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(2009) 01 KAR CK 0042

In the Karnataka High Court

Case No : Company Petition No. 44 of 2008

In Re: Titan Holdings Limited

Date of Decision : 09-01-2009

Acts Referred:
Companies Act, 1956 — Section 391, 394

Citation : (2009) 01 KAR CK 0042

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Uday Shankar Associates, for the Appellant; Deepak and V. Jayaram for OL, K.S. Mahadevan, CGSC for ROC, for the Respondent

Final Decision : Allowed

Judgement

Mohan Shantanagoudar, J.—This petition is filed under Sections 391 - 394 of the Companies Act, 1956 (for short hereinafter referred to as the ''Act'') to obtain sanction of this Court, to the Scheme of Amalgamation of the petitioner-company with Titan Industries Limited.

The petitioner-transferor company was incorporated on 10.3.1993 under the name of style of Titan Holdings Limited, having its registered office at Golden Enclave, Tower ''A'', Airport Road, Bangalore-560 017. Clause 32 of the Memorandum of Articles of Association of the petitioner-company permits for amalgamation of the company. By virtue of the scheme of amalgamation, the petitioner-company is proposed to be amalgamated with Titan Industries Limited (transferee company).

2. Main objects of the petitioner-transferor company as set out in the Memorandum of Association are to carry on the business as an investment and finance company and to provide finance or to make investment in shares, stocks, securities and to provide on lease or hire purchase basis or on deferred payment or on any other basis, all types of plant, equipment, machinery, vehicles and real estate and any other movables and immovable properties whether in India or abroad, for industrial, commercial or other uses and to establish and carry on the business of merchant banking and to promote, establish, finance or in any other

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manner support or encourage establishment of industrial and trading activities and etc.,

3. The authorized share capital of the petitioner-transferor company is Rs. 10,00,00,000/- divided into 1,00,000 equity shares of Rs. 10/- each.

4. The net worth of petitioner-transferor company is Rs. 11,66,95,421/- (Rupees Eleven crores sixty-six lakhs ninety five thousand four hundred and twenty one only) and the excess of current assets over current liabilities is Rs. 1,56,91,873/- (Rupees One crore fifty-six lakhs ninety-one thousand eight hundred seventy-three only) as on 31st December 2007, which means that the company is financially sound to meet all its liabilities.

5. The transferee company is a Public Limited Company whose net worth as, on 31st March 2007 is Rs. 327,44,47,00/- and its excess of current assets over its current liabilities as on the same date is Rs. 2,93,54,68,000/-, which means the transferee company is also financially sound to meet all its liabilities, including the liabilities of petitioner-transferor company on amalgamation.

6. The main objects of transferee company as set out in the Memorandum of Association are to carry on business of designing, engineering, manufacturing, producing, assembling, fabricating, altering, repairing, buying, selling, trading, acquiring, representing manufacturers, storing, packing, transporting, forwarding, distributing, importing, exporting and disposing of watches, clocks, chronometers, chronological instruments and other devices for measuring time and components etc.,

The authorised share capital of the transferee company is Rs. 120,00,00,000/- (Rupees One hundred twenty crore only), divided into 8,00,00,000/- (Eight crore) equity share of Rs. 10/- each and 40,00,000/- redeemable cumulative preference shares of Rs. 100/- each.

7. The two other transferor companies to the Scheme of Amalgamation, viz., Samrat Holdings Limited and Questar Investments Limited being the subsidiaries of transferee company have filed respective petitions before the High Court of Judicature, Mumbai, seeking sanction of the scheme of amalgamation.

8. The three transferor companies to the Scheme of Amalgamation, viz., the petitioner-company, Samrat Holdings Limited and Questar Investments Limited are the subsidiaries of transferee company and after considering their inter-transferor company shareholding which are to be cancelled and extinguished on amalgamation, there will be no swap or issue of new shares by the transferee company, which is dealt in Clause 10 r/w. Clause 4 (c) of the Scheme of Amalgamation. There will therefore be no change in the share capital/ shareholding of the transferee company

9. The scheme does not envisage any compromise or arrangement between the transferee company and its creditors or any class of them or between the transferee company and its members or any class of them as contemplated u/s

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391 of the Act

10. The Scheme of amalgamation does not affect the rights of any of the members or creditors of the transferee company as between themselves and the company or does not involve a re-organisation of the share capital of the transferee company.

