

(2011) 02 GUJ CK 0191
In the Gujarat High Court
Case No : Company Application No. 202 of 2011
In Re: TML Industries Ltd.

Date of Decision : 09-02-2011

Acts Referred:

Companies Act, 1956 — Section 391, 394, 4

Citation : (2013) 176 CompCas 211

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : K.S. Nanavati and Nandish Chudgar for Nanavati Associates, for the Appellant;

Judgement

Anant S. Dave, J.—The present judge's summons has been taken out by the applicant. TML Industries ("transferee company") praying for dispensation of meetings of the equity shareholders, secured and unsecured creditors of the applicant-company to consider and/or approve, with or without modification(s), the proposed scheme of amalgamation of Mumukshu Finances and Services Ltd. ("transferor company"), which is the wholly owned subsidiary company, with the applicant-company. Shri K.S. Nanavati, the learned senior advocate appearing with Mr. Nandish Chudgar for Nanavati Associates on behalf of the applicant-company has submitted that the rights and interest of the equity shareholders, secured and unsecured creditors of the applicant-company are not affected by the scheme of amalgamation as proposed and therefore, it is requested to dispense with their meetings.

2. It is further submitted that under the scheme, no compromise is offered to any of the creditors whether secured or unsecured and neither any liability of the creditors under the scheme is being reduced or extinguished. Relying upon the audited balance-sheet as on March 31, 2010, as well as the certificate of the chartered accountant it is submitted that in case of transferor company, there are no creditors (secured and unsecured) and in case of the transferor company there are excess of assets over liabilities to the tune of Rs. 25 crores as specifically stated in paragraph 14 of the affidavit in support of summons for

directions. Therefore, it is requested to dispense with the meetings of the equity shareholders, secured and unsecured creditors.

3. Mr. Nanavati, learned senior counsel, relied upon the following decisions in support of his submission that meeting of equity shareholders, secured and unsecured creditors of the applicant may be dispensed with:

- (i) Mahaamba Investments Ltd. Vs. IDI Limited, ;
- (ii) Andhra Bank Housing Finance Limited Vs. Andhra Bank, ;
- (iii) In Re: Santhanalakshmi Investments (P.) Ltd., ; and
- (iv) Aditya Birla Nuvo Ltd., being Company Application No. 241 of 2007.

4. Having heard learned counsel appearing on behalf of the applicant-company and considering clauses 11 and 12 of Part III of the scheme that no allotment of any shares would be made by the applicant-company to the shareholders of the transferor company and the rights of the shareholders of the applicant-company are not affected as no new shares are being issued and that there would be no change in the capital structure of the applicant-company and that the scheme does not involve reorganisation of the share capital of the applicant-company and accordingly, rights and interest of the shareholders of the applicant-company are not affected by the proposed scheme, the meeting of the equity shareholders of the applicant-company to consider and/or approve the proposed scheme of amalgamation is hereby dispensed with.

5. In the case of Mahaamba Investments Ltd. Vs. IDI Limited, , the learned company judge was considering a question as regards office objections that no petition was filed by the transferee company. The transferee company in that case was holding company of the transferor company and thus it is 100 per cent; subsidiary and besides the scheme of amalgamation postulates that the entire share capital of the transferor company was held by the transferee, upon the scheme becoming finally effective, the said share capital of the transferor would stand automatically cancelled and no shares would be allotted of the transferor company to the shareholders of the transferor company because the transferee company hold 100 per cent. share capital of the transferor company. The above aspect was also considered by the learned single judge of the Bombay High Court in the case of Bank of India Ltd. Vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd., and it was held in the above case that if a scheme by way of transfer of undertaking does not affect the rights of the members or creditors of the transferee company, as between themselves and the company, or does not involve a re-organisation of share capital of transferee company, no application of the transferee company under sections 391 or section 394 would be necessary.

6. In the case of Andhra Bank Housing Finance Limited Vs. Andhra Bank, , the decision of the Mahaamba Investments Ltd. Vs. IDI Limited, , was followed. In the above case, the petitioner Andhra Bank Housing Finance Limited Vs. Andhra Bank, , had filed an application of or seeking sanction of the scheme of

arrangement for its amalgamation with another under sections 391 and 394 of the Companies Act, 1956. After referring to provisions of section 394 of the Act, and considering meaning of "holding company" and "subsidiary" in the context of section 4 of the Companies Act and with regard to the question whether the holding company shall also file a petition seeking application of the scheme, it was noticed that there was nothing in section 394 of the Act, which mandates that an application is got to be made by the transferor company and transferee company separately in first instance. What is to be seen from the section is whether the proposed scheme is in any manner prejudicial to the interest of the members of the company or public interest. According to the learned company judge, the legal position was no more res integra. The learned company judge also referred to the decision of the point of rendered of various High Courts, including Mahaamba Investments Ltd. Vs. IDI Limited, , In Re: Santhanalakshmi Investments (P.) Ltd., and Bank of India Ltd. Vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd., .

7. The above two decisions are relied on by the learned company judge of the Madras High Court in the case of In Re: Santhanalakshmi Investments (P.) Ltd., and allowing the application, it was held that since the transferor company was a wholly owned subsidiary of the transferee company a single application at the instance of the transferee company would be sufficient.

8. In view of the above decisions, what is to be seen u/s 394 of the Act, at the first instance, is about the proposed scheme of amalgamation whether is in any manner prejudicial to the members of either the subsidiary or holding company of prejudicial to the public interest and where it affects the lights of the members of the transferee company or its creditors. In, the facts of this case, as noticed in the above paragraphs and perusal of the scheme reveal that the transferor company being wholly owned subsidiary company of the transferee company and certain directors on the board of the transferor company are also the directors on the board of the transferee company and no new shares are sought to be issued to the members of the transferor company by the transferee company, the scheme will not affect the members of the transferee company.

9. Therefore, considering the averments in paragraphs, 14 and 15 of the application that under the scheme, no compromise is offered to any of the creditors whether secured or unsecured and neither any liability of the creditors under the scheme is being reduced or extinguished and considering the fact that as per the audited balance-sheet as oh March 31, 2010, in case of transferee company there are excess of assets over liabilities to the tune of Rs. 25 crores and as the interest of the secured and unsecured creditors of the applicant-company are not in any way affected by the proposed scheme of amalgamation, the meetings of the secured and unsecured creditors of the applicant-company to consider and/or approve the proposed scheme of amalgamation is hereby dispensed with. Accordingly, this application stands disposed of. No costs.