

(2006) 06 RAJ CK 0003
In the Rajasthan High Court
In Re: Skipper Electricals (India) Ltd.

Date of Decision : 01-06-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 21, 235, 236, 237, 238

Citation : (2007) 136 CompCas 790 : (2007) 75 SCL 270

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—This petition under Sections 391(2) and 394 of the Companies Act, 1956, (in short "Act of 1956") seeking approval of the scheme of amalgamation between Skipper Electricals (India) Limited [hereinafter referred to as the "Transferor company" (Company No. 1), with SEIL Powergears Limited (hereinafter referred to as the "Transferee Company (Company No. 2)"].

2. The transferor company was incorporated on 23-5-1989 under the provisions of Companies Act, 1956 as a private limited company and converted into a public limited company vide special resolution dated 28-6-1994. Fresh certificate of incorporation dated 21-10-1994 was issued by Assistant Registrar of Companies, NCT of Delhi and Haryana. The authorised share capital of the transferor company is Rs. 10,00,000 (Rupees ten lakhs) divided into 10,000 (ten thousand) equity shares of Rs. 100 each. The issued, subscribed and paid up share capital of the transferor company is Rs. 5,00,000 (Rupees five lakhs) divided into 5,000 (five thousand) equity shares of Rs. 100 each fully paid up.

3. The transferor company is presently engaged in the business of manufacturing sub-station and transformer equipment. Accounts of the company have been audited and finalised on 31-3-2005.

4. Subsequent to the date of audit 890 equity shares of Rs. 100 each of the transferor company have been allotted in the name of Shri Jitender Sachdeva, as such paid up share capital presently is Rs. 5,00,000 (Rupees five lakhs). There is no substantial change in the financial position of the transferor company.

5. The transferee company SEIL Powergears Limited was incorporated on 24-2-1995 under the provisions of Companies Act, 1956 as a company limited by shares. The authorised share capital of the transferee company is Rs. 1,25,00,000 (Rupees one crore twenty five lakhs) divided into 12,50,000 (twelve lakhs fifty thousand) equity share of Rs. 10 each. The issued, subscribed and paid up share capital of the transferee company is Rs. 1,22,51,330 (Rupees one crore twenty two lakhs fifty one thousand three hundred thirty) divided into 12,25,133 (twelve lakhs twenty five thousand one hundred thirty three) equity shares of Rs. 10 each fully paid up.

6. The transferee company is presently engaged in the business of manufacturing sub-station material such as power destination transformer and current and potential transformers. Accounts of the company have been audited and finalised on 31-3-2005. Subsequent to the date of audit there is no substantial change in the financial position of the transferee company.

7. The circumstances and/or reasons necessitating the scheme of amalgamation are:

(i) Both the transferor company and transferee company are group companies, as part of restructuring and reorganization within the group. It is proposed to consolidate the business of the companies as provided in the proposed scheme.

(ii) Both the companies are engaged in similar business, i.e., manufacturing of sub-station and transformer equipment and have complementary product range and common customers. For the purpose of better efficient and economical management control and running of their business and for further development and growth of the business of companies the scheme of amalgamation is proposed.

(iii) The scheme will enable the pooling of the resources of the transferor and transferee companies to their common advantage.

(iv) The scheme will result in greater economies of scale, reduction in overheads and other expenses and better and moral productive utilization of various resources.

(v) The scheme will contribute in furthering and fulfilling the objects of the companies and lead to the optimum growth and development of the business of the amalgamated company.

(vi) The combined operation will offer possibilities of business synergy owing to economics of scale, integrated operations and reduction in costs. The business can be conveniently and advantageously combined together.

(vii) The amalgamation would also enable optimum utilization of various facilities, better planning and execution of orders.

(viii) The scheme will enable the establishment of a larger company with larger resources and larger capital base facilitating further expansion and development

of business of both the companies.

(ix) Amalgamation will contribute in furthering and fulfilling the objectives and business strategies of both the companies. It will provide a strong and focused based to undertake the business more advantageously and thereby increase their profitability and share holders net worth.

8. The Board of Directors of the transferor company and the transferee company have at their respective meetings by resolutions passed unanimously approved the said scheme of amalgamation. The Directors holding shares in the Companies do not hold any other shares in either the transferor company or the transferee company. No other director of either the transferor company or the transferee company hold any shares in any of the said Companies. None of the Directors of the transferor company or the transferee company have any material interest in the said Scheme of Amalgamation, save and except as shareholders in general. The aggregate assets of the transferee company are more than sufficient to meet all the liabilities of the transferor company as well as those of the transferee company and the said Scheme will not adversely affect the rights of the creditors of any of the companies in any manner whatsoever and due provisions have been made for payment of all liabilities as and when the same fall due in usual course. There are no proceedings under Sections 235 to 251 the Companies Act, 1956 or under the provisions of the Monopolistic and Restrictive Trade Practices Act against either the transferor company or the transferee company.