11. The petitioner-transferor company filed CA. No. 255/2008 before this Court praying to exempt from calling and convening a meeting of the equity shareholders and preference shareholders of the applicant company for the purpose of considering and approving the proposed scheme of amalgamation of the applicant company -Titan Holdings Limited, Samrat Holdings Limited, Questar Investments Limited with Titan Industries Limited. This Court by the order dated 10th April 2008 ordered dispensation of meetings of equity shareholders in view of consent letters produced in the application and also dispensed with the meeting of the preference shareholders of the applicant-company as they have given no objection to the scheme. In pursuance to the order of this Court, advertisements were published on 19.6.2008 in ''Vijaya Karnataka'' and the ''The Hindu'' daily newspapers.

12. On the request of the Official Liquidator, this Court appointed M/s. N.M. Arunkumar & Co., Chartered Accountants, to examine the books of accounts of the petitioner-company and to furnish a report. The Official Liquidator has also filed the report mentioning that he has no objection for amalgamation.

13. Sri K.S. Mahadevan, learned Central Government Counsel appearing on behalf of Registrar of Companies has filed his affidavit stating that the scheme may be approved, subject to sanction of the scheme by the High Court of Judicature, Bombay. It is also pointed out therein that the transferee company whose registered office is at Hosur in Tamil Nadu, has not filed any petition u/s 295 of the Companies Act before High Court as mentioned in the scheme. In answer to the said affidavit, the petitioner-transferor company has clarified that Clause 13 (b) of the Scheme has become redundant and to the said effect the transferor as well as the transferee company have passed resolutions. The affidavit of Sri K.F. Kapadia, Director, Titan Holdings Limited, sworn on 21st November 2008 and the Resolutions passed by the transferor and transferee companies filed Annexures- ''A'' and ''E'' to the said affidavit are taken on record. The said affidavit and the Resolutions passed by the transferor and transferee companies dated 29th September 2008 and 20th October 2008 clearly reveal that Clause 13 (b) or any other clause or clauses linked thereto of the. Scheme of Amalgamation has become redundant and is not to be acted upon. Since the transferor and transferee companies have clarified the objections raised by the Registrar of Companies, in my considered opinion, the prayer as sought for in the petitioner may be granted.

14. As could be seen from the petition, the Scheme of Amalgamation will be beneficial to the petitioner company and the transferee company to closely linked

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together in their business activities. The infrastructure facilities of both the companies could be pooled together for the benefit of the Amalgamated Company, which will be able to function as one single unit with the focus of management entirely on the Amalgamated Company. The main object of the proposed amalgamation of the transferor companies with the transferee company is to carry on the business of all the transferor companies and transferee company more efficiently, conveniently, economically arid advantageously under the single management of the transferee company. The expertise of transferor companies and experience of transferee company will enable the combined operations to grow wider in scope and will help the companies to achieve all round economies, savings in cost and reduction in administrative and operational overheads. There are synergies of objects and operations of the transferor companies and the transferee company and it will be in the interest of all the respective companies arid their members to pool and consolidate the company''s investment in and through the associate companies under one umbrella for a more beneficial and focused business approach so that the resources can be better and productively utilised for the common benefit of all the transferor companies and transferee company.

15. Since sanctioning of the Scheme of Amalgamation would be beneficial to both the transferor and transferee companies and there is no impediment in law for sanctioning of the Scheme. The share holders have unanimously accepted the scheme. The records do not disclose that any other person has objected for the scheme even after issuing notice through paper publication. As the shareholders who are the persons affected have given their approval, it is not open to this Court to sit as a Court of appeal and decide sitting in judgment over the commercial wisdom of the shareholders. Accordingly, the following order is made:

The Scheme of Amalgamation vide Annexure-A is sanctioned, so as to be binding on all the shareholders and creditors of transferor and transferee companies. The transferor company is dissolved without there being an order of winding up as per Clause-6 of the Scheme of Amalgamation.

The certified copy of the order shall be filed before the Registrar of Companies within thirty days from the date of receipt of this order.

Company petition is allowed accordingly.

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