

(2011) 01 SHI CK 0049

In the High Court Of Himachal Pradesh

Case No : Co. Petition No"s. 14 and 15 of 2010

**In Re: Sunvision Engineering Company Private Limited;
 In Re:
Himachal Futuristic Communications**

Date of Decision : 05-01-2011

Acts Referred:

Companies (Court) Rules, 1959 — Rule 69, 73, 74, 80
Companies Act, 1956 — Section 391, 391(1), 391(2), 394(1), 394A

Citation : (2011) 01 SHI CK 0049

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in both the petitions, the same are taken up together for hearing and are being disposed of by a common judgment.

2. The Board of Directors of the Transferor Company, i.e. Sunvision Engineering Company Private Limited, approved the scheme on 21.9.2010. The Board of Directors of the transferee company, i.e. Himachal Futuristic Communications Limited, also approved the scheme on 21.9.2010. The National Stock Exchange of India Limited and Bombay Stock Exchange conveyed their "no objection" to the filing of scheme in this Court on 12.10.2010 and 19.11.2010, respectively.

3. Company Petition No. 13 of 2010, instituted by Transferor Company, u/s 391 of the Companies Act, 1956 sought directions under Rule 69 of the Companies (Court) Rules, 1959 (hereinafter referred to as "Rules" for brevity sake) for dispensing with the requirement of convening the meetings of the Equity Shareholders, Unsecured Creditors and Optionally Convertible Debenture Holder. The Transferee Company instituted Company Petition No. 12/2010 seeking directions under Rule 69 of the Rules for convening the meetings of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company to consider the scheme.

4. This Court in Company Petition No. 13 of 2010 dispensed with the requirement of convening the meetings of the Equity Shareholders, Unsecured Creditors and

Optionally Convertible Debenture Holder on 22.10.2010. This Court in Company Petition No. 12 of 2010 on 22.10.2010 directed convening of the meetings of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company to consider the scheme. From 25.10.2010 to 28.10.2010, in terms of Rule 73 of the Rules, notices of the meeting of the Equity Shareholders with a copy of the scheme, explanatory statement and form of proxy were issued to the Equity Shareholders of the Transferee Company. On 27.10.2010, notices of the meeting of the Preference Shareholders with a copy of scheme, explanatory statement and form of proxy was despatched to the Preference Shareholders of the Transferee Company. Similarly, on 27.10.2010, under Rule 73 of the Rules, notice of the meeting of the Secured Creditors with a copy of the scheme, explanatory statement and form of proxy, was despatched by U.P.C. to the Secured Creditors of the Transferee Company. On 28.10.2010, notice of the meeting of the Unsecured Creditors with copy of the scheme, explanatory statement and form of proxy, was despatched by U.P.C. to the Unsecured Creditors of the Transferee Company. On 27.10.2010, in compliance to Rule 74 of the Rules, public notice of the meetings of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors was published in the Indian Express (English - All India Edition-North), the New India Express (English - All India Edition-South), Indian Express (English-Chandigarh Edition) and Dainik Tribune (Hindi - Chandigarh Edition).

5. The Equity Shareholders of the Transferee Company convened its meeting on 26.11.2010 for approving the scheme, in accordance with the provisions of Section 391(2) of the Act. The Equity Shareholders voted in favour of the scheme represented 99.06% in number and 99.84% in value of the Equity Shareholders present and voted. The preference Shareholders of the Transferee Company at the meeting held on 26.11.2010 approved the scheme, in accordance with the provisions of Section 391(2) of the Act. The Preference Shareholders who voted in favour of the scheme represented 100% in number and 100% in value of the Preference Shareholders present and voted. The Secured Creditors of the Transferee Company also approved the scheme, in accordance with the provisions of Section 391(2) of the Act, on 26.11.2010. The Secured Creditors, who voted in favour of the Scheme represented 100% in number and 100% in value of the Secured Creditors present in voting. The Unsecured Creditors of Transferee Company at the meeting held on 26.11.2010, approved the Scheme in accordance with the provisions of Section 391(2) of the Act. The Unsecured Creditors who voted in favour of Scheme represented 100% in number and 100% in value of the Unsecured Creditors present in voting. The Chairperson filed report in this Court in Company Petition No. 12 of 2010. Thereafter, in Company Petition No. 14 of 2010 and 15 of 2010, Transferor Company and Transferee Company, respectively sought sanction of the scheme of amalgamation.

6. This Court in Company Petition No. 14 of 2010 directed the publication of notice in the newspapers and notice to be served on the Regional Director,

Registrar of Companies and the Official Liquidator on 2.12.2010. Similarly, the Court in Company Petition No. 15 of 2010 directed publication of notice in the newspapers and notice to be served on the Regional Director and Registrar of Companies. In sequel to orders dated 2.12.2010, passed in Company Petitions No. 14 and 15 of 2010, notices of petition was served upon Official Liquidator, Registrar of Companies and the Regional Director. Notices were also published in the newspapers, as directed, strictly in conformity with Rule 80 of the Rules. The notices of the petition were served on the Registrar of Companies and the Regional Director, in terms of order dated 2.12.2010 in Company Petition No. 15 of 2010. Notices were also published in the newspapers in conformity with Rule 80 of the Rules. The Regional Director, in terms of first proviso to Section 391(1) and Section 394-A of the Act, had filed the report, inter alia, stating:

a) Upon the sanction of the scheme, all employees of the Transferor Company shall become the employees of the Transferee Company without interruption or break in service.

b) The Transferee Company will advise to comply with the conditions raised by the Bombay Stock Exchange Limited.

7. The Official Liquidator, in terms of second provision to Section 394(1) of the Act, has filed the report on 16.12.2010, inter alia, stating therein that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

8. Mr. Rajiv Nayyar, Senior Advocate submits that as far as condition No. 9 of the report filed by the Regional Director, is concerned, it has been duly provided in Clause 3.6.1 (a) of Part-III of the Scheme. Mr. Rajiv Nayyar also undertakes on behalf of his clients that the Transferee Company will comply with the conditions stated by the Bombay Stock Exchange Limited in its communication dated 19.10.2010.

9. It is evident from the observations and discussions made hereinabove that all the mandatory provisions under the Act and Rules have been complied with. The Scheme has been duly approved by the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company. There is a report of the Regional Director and the Official Liquidator.

10. Consequently, the Court does hereby sanction the composite Scheme of Arrangement and Amalgamation between the Petitioner company, being Annexure A to Company Petition No. 14 of 2010, and Annexure A to Company Petition No. 15 of 2010. A copy of the Scheme shall be annexed to this order of sanction. The Transferor and Transferee Companies shall file a copy of this order alongwith composite Scheme of Arrangement of Amalgamation with the Registrar of Companies (for the States of Punjab, Chandigarh and Himachal Pradesh) within 30 days of the date of receipt of this order. Upon filing of the sanction order of this Court with the Registrar of Companies, the Transferor Company shall stand dissolved without the process of winding up. A copy of this order be

given Dasti to the counsel for the Petitioner companies.

11. In the light of above, both the petitions stand disposed of. No costs.