(1995) 08 AP CK 0040

In the Andhra Pradesh High Court

Case No : Company Petition No''s. 16 and 17 of 1994 (connected with Company Application No''s. 47 and 48 of 1994)

**In Re: Vinay Metal Printers Private Ltd.
 In Re: Anand Crown and Seal Private Ltd.**

Date of Decision : 01-08-1995

Acts Referred:
Companies Act, 1956 — Section 394, 81(1A)

Citation : (1995) 3 ALT 222 : (1996) 87 CompCas 266

Hon'ble Judges : Avinash Somakant Bhate, J

Bench : Single Bench

Advocate : S. Ravi, for the Appellant; P. Innaiah Reddy, for the Central Government and P. Ravi Prasad, for the Official Liquidator, for the Respondent

Judgement

Avinash Somakant Bhate, J.—These two Company Petitions Nos. 16 and 17 of 1994 have been filed by Vinay Metal Printers Private Limited and Anand Crown and Seal Private Limited. Vinay Metal Printers Private Limited shall hereinafter be called "the transferee-company", while Anand Crown and Seal Private Limited is hereinafter be called "the transferor-company". The transfer was u/s 394 of the Companies Act (1 of 1956) (for short "the Act"). Both the companies have filed the petitions with a prayer that the scheme of amalgamation of the two companies, namely, the transferee-company and the transferor-company be sanctioned. Petition No. 16 is filed by the transferee-company while Petition No. 17 is preferred by the transferor-company. Both petitions raise common question and are hence disposed of by this common order.

2. The transferee-company in this case was incorporated some time in September, 1987. It was a private company. The registered office of the said company is situated at Hyderabad. The authorised capital of the company is Rs. 5,00,000 (rupees five lakhs only) divided into 50,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up capital is Rs. 2,25,300 (rupees two lakhs twenty-five thousand three hundred only) which is divided into 22,530 equity shares of Rs. 10 each. The principal objects of the company as per the memorandum of association annexed thereof inter alia contain the following :

1. To carry on business of printers, lithographers, engravers, art printers, etc., on tinplates, sheet iron, aluminium metal, zinc plates or all or any metal sheets.

2. To carry on all or any of the business as manufacturers, exporters, importers, buyers, sellers and dealers in boxes, cartons, packings, packages, etc., of all kinds made from paper and boards including card boards or plastic material, etc.

3. To carry on all or any of the business of merchants and manufacturers of and or dealers in tin and black plates, metal sheets, crown corks made of tin plates or other materials.

3. As far as the transferor-company is concerned, the same was registered some time in January, 1993. Formerly, it was a partnership-firm under the name "Anand Industries". This was subsequently altered with effect from January 1, 1993, its present name. The registered office of the company is situated at D. No. 4-1-968, 1st Floor, Abid Road, Hyderabad-500 001. The authorised capital of this company is Rs. 25,00,000 (rupees twenty-five lakhs only) divided into 2,50,000 equity shares of value of Rs. 10 each. The issued, subscribed and paid-up capital is Rs. 10,00,350 (rupees ten lakhs three hundred and fifty only) divided into 1,00,035 equity shares of value of Rs. 10 each. The principal objects of this company from the memorandum of association are :

1. To purchase, buy, sell, manufacture, prepare, build in all kinds and varieties of crown caps, all kinds of p. p. caps, bottle caps, seals and closures, cans, boxes, containers, metal components.

2. To purchase, buy, sell, prepare, trade in, all kinds of plastic containers, bottles, packing material bags, paper lamination, etc.

3. To form, fill and seal all kinds of material including food and beverages, and

4. To print all or any of the packing material.

4. It may be stated that the shareholders and directors of both the companies are related to each other and hold 100 per cent. of the equity shares in both the companies. Thus, the transferor-company and the transferee-company belong to the same group of companies. From the objects stated above, the transferor-company and the transferee-company were incorporated with the broad object of carrying on business in the area of printing of tinplates and for manufacture and sale of crown corks made of tinplates for which the printing copy of tinplates is being done by the transferee-company. It has already been pointed out that the business done by both the companies can be carried on together under one umbrella in a more convenient manner and will also result in economy. It will obviously reduce overhead expenses particularly as regards administration. More efficient and productive utilisation of labour and other resources can be achieved.

5. After the petitions were filed the usual steps of publication of notice in English, as well as regional newspapers was done and notices were issued to the Registrar of Companies as also the official liquidator.

6. The official liquidator by his report has contended that from all the information available with his office it was seen that the affairs of any of the two companies did not appear to have been conducted in a manner prejudicial to the interest of the company or public interest. The report further says that the court may be pleased to pass orders as deemed fit. At the Bar, the learned advocate on behalf of the official liquidator squarely stated that there was no objection whatsoever from the official liquidator for the proposed amalgamation.

7. The scheme of amalgamation of the two companies has the following broad features.

1. From the transfer date, the undertaking of the transferor-company shall without further act or deed be transferred to and be vested or deemed to be vested in the transferee-company as per the provisions of the Companies Act subject to all charges, liens, mortgages, lis pendens, if any.

2. If any suit or appeal or other proceedings of whatsoever nature by or against the transferor-company be pending the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer proposed. Such proceedings take into their sweep all types of litigation pending.

