
(2010) 04 RAJ CK 0005
In the Rajasthan High Court

Miraj Tradecom Pvt. Ltd.

APPELLANT

Vs

None

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

COMPANIES ACT, 1956 — Section 235, 236, 237, 238, 239

Citation : (2010) 04 RAJ CK 0005

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—It is found that no court fees stamp has been affixed on the file. It appears from Section 391 of the Companies Act 1956 that an application is required for seeking order for convening the meetings of the creditors or class of creditors, or of the members or class of members, as the case may be to be called. Upon application the court may issue direction for conducting such meetings. As per Rule 67 of the Rules of 1959, the application u/s 391(1) is to be "Judge"s Summons" supported by an affidavit, but proposed compromise or arrangement shall be annexed to the affidavit as an exhibit thereto. The summons are to be in form No. 34.

2. The petitioner is permitted to affix the court fees stamps on the affidavit as the said affidavit is also an application u/s 391(1) of the Act of 1956.

3. Three company applications have been filed by Miraj Tradecom (P) Ltd., Miraj Business Development (P) Ltd and Miraj Products (P) Ltd. However, for the purpose of deciding all the above three applications, the facts of S.B. Company Application No. 5/2010 are taken which are that the applicant-company is Transferee Company incorporated on 9th December, 2009 and has its Memorandum and Articles of Association, copy of which has been placed on record as Annex-2. It has Share Capital of Rs. 25,00,000/-divided into 2,50,000 equity shares of Rs. 10/ each. The issued, subscribed and paid up capital of the Transferee Company i.e. Miraj Tradecom (P) Ltd as on 31st December, 2009 is Rs. 10,000 equity shares of Rs. 10/-each fully paid up. The objects of Transferee

Company are set out in Memorandum and Articles of Association. The last accounts of the company were duly audited upto 31st December, 2009 and the Auditors of the Transferee Company has neither not made any adverse remarks or comments in their report nor the Auditor found any irregularity or mismanagement of the affairs of the company. The applicant has placed on record the copies of the latest Balance Sheet of Transferee Company for the period ended on 31st December, 2009 along with a copy of the Auditor's Report as Annex-3. It is also submitted that no investigation proceedings in relation to the company u/s 235 or 251 of the Companies Act, 1956 are pending nor proceedings u/s 397 and/ or 398 of the Companies Act, 1956 are pending against the company.

4. The Miraj Products Private Limited is the Transferor Company, which was incorporated under the name of Miraj Zarda Private Limited on 10th September, 1996 with Registrar of Companies in Rajasthan. The name of the company was subsequently changed to Miraj Products Private Limited on 10th July, 1998. The registered office of the transferor company is situated at Uper Ki Oden, Nathdwara, Rajsamand in the State of Rajasthan. The transferor company has an Authorized Share Capital of Rs. 1,00,00,000/-divided into 10,00,000 Equity Shares of Rs. 10/-each. The issued, subscribed and paid up capital of the Transferor Company is 10,00,000 Equity Shares of Rs. 10/-each fully paid up. The objects of the Transferor Company as set out in Memorandum and Articles of Association, which has already been annexed by the applicant alongwith the application as Annex-4. The Auditors of the Transferor Company has also not made any adverse remarks or comments in their report nor any irregularity or mismanagement in the affairs of the company was found. The copies of the latest Balance Sheet and Profit & Loss Account of Transferor Company for the period ended on 31st December, 2009 along with a copy of the Auditor's Report on the accounts of the company has been filed Annex-5. No investigation proceedings in relation to the company u/s 235 - 251 of the Companies Act, 1956 are pending as also no proceedings u/s 397 and/or 398 of the Companies Act, 1956 are pending against the company.

5. The Miraj Business Development Private Limited is second Transferee Company which was also incorporated under the provisions of the Companies Act, 1956 on 9th December, 2009 and copy of Memorandum and Articles of Association of the Company is Annex-6. Its registered office is situated Uper Ki Oden, Nathdwara, Rajsamand, Rajasthan. The Transferee Company has an Authorised Share Capital of Rs. 25,00,000/ divided into 2,50,000 equity shares of Rs. 10/-each. The issued, subscribed and paid up capital of the Transferee Company No. 1 as on 31st December, 2009 is 10,000 equity shares of Rs. 10/ each fully paid up. The main objects of Transferee Company No. 2 are set out in Memorandum and Articles of Association. For this company also the Auditors has not recorded any adverse remarks or comments in their report nor found any irregularity or mismanagement of the affairs of the company. Copies of the latest Balance Sheet of Transferee Company No. 2 for the period ended on 31st

December, 2009 along with a copy of the Auditor's Report on account of the company annexed as Annex-7. No investigation proceedings in relation to the company u/s 235 or 251 of the Companies Act, 1956 are pending.

6. This application has been submitted to obtain sanction from this Court of a scheme of Demerger (Arrangement). It is proposed to transfer all assets and liabilities of trading business undertakings of the Transferor Company into the Transferee Company No. 1 and all assets and liabilities of service business undertaking of Transferor Company into the Transferee Company No. 2 without any further act or deed and with a view to develop, improve and expand the business carried on by the said applicant companies. The salient feature of the aforesaid proposal is given out in the application.

7. It is stated in the application that the Board of Directors of the aforesaid companies have at their respective Board Meetings held on the 10th January, 2010 respectively, approved and resolved to carry out the said scheme of Demerger subject to approval of their respective shareholders. It is said that all above has been done after careful consideration and after taking into account the book value and realizable value of the assets and liabilities and other relevant facts.

8. The applicant Miraj Tradecom (P) Ltd-the Applicant Transferee Company No. 1 has only 2 shareholders who have given their consent to the proposed scheme of Demerger. It is stated that Transferee Company No. 1 has no secured creditors and only 1 unsecured creditors who has also already given his consent to the proposed scheme of Demerger. A list of creditors verified by the Chartered Accountant is annexed as Annex-10.

9. The applicants in other two company application Nos. 6/2010 and 8/2010 are Miraj Business Development (P) Ltd and Miraj Products (P) Ltd. The relevant facts for the purpose of passing the order in these applications have already been noticed as above and all the three companies have already resolved for the demerger/arrangement referred to above.

10. The Miraj Business Development (P) Ltd has two shareholders and one unsecured creditor and no secured creditor, whereas Miraj Products (P) Ltd has two shareholders and secured and unsecured creditors. In the company applications Nos. 5/2010 and 6/2010 it has been prayed that since there are 2 shareholders only, one unsecured creditor and there is no secured creditor, therefore, the court may dispense with the company from convening the meeting of the secured and unsecured creditors and in view of the fact that shareholders already gave their written consent and the same is the position that the sole unsecured creditor who also gave no objection for the resolution, therefore, the shareholders' meeting may also be dispensed with. However, in company application No. 8/2010 since there are number of creditors-secured and unsecured and therefore, directions have been sought by the applicant company Miraj Product (P) Ltd for convening the meeting of the secured and unsecured

creditors as well as prayed that shareholders' meeting may be dispensed with in view of the fact that there are only two share holders and they have given their consent.

11. The facts stated in the affidavit and supported by the documents and the certificate of the CA it appears that companies Miraj Tradecom (P) Ltd and Miraj Business Development (P) Ltd. are companies having two share holders and they have given their consent in writing which is placed on record by the applicants for the demerger/arrangement. The sole unsecured creditor also gave his no objection in writing.

12. In view of the above reasons, the court deems it proper to dispense with the company from convening the meeting of the shareholders and unsecured creditor for the company Miraj Tradecom (P) Ltd and Miraj Business Development (P) Ltd. In Miraj Products (P) Ltd there are secured and unsecured creditors, but so far as share holders are concerned they are two only and both have given consent for the demerger and therefore this Court deems it proper to dispense with the convening of the meeting of the share holders.

13. In view of the above reasons, the Company Application Nos. 5/2010 and 6/2010 are disposed of and the requirement of convening of the meetings of shareholders and the creditors are dispensed with and companies are permitted to proceed further. So far as Company Application No. 8/2010 is concerned, in which the convening of the meetings of the shareholders is dispensed with. However, the company shall convene the meeting of the secured and unsecured creditors.

14. A meeting of the secured creditors of the Applicant- transferor Company as on 31st Dec., 2009 shall be convened and held at the registered office of the applicant company situated at Uper Ki Oden, Nathdwara, District-Rajsamand, Rajasthan on 22.5.2010 at 12.00 Noon for the purpose of considering and if though fit approving, with or without modifications, the Scheme of Demerger proposed to be made between the Applicant- transferor company and Miraj Tradecom Private Limited and Miraj Business Development Private Limited - the resulting companies.

15. The quorum for the said meeting of the secured creditors shall be two (2) creditors entitled to attend the meeting present in person or by proxy.

16. A meeting of the Unsecured creditors of Rs. 1 lakh or more of the Applicant-transferor company as on 31st Dec., 2009 shall be convened and held at the registered office of the applicant company situated at Uper Ki Oden, Nathdwara, District - Rajsamand, Rajasthan on 31.5.2010 at 1.00 PM for the purpose of considering and if though fit approving, with or without modifications, the Scheme of Demerger proposed to be made between the Applicant-transferor company and Miraj Tradecom Private Limited and Miraj Business Development Private Limited - the resulting companies.

17. The quorum for the said meeting of the unsecured creditors shall be two (2) unsecured creditors entitled to attend the meeting present in person or by proxy.

18. Shri Dinesh Mehta, Advocate and failing him Shri Manoj Bhandari, Advocate shall be the Chairman of aforesaid meetings of the applicant-transferor company.

19. At least