9. The exchange ratio for allotment of the shares of the transferee company in lieu of shares of the transferor company has been fixed on a fair and reasonable basis and on the basis of the valuation report of M/s. G.P. Agrawal & Co., Chartered Accountants. The transferor company has 9 (Nine) equity shareholders. All the shareholders of the transferor company have agreed in writing to the proposed amalgamation. The shareholders have also recorded that the meeting of the shareholders as required u/s 391(1) of the Companies Act, 1956 need not be held and have waived all their rights in respect thereof. The shareholders have further recorded their consent and no objection to the transferor company to file necessary applications before the High Court of Delhi at New Delhi to file this consent and to apply for waiver from holding such meeting.

10. The registered office of the transferor company is situated at Delhi within the jurisdiction of the Hon''ble High Court of Delhi. On consideration of the application under Sections 391(2) and 304 for sanction of the scheme of amalgamation the Hon''ble Delhi High Court was pleased to pass an order on 3-8-2005 sanctioning the scheme of amalgamation in issue. The order dated 3-8-2005 is enclosed as Annexure III with the company petition. The transferor company modified the scheme by deleting the existing para 10(b)111 and substituted it with the new para as shown in para 24 of the company petition. The copy of the modified scheme has been annexed as Annexure IV. The Board

of Directors of the transferor company and the transferee company have at their respective meetings by Resolutions passed unanimously approved the amended scheme of amalgamation.

11. The transferee company had eight equity shareholders. All the shareholders of the transferee company have agreed in writing to the proposed amalgamation and also agreed in writing that the meeting of the shareholders of the petitioning company as required u/s 391 of the Companies Act need not be held and waived all their rights. The transferee company has only one unsecured creditor, namely, SBBJ. Unsecured creditor of the transferee company has agreed in writing to the proposed amalgamation. The transferred company has no secured creditors. This Court vide order dated 24-8-2005 passed in Company Application No. 38 of 2005 filed by the transferee company SEIL Powergears was pleased to pass following order:

It is a fit case for dispensing with the meeting of the equity shareholders and unsecured creditors of the applicant transferee company. It is not gain say that it is not the final order in the matter. The equity shareholders and the unsecured creditors may have ample opportunity, if they have any objection against the scheme of amalgamation of Transferor Company Skipper Electricals (India) Limited with the applicant transferee company, when the matter will come up for sanction thereof.

12. This Court issued notice of this petition on 5-1-2006. The notice of this petition were published in two newspapers, viz., Dainik Bhaskar dated 9-2-2006 and English Newspaper - The Indian Express dated 8-2-2006.

13. Objections were filed and the first objection was that share capital of the transferor company is inadequate to facilitate a swap of the share of the two companies without the share capital of the transferor company being enhanced. The second objection was that name of the amalgamated entity is sought to be Skipper Electricals (India) Ltd. without resort to provisions of the Companies Act.

14. In reply to first objection the petitioner submitted that according to Clause (b) of para 10 of the scheme of amalgamation the equity shares of the transferee company held by the transferor company on the record date, if any, shall stand cancelled and the issues, subscribed and paid up share capital of the transferee company shall stand reduced to the extent of the equity shares so cancelled without further act or deed.

15. In reply to second objection it has been submitted that intended new name is more well-known in the market and the business in which the transferor company engages. Sections 391 and 394 of the Companies Act allow for complete restructuring of the companies in the interest of shareholders and apart from merger of other companies the proceedings under the said provisions allow for permissible changes under the Companies Act. Lastly the petitioner-company prayed to sanction the scheme of amalgamation duly approved by the shareholders and creditors.

16. Reliance is placed on Govind Rubber Ltd. In re [1995] 83 Comp. Cas. 556. His Lordship of the Bombay High Court held that u/s 21 of the Act, the company is required to pass a special resolution and obtain the approval of the Central Government for change of its name. The change in the name of the company cannot be effected merely on the scheme of amalgamation becoming effective. The objections raised by the OL are sound. The objections raised regarding paras 12(a) and 12(b) are allowed. These paras will not form the part of the Part IV of the Scheme of Amalgamation.

17. Having closely scrutinised the Scheme of Arrangement, I am of the opinion that it is not unjust and unfair to the creditors or any class of creditors.

18. I do not find any other objection on record and the scheme as such is sanctioned except paras 12(a) and 12(b) of Part IV of the scheme of amalgamation. The judicial powers in the matters of Sections 391 and 394 of the Companies Act can be involved only when it is revealed that the whole scheme is unfair, unreasonable, contrary to law and public policy. Instant scheme of Arrangement to my mind does not come in these categories. The scheme appears to be fair, reasonable, according to law and in the interest of the shareholders.

19. For these reasons, the petition stands allowed and the scheme of arrangement is sanctioned in terms of prayer Clauses (i) to (iii) except the paras 12(a) and 12(b) of Part IV of the amalgamation scheme. Costs of Rs. 2,500 to the Official Liquidator to be paid by the petitioner within two weeks from today. The copy of the order be sent to the Registrar of Companies as per Rules.