3. The transfer and vesting of properties and liabilities and the continuance of the proceedings by or against the transferee-company shall not affect any transaction or proceedings already concluded by the transferor-company on and after transfer date to the end and the transferee-company accepts all acts, deeds and things done and executed by or on behalf of the transferor-company as if acts done by itself.

8. Subject to the other provisions of the scheme, all contracts, deeds, bonds, agreements and other documents and instruments of whatever nature to which the transferor-company is a party subsisting immediately and before the amalgamation shall remain in full force and may be enforced effectively against the transferee-company.

9. Further, the scheme stipulates that the transferee-company shall, without further application, issue and allot to every equity shareholder of the transferor-company, 7 equity shares of Rs. 10 each full paid-up and held by such shareholder in the transferor-company. All the equity shares to be issued and allotted as aforesaid shall rank pari passu in all respects with the existing equity shares in the transferee-company. All the members of the transferor-company shall accept the shares to be allotted as aforesaid in lieu of their shareholding in the transferor-company. All the members of the transferor-company shall surrender to the transferee-company for cancellation of the share certificates in respect of the shares held by them in the transferor-company and take all steps to obtain from the transferee-company to which the member may be entitled to under other provisions.

10. The scheme also envisages that an account shall be taken of the assets and

properties of the transferor-company as on the date of transfer. The difference between the valuation of the assets of the transferor-company on the one hand and the shares to be issued and allotted by the transferee-company and liabilities of the transferor-company on the other hand, shall be applied in the first instance in writing off the miscellaneous expenditure and debit balance of the profit and loss account if any, and the balance shall be treated as general reserve in the books of transferee-company.

11. All the creditors of the transferor-company are to become the creditors of the transferee-company on the same terms and conditions and without the transferee-company being required to extend further security for the same.

12. The transferee-company shall cause a special resolution to be passed pursuant to section 81(1A) of the Act for offer and allotment of equity shares in the transferee-company to the Kaveri shareholders in accordance with and subject to the provisions of the scheme.

13. All the employees of the transferor-company shall become the employees of the transferee-company without interruption in service and on terms not less favourable to them than those applicable to them at the time of amalgamation.

14. On April 13, 1994, the meeting of the equity shareholders of each of the companies was held. One Sri R. C. Mishra acted as chairman of the meeting of each of the companies. The meeting resolved that the scheme of amalgamation be approved without any modification. The meeting also found that the compromise or arrangement will be for the benefit of the company.

15. Thus these are the salient features of the amalgamation scheme. As already pointed out the terms of the amalgamation have been approved by the shareholders of each of the companies in accordance with law. The principles governing amalgamation and merger of the transferor and transferee companies are quite well settled. The amalgamation should not only be beneficial to the company, but should also be in the interest of the creditors, the members of the transferor and transferee companies and should be in the public interest. The court has to consider the scheme as a whole and having regard to the general conditions in text and object of the scheme, the court has to find out whether it is reasonable and fair. If the court finds that the scheme of the amalgamation is beneficial to the members of both the companies and the affairs of the company which is going to be dissolved, i.e., the transferor-company, have not been conducted in any manner prejudicial to the interests of members or to the public interest then it is not for the court to launch any minute investigation upon the commercial merits or demerits of the scheme. The collective wisdom of the shareholders of the company should normally not be interfered with.

16. Now, in the present case as pointed out, the official liquidator has given his report and the advocate appearing on behalf of the official liquidator has squarely stated that there is no objection to the proposed amalgamation. However, the Registrar of Companies has pointed out that a notice should be given to the

Income Tax Department to find out as to whether there is motive of tax evasion by the proposed amalgamation. To be precise the affidavit on behalf of the Registrar says "the above scheme will have tax implications which are required to be complied with by the respective transferor and transferee companies. Hence, the tax authorities may be served with due notice to enable them to make suitable representation in this regard in the interest of justice." It is the usual plea taken that amalgamation of companies is with some ulterior motive and more often than not the objection is that, tax evasion is probable in such amalgamation. I have already pointed out that the official liquidator has not stated that the transferor-company is going to avoid tax or reduce its tax liability by the proposed amalgamation. There is no necessity to give any separate notice to the Tax Department. Public notice has already been published in the newspapers. The law does not require issue of a separate notice to the Tax Department. There is absolutely no material except a random guess on the part of the Registrar of Companies that there may be avoidance of tax. The contention has, therefore, to be rejected.

17. It appears that the transferee-company is financially pretty sound and there are no major liabilities which cannot be met. The transferee-company has undertaken to effectively execute the objects of the transferor-company. The very purpose of amalgamation is more efficient working by reducing the overhead expenses. At the cost of repetition it may be stated that the scheme is for the benefit of the shareholders. The shareholders in both the companies are of the same family. It is difficult to envisage any unfairness and unreasonableness in the proposed merger.

18. It is needless to quote the principles laid down from time to time in the matter of granting permission for such amalgamation. They are pretty well settled and I have extracted them in brief already.

19. In my view, therefore, the amalgamation proposed deserves to be granted or rather permitted.

20. In the result, I make both the company petitions absolute in terms of the prayers thereof. The orders be communicated by the petitioners to the Registrar of Companies within six weeks from the date of receipt of a copy of this order. The transferor-company shall stand dissolved in consequence of the sanction order of amalgamation. The scheme proposed would take effect from December 31, 1993. The Registrar of Companies shall preserve all documents relating to the transferor-company and shall tag them with the transferee-company and consolidate the same. In the circumstances, the parties are left to bear their own costs.

