set out in detail in memorandum and Article of Association as also in scheme (Exhibit - A) of Transferor company shall amalgamate/Merge/Vest with the Siddharth Soya Products Private Limited ie., Transferee Company on the terms set out in the Scheme of amalgamation (Exhibit - A).

2. The Scheme of Amalgamation is sought to strengthen and consolidate the position of the amalgamated/resulting Company which will enable the amalgamated/resulting Company to participate more vigorously and profitably in an increasingly competitive and liberalized market. The amalgamated/resulting Company will also be in a position to generate additional funds and to further diversify and expand its business.

3. The said Scheme will also enable the management of the Transferor company and the Transferee Company to combine and pool the resources of both the

Companies for their common advantage and further growth and diversification of their business.

4. It is also stated that the proposed Scheme will enable both the Companies concerned to rationalize and streamline their management, businesses and finances and will eliminate duplication of work and achieve synergies to their common advantage.

5. It is also stated that the arrangement will further combine and enhance the collective net worth of the Transferor and Transferee Companies enabling the amalgamated/resulting Company to raise funds from the financial systems on better terms.

6. It is also stated that the Transferee Company will have a strong financial and operational structure, which will be capable of resource mobilization and financial consolidation, necessary to withstand the new competitive environment.

7. It is further stated that the said Scheme of amalgamation is beneficial to both Transferor and Transferee Companies, their shareholders, creditors, employees and all concerned and will enable both the Companies to achieve and fulfil their objectives more efficiently and economically. The said scheme will further contribute in furthering and fulfilling the objects of the amalgamating Companies and in the growth and development of their business.

8. It is also stated that proposed amalgamation would rationalize existing inter company transactions, introduce greater transparency, eliminate avoidable administration costs thereby improving investor and lenders' confidence.

9. It is also stated that the merger/amalgamation of the Transferor and Transferee Companies will result in strong financial structure; will facilitate resource mobilization, and financial consolidation. The synergy of the merger will improve credit rating of the resultant entity lowering the cost of borrowing, increased operational efficiency, integrated management functioning and will enhance the share value for the benefit of the shareholders of the existing entities.

10. It is lastly stated that the amalgamation will result in improved asset base and enable the Transferee Company to raise resources for future growth and expansion of the business.

11. This Court while deciding the earlier Company Petition No. 10 of 2005 filed by these two companies had directed by order dated 11-7-2005 for convening of the meetings of shareholders as also that of creditors of transferee company named above as contemplated by Section 391/394 of the Act by appointing Shri V.K. Jain, counsel of this Court, as Chairman and failing which Mr. Vivek Phadke. Accordingly, Mr. V.K. Jain, convened the meeting of shareholders as also that of creditors of transferee company on 13-8-2005 after following due procedure prescribed under the Act and the rules as directed by this Court in its order dated 11-7-2005 passed in Company Petition No. 10 of 2005 for issuance of notices to

shareholders and creditors of the transferee company. The Chairman has accordingly, submitted his report dated 16-8-2005 (Exhibit H) in terms of Rule 78 of the Company Court Rules, 1959.

12. Similarly, this Court in terms of the requirement of Act and the Rules issued notice of the Petition to Registrar of Companies inviting their objections, if any, to the proposed scheme or arrangement/amalgamation. Accordingly on 8-9-2005 and 6-10-2005 the Regional Director of Companies filed his reply in the form of affidavits of one Mr. V Shrinivasa Rao. It is inter alia averred in the affidavits by the Regional Director that he has no objection to the acceptance of the Scheme as proposed. The Director has, thus, opined after examining the Scheme in detail that the Scheme in question is in conformity with the requirement of law and secondly affairs of the Company in question i.e., transferee company are conducted in the manner not prejudicial to the interest of its members or public interest.

13. It is also reported by the Chairman in his reports dated 16-8-2005 that all the shareholders as also the creditors of the transferee company have unanimously consented to the proposed scheme of arrangement/amalgamation. In other words, the scheme in question has been approved by the entire body of shareholders as also creditors of the transferee company, in the meeting held on 13-8-2005.

14. Heard Shri R. Saboo, learned Counsel for the petitioner, Shri Vinay Zelawat, learned Counsel for Union of India.

15. Having heard learned Counsel for the parties and having perused record of the case, I am inclined to grant sanction to the scheme (Exhibit - A) proposed by the aforementioned Companies subject to what is mentioned infra.

16. In my considered opinion, I have not been able to notice any infirmity or objectionable feature of any kind or illegality or lacking bona fide in the scheme so proposed. It also does not appear to have been framed to defeat the rights of the creditors or any class of creditors or even any class or group of minority shareholders or to defeat any governmental dues or Revenue. Indeed all persons, who are directly or indirectly associated and dealing with the transferee Company, such as shareholders, creditors. Registrar of the Companies has given his no objection certificate/consent for approval of the scheme in question. As taken note of supra, the Scheme in question has been unanimously passed and approved by shareholders and creditors in their meeting held on 13-8-2005 under the chairman appointed by this Court as also it is approved by the shareholders even earlier to filing of this petition in their meeting.

17. It cannot be disputed that all such schemes are essentially meant for shareholders and creditors of the company whether transferor or transferee. When the entire body of shareholders and creditors do not object to it and on the other hand approves it in express terms in the specially convened meeting for the said purpose then it has to be given effect to because wishes of shareholders

and creditors must be allowed to prevail in the absence of any other illegality being noticed by this Court within the meaning of sections 391 and 394 of the Companies Act.

18. In my opinion, thus the Scheme of amalgamation proposed appears more on administrative basis. It will enable the transferee-company to run their business more effectively and economically than what they are presently doing. It will certainly reduce the expenses which are being incurred today by these companies. Moreover, the proposed scheme does take into consideration and safeguard the rights of shareholders of the transferor companies. In other words, none of the liabilities of the transferor company are in any way going to be adversely affected by the Scheme if allowed to be implemented. So far as the rights of the creditors are concerned, they also remain intact so too shareholders who will be paid dividend on their shareholding depending upon the profitability of the Company and the business done.

19. I, therefore, allow the application and grant sanction to the proposed Scheme of arrangement/merger/amalgamation (Annexure-A) as prayed. It is, however, made clear that this Court has examined the Scheme only at the instance of Transferee Company whose registered office is situated within the territorial jurisdiction of this Court. In other words, this Court has not examined the Scheme so far as Transferor Company is concerned. It is for the reason that the office of Transferor Company is situated outside the territorial jurisdiction of this Court. It is situated at New Delhi. In these circumstances, the sanction granted by this Court will be subject to any order that may be passed by a Company Court in the Company Petition if and when filed by the Transferor Company before Delhi High Court, seeking sanction of this Scheme as contemplated u/s 391/394 of the Companies Act.

20. Petitioner to pay fees of standing counsel for the Central Government Rs. 10,000, if certified.