

(2004) 04 AHC CK 0125

In the Allahabad High Court

Case No : Company Petition No. 55 of 2003 and Company Application No. 17 of 2003

In the matter of the Companies Act,1956

Date of Decision : 20-04-2004

Acts Referred:

Citation : (2004) 04 AHC CK 0125

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—A joint application has been filed by the Amar Ujala Prakashan Ltd. having its registered office at 19, Civil Lines, Bareilly (hereinafter referred to as the Transfer Company) seeking amalgamation under Chapter V of the Companies Act, 1956 with Amar Ujala Publications Ltd. having its registered office at Guru Ka Tal, Agra, Mathura Road, Agra (hereinafter referred to as the Transferee Company) in accordance with the scheme of amalgamation annexed as Annexure A1 to this company petition.

2. On hearing the company application No. 17 of 2003 this Court on 15/7/2003 dispensed with the meeting of the shareholders of the aforesaid transferor company and the transferee company, since the shareholders of both the companies had given their affidavits separately giving their consent to the proposed scheme of amalgamation. The Court vide order of the same date ordered the transferor and the transferee company to convene a meeting of their creditors for the purpose of considering and, if thought fit, for approving, with or without modification, the proposed scheme of amalgamation. The Court appointed Sri Dinesh Kakkar, Advocate as the Chairman and Sri Anjani Kumar Mishra Advocate as the alternate Chairman for convening the meeting of the creditors of the transferor company. The Court further appointed Sri Shambhu Chopra, Advocate as the Chairman and Sri Alok Kumar Yadav, Advocate as the alternate Chairman for convening the meeting of the creditors of the transferee company. The Chairman was directed to issue the advertisement and to send out the notices of the meeting of the creditors of both the Companies.

3. The notices of the Chairman for holding the meeting of the transferor company was published in the newspaper 'Hindustan Times' published in English from Lucknow and 'Amar Ujala' published in Hindi from Lucknow on 682003 and 582003 respectively. Separate notices for convening the meeting of the creditors of the transferor company together with the scheme of amalgamation, explanatory statement and prescribed proxy form by prepaid letter post under certificate of posting was sent to the creditors on 582003. The Chairman has filed his affidavit of service on 892003 as required under Rule 76 of the Companies Court (Rules, 1959).

4. Similarly, the notices of the Chairman for holding the meeting of the transferee company was published in the newspaper 'Hindustan Times' published in English from Lucknow and 'Dainik Jagran' published in Hindi in its Agra issue on 882003. Separate notices for convening the meeting of the creditors of the transferee company together with the scheme of amalgamation explanatory statement and prescribed proxy form by prepaid letter post under certificate of posting was sent to the creditors on 582003. The Chairman filed his affidavit of service on 892003 as required under Rule 76 of the Companies Courts (Rules 1959).

5. The meeting of the creditors of the transferor company was convened on 3082003, which was the date schedule for the said purpose. The report of the Chairman dated 1592003 has been filed and is on the record.

6. Similarly, the meeting of the creditors of the transferee company was convened on 692003, which was the date scheduled for the said purpose. The report of the Chairman dated 1592003 has been filed and is on the record.

7. This Court has perused the report of the Chairman. In effect the reports of the Chairman are that the quorum prescribed by the Court vide its order dated 1572003 was complete and the creditors of both the companies have unanimously agreed to the scheme of amalgamation without any modification.

8. Thereafter, a joint petition was filed by the transferor and the transferee company under Rule 79 of the Companies (Court) Rules, 1959 on 2992003. This Court by an order of the same date, directed the petitioners to get the notices published in accordance with Rule 80 of the Companies (Court) Rules in the 'Times of India' published in English from Delhi and 'Dainik Jagran' published in Hindi from Bareilly. It was further directed that the notices was to be published at least 10 days prior to the date fixed for hearing. The petitioner was also directed as serve the notices on the Regional Director, Company Law Board, Northern Region) Kanpur and to the Official Liquidator and 18112003 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.

9. In response to the notice issued to the Regional Director, Company Law Board, Kanpur the Regional Director has filed his affidavit/representation dated 10122003 and submitted that the authorized share capital of the transferee

company was not sufficient to allot the share to the members of the transferor company and therefore, the transferee company may be directed to increase the authorized share capital after following the procedure prescribed under the relevant rules of the Companies Act, 1956. Based on the aforesaid objection of the Regional Director, the transferee company increased its authorized share capital from Rupees three crores to Rupees five crores and Form No. 5 was filed before the Registrar of Company, Kanpur alongwith the requisite fee on 2012004.

10. The Regional Director submitted a fresh affidavit dated 622004 intimating this Court that the transferee company has increased its authorised share capital from Rupees three crores to Rupees five crores and therefore, the Central Government now has no objection to the proposed scheme of amalgamation.

11. In response to the notice issued to the Official Liquidator, the Official Liquidator submitted his report No. 25 of 2004 dated 2212004 indicating therein that he had scrutinized the books of accounts and other statutory record of the transferor company and found that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its member or to public interest.

12. Thus, there being unanimity amongst the shareholders and creditors of the transferor and transferee company and the objection of the Regional Director having been removed and the Official Liquidator holding that nothing adverse was found in the Books of Accounts and statutory records of the transferor company and further their being nothing adverse in the report of the Chairman, which may occasion this Court to deny the relief, which is being sought in this petition and having regard to the entirety of the record, this Court considers it expedient appropriate and in the interest of justice that the relief sought for amalgamation of the two companies be granted and the scheme of amalgamation appended as Annexure A1 to the Company Petition No. 55 of 2003 be accepted.

13. Consequently, this petition is allowed and the scheme of amalgamation appended as Annexure A1 to the Company Petition No. 55 of 2003 is hereby sanctioned with effect from the date specified in the scheme of amalgamation and the same shall be binding on all the shareholders and creditors of the transferor and transferee Company. It is further ordered that a certified copy of this order shall be filed before the Registrar of Companies within 30 days of the receipt of the certified copy of this order and on such certified copy being so delivered, the transferor Company shall be dissolved without the process of winding up. A formal order in the prescribed form shall follow as required.