

(2011) 04 KAR CK 0025
In the Karnataka High Court
Case No : Company Application No. 393 of 2011
In Re : Ub Nizam Breweries P. Ltd.

Date of Decision : 21-04-2011

Acts Referred:

Companies Act, 1956 — Section 391

Citation : (2011) 167 CompCas 562

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Vivek Holla for M/s. Holla and Holla, for the Appellant;

Judgement

Aravind Kumar, J.—In this application, the applicant-company is seeking dispensation for convening of meeting of equity shareholders, preference shareholders and unsecured creditors of the applicant-company by invoking section 391 of the Companies Act, 1956 (for short "the Act").

2. It is contended that the applicant-company was incorporated on September 14, 2005, as Pearl Breweries P. Ltd., which was subsequently changed to Asia Pacific Breweries-Pearl P. Ltd., with effect from September 29, 2006 and subsequently to the present name, viz., UB Nizam Breweries P. Ltd., with effect from May 21, 2010, as reflected in the certificate of incorporation found in the memorandum of association and articles of association, appended to the application as per annexure B to the application. The objects of the applicant-company as envisaged under the memorandum of association is to carry on business of bottlers, preservers, processors, coopers, canners, brewers, distillers, dehydrators, rectifiers, mythylatores, malsters, manufacturers, exports and dealers in beer, ale, stout, porter, wines, brandies, olders, spirits, aerated water, mineral water, liquors of ever)" descriptions including Indian made foreign liquors, country liquors, by products therefrom, foreign extracts of fruits, tonics, vilemine beverages, flavoured drinks, yeast nectors, punch, venegars, acids, molasses, barley malt, malt products, malt hops, which may be conveniently used or manufactured in conjunction with any of the above business. A perusal of the memorandum of association and articles of association would reflect that it

enables the applicant-company as per clause III(B)(6) Corrected vide court order dated May 20, 2011, for merging with other companies. Pursuant to the same, a scheme of amalgamation is said to have been propounded by the applicant-company as per the scheme of amalgamation appended to the application at annexure A, whereunder, it is seeking to amalgamate with UB Ltd., a company incorporated under the Act and having its registered office at UB Tower, UB City, 24, Vittal Mallya Road, Bangalore-560 001 (transferee company).

3. The authorised share capital of the applicant transferor company is Rs. 900, 000, 000 comprising of 64,000,000 equity shares of Rs. 10 each and 26,000,000 preference shares of Rs. 10 each. Issued, subscribed and paid-up share capital is 48,010,000 equity shares of Rs. 10 each, fully paid-up and 18,230,000, 8 per cent, fully convertible cumulative preference shares of Rs. 10 each fully paid-up, totalling of Rs. 662,400,000. This is evidenced from the balance-sheet, duly audited by the applicant-company's audit or, which is appended to the application along with the auditors' report as per annexure E.

4. The certificate issued by the chartered accountant dated April 6, 2011, would also reinforce this fact, viz., there are two equity shareholders as also two preference shareholders, as reflected in the said certificate, which is appended to the application as annexure K. The said figures as certified by the auditor as per annexure K is in consonance with the figures reflected in the balance-sheet, which is also duly certified by the auditors.

5. It is stated by the applicant-company that there are no secured creditors as on March 31, 2010, as per certificate issued by the chartered accountants of the applicant-company dated April 6, 2011 (annexure K) and this fact is also fortified and evidenced from the balance-sheet produced by the applicant-company as per annexure E, wherein under the column "loan fund", secured loans have been depicted as "nil".

6. The equity shareholders and the preference shareholders have given their consent by letters dated March 29, 2011 and March 25, 2011 and annexed to the application as annexures H and J respectively, whereunder they have concurred, approved and consented for the scheme of amalgamation and have waived their right to receive notice of meeting, thereby consenting for dispensing with convening of meeting of the equity shareholders and preference shareholders. Thus, it appears from the records that the equity shareholders as well as preference shareholders have consented and accepted for dispensing with convening of the meeting of the equity and preference shareholders.

7. On perusal of records referred to above, this court is fully satisfied that equity and preference shareholders have given their consent, for dispensing with convening of meeting of equity and preference shareholders.

8. In this application, the applicant is also seeking for dispensing with convening of meeting of unsecured creditors, who are 118 in number and total amount and sum total of unsecured creditors which the applicant-company owes to the

unsecured creditors is to the tune of Rs. 896,544,337. The list of unsecured loan and unsecured creditors is annexed to the certificate of chartered accountants produced at annexure K and captioned as annexure I to said certificate.

9. Though Sri Vivek Holla, learned counsel for the applicant-company would contend that by dispensing with convening of the meeting of unsecured creditors, no prejudice would be caused to them, under the scheme of amalgamation and their interest has been taken care of. However, there being no consent given by them and to what extent the interest of unsecured creditors is being taken care of under the scheme of amalgamation by the transferee company, it is the wisdom of the unsecured creditors which has to be looked into by them only and this court, would not be in a position to examine the said factor. As such, in so far as the prayer sought for by the applicant-company seeking for dispensing with a meeting of the unsecured creditors cannot be accorded and it is hereby rejected.

10. In view of the discussions made hereinabove, the following order is passed :

ORDER

(i) Convening of meeting of equity and preference shareholders of the applicant-company is hereby dispensed with;

(ii) The applicant-company shall convene the meeting of unsecured creditors, which shall be chaired by Sri C. Y. Pal or failing him Sri C. L. Jain or failing him Sri A. K. Ravi Nedungadi. The calendar of events for convening the meeting of unsecured creditors as per annexure I appended to annexure K is as under:

Date of meeting

May 23, 2011

Time of meeting

4.30 p.m.

Venue

Good Shepherd Auditorium,
Opp St. Joseph's PU College,
Residency Road,
Bangalore-560 025.

Chairman of meeting

Sri C.Y. Pal or failing him Sri C.L. Jain or failing him Sri A.K. Ravi Nedungadi.

Quorum

5 unsecured creditors

The applicant-company is directed to advertise the same in two newspapers, namely, The Times of India English daily and Prajavani Kannada daily on or before April 30, 2011 Corrected vide court order dated May 20, 2011.

(iii) After convening the meeting of unsecured creditors, the chairman shall file a report and the applicant-company is permitted to file petition within 30 days thereafter.

(iv) This application is disposed of accordingly.