(2004) 04 AHC CK 0127

In the Allahabad High Court

Case No : Company Petition No. 54 of 2003 with Company Application No. 20 of 2003

In the Matter of : Graceful Property Ltd.

Date of Decision : 22-04-2004

Acts Referred:
Companies (Court) Rules, 1959 — Rule 79

Citation : (2004) 04 AHC CK 0127

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Ratan Housing Development Ltd. (hereinafter referred to as the Transferee Company) having its registered office at 55/57, Generalganj, Kanpur, seeks amalgamation under Chapter V of the Indian Companies Act, 1956, with the transferor company, Graceful Properties Ltd. [hereinafter referred to as the Transferor Company] having its registered office at 102, Stephen House, BBD Bagh [East], Kolkatta in accordance with the scheme of amalgamation annexed as AnnexureA to this company petition.

2. On hearing the company application No. 20 of 2003, this Court on 2882003 dispensed with the meeting of the shareholders of the transferee company for the purpose of considering and if thought fit, for approving with or without modification, the scheme of amalgamation by which the transferor company was proposed to be amalgamated with the transferee company. Since there were no creditors in the transferee company, consequently, no meeting of the creditors was required to be called for.

3. The transferee company thereafter filed the present petition under Rule 79 of the Companies (Court) Rules, 1959 of 2992003 for sanctioning the scheme of Amalgamation. This Court, vide an order of the same date directed the transferee company to get the notices published in accordance with Rule 80 of the Companies [Court] Rules in two newspapers namely, ?Times of India? published in English from Lucknow and ?Dainik Jagran? published in Hindi from Kanpur. It was further directed that the notice was to be published at least ten

days prior to the date fixed for hearing. The petitioner was also directed to serve the notice on the Regional Director, Company law Board, Northern Region, Kanpur and the Official Liquidator and 17112003 was fixed for hearing of the petition. The notices have been duly published in the aforesaid two newspapers and the same is on the record.

4. In response to the notice issued to the Regional Director, Company Law Board, Kanpur and the Official Liquidator, the former has filed his affidavit/ representation and has submitted that the ratio of exchange as proposed in this scheme of amalgamation is not in the interest of the share holders of the transferor company. The objection raised by the Regional Director, Company Law Board, Kanpur, is that the valuers have valued the share of the transferee company on the basis of the book value of the shares of the said company, whereas in the case of the transferor company the shares have been valued on the basis of the average quoted price per share for the last three years as quoted by the Kolkatta Stock Exchange. It was contended that two different methods of the valuation should not be adopted for valuing the shares of the respective companies. The Regional Director contended that the price quoted at the Kolkatta Stock Exchange of the transferor company could not be considered, as the fair value of the shares of the transferor company and that the book value of the shares of the transferor company should be taken as the fair value and on that basis the ratio of exchange should be made in the scheme of amalgamation. The Regional Director, Company Law Board, Northern Region, Kanpur suggested that the air ratio of exchange should be two shares of Rs. 10 each of the transferee company for every one share of Rs. 10 each of the transferor company instead of one equity share of Rs. 10 each of the transferee company or very live equity share of Rs. 10 each of the transferor company, as stated in the Scheme of Amalgamation.

5. The Official Liquidator in his report No. 327 of 2003 stated that he is only required to submit a report under Section 394 of the Companies Act with regard to the transferor company and not with regard to the transferee company. Since the transferor company is located in Kolkatta, therefore, no report is required to be submitted before this Court.

6. Heard Sri Piyush Agrawal, the learned Counsel for the petitioner, Sri S.K. Saxena, the Official Liquidator attached to this Court and Sri Subodh Kumar, the learned Counsel appearing on behalf of the Regional Director, Company Law Board, Northern Region, Kanpur.

7. The Supreme Court in Hindustan Lever Employees'' Union v. Hindustan Lever, 1995 (83) SC 30 at page 53 held :

?It will, therefore, appear that in the case of amalgamation a combination of all or some of the methods of valuation may be adopted for the purpose of fixation of the exchange ratio of the shares of the two companies.?

8. It is thus clear that different methods of valuation could be adopted for

valuing the shares of the respective companies.

9. In the present case, the valuer found that the reliasable value of assets of the company was not ascertainable fairly and therefore, the next asset value method would not give a fair value of the share of the company. The valuer further found that the transferor company was running in losses or very little profit in the last three years and therefore, the earning capitalization method would also not give a fair value of the shares. In such circumstances, the valuer took the average quoted price of the shares of the company of the last three years in arriving at the value of the share of the transferor company.

10. On the other hand, the valuer found that the transferee company is an unlisted company and is also a closely held company. Since the value of the shares were not quoted in the stock exchange, the valuer took the net assets of the company against the fully paid up equity shares and arrived at the net asset value per share.

11. The Regional Director in his objection has not contended that the valuer has played a fraud. The Regional Director only contended that one method of valuation should have been adopted. As stated earlier, the Supreme Court has held in Hindustan Lever''s (supra), that different methods of valuation could be adopted for the purpose of the fixation of the exchange ratio of the shares of the two companies. Thus, in the absence of fraud or mala fides, the mere fact that the determination of the exchange ratio of the shares of the two companies could be done by a slighter different method which might have given a different exchange ratio could not justify interference unless it was found to be unfair.

12. In the present case all the shareholders of the transferee company have unanimously approved the scheme of amalgamation and, therefore, have approved the exchange ratio. The shareholders of the transferor company has also approved the scheme of amalgamation before the Kolkatta High Court. Since the scheme of Amalgamation and consequently the exchange ratio has been approved unanimously, there is no reason why their business decision should be interfered with and the Court should, therefore, proceed on the basis that the ratio of exchange as approved by the share holders of the transferor company is the fair ratio of exchange.

13. Further in the absence of any challenge from the share holders of the transferor company who are primarily and exclusively to question the ratio of exchange of shares, the exchange ratio has to be considered as fair and reasonable.

14. Similar view was also taken by the Kolkatta High Court in AIR 1997 Cal 208, in the matter of E.I.T.A. India Ltd. and others and by the Madras High Court in Coimbotore Cotton Mills Ltd. and Lakshmi Mill Company Ltd., 1980 (50) CC 623 and by the Bombay High Court in Govind Rubber Ltd., 1995 (83) CC 556, as well as by the Supreme Court in Hindustan Lever''s case (supra).

15. In (1999)34 CLA 146, In re Operations Research (India) Ltd., the Gujarat High Court held that if the share holders in their commercial wisdom have accepted the exchange ratio of shares with their open eyes, it would not be open for the Regional Director to raise objections on the exchange ratio.

16. In 1984 (55) CC 308, Kamla Sugar Mills Ltd., the Madras High Court held :

?Besides the exchange ratio has been accepted without demur by the overwhelming majority of the share holders of the two companies. No share holder has come forward and objected before me that the ratio fixed in the scheme of amalgamation is neither fair nor reasonable. It cannot be disputed and it was not disputed as a matter of fact by Mr. U.N.R. Rao, that he share holders are the best Judges on the rate of exchange ratio to be fixed in scheme of amalgamation and once they have accepted it, it is not for the Court to say that the share holders of both the companies in their collective wisdom should not have accepted the exchange ratio arrived at in the scheme of amalgamation on the ground that it was detrimental to their interest.?

The aforesaid view was affirmed by the Supreme Court in Mihccr H. Mafatlal v. Mafatlal Industries Ltd., 1997 (1) SCC 579.

17. In Hindustan Lever''s case (supra) the Supreme Court held

?Sections 394 casts an obligation on the Court to be satisfied that the scheme for amalgamation or merger was not contrary to public interest. The basic principle of such satisfaction is none other than the broad and general principles inherent in any compromise or settlement entered into between parties that it should not be unfair or contrary to public policy or unconscionable. In amalgamation of companies, the Courts have evolved, the principle of ?prudent business management test? or that the scheme should not be a device to evade law.?

18. The main reason why a notice is given to the Regional Director under Section 394A of the Companies Act is to ensure that the public interest is safeguarded when companies propound a scheme of amalgamation. In the present case, the Regional Director in his affidavit has not stated that the exchange ratio is contrary to public interest. The Regional Director has only stated that the interest of the share holders of the transferor company is likely to be adversely affected by the exchange ratio. If at all there is under valuation, then, it is the share holders of the transferee company, who are benefited. Hence, under valuation, if any, does not affect any public interest.

19. Similar view was held by the Bombay High Court in Primal Spinning and Weaving Mills Ltd., 1980 (50) CC 574.

20. It may be stated here, that the transferor company had unanimously approved the scheme of amalgamation and consequently, the exchange ratio before the Kolkatta High Court. The Regional Director did not place any objection with regard to the exchange ratio before the Kolkatta High Court. The Kolkatta High Court by order dated 25112003 approved the scheme of amalgamation.

This Court is only considering the scheme of amalgamation in so far as it relates to the transferee company. The transferor company is not before this Court. Therefore, such objections of the Regional Director is totally misplaced and could not be raised before this Court. Such objections could only be raised before the Kolkatta High Court.

21. Apart from the aforesaid objection of the Regional Director, no objection has been received from any person, pursuant to the advertisement. It has also been brought to the knowledge of this Court that the Kolkatta High Court by order dated 25112003 has approved the scheme of Amalgamation with regard to the transferor company. The exchange ratio has been duly approved by the share holders of the transferor company. Thus, this Court is, therefore, not inclined to interfere at the instance of the Regional Director. Even otherwise, I do not find anything in the scheme, which could be said to be detrimental to the interest of any share holder or creditor of the transferee company or to the public interest.

22. Thus, this Court hereby sanctions the scheme of Amalgamation as appended as Annexure''A'' to this petition and hereby declares the same to be binding on the shareholders and creditors of the transferee namely, Ratan Housing Development Ltd. For this purpose of the effective date will be the same as mentioned in the scheme of Amalgamation, namely, the date when the certified copy of this order and the order of the Kolkatta High Court in respect of the transferor and the transferee company are filed before the concerned Registrar of Companies. It is further ordered that a certified copy of this order shall be filed before the Registrar of the Companies within thirty days of the receipt of the certified copy of this order. A formal order in the prescribed form shall be followed as required.

Decided accordingly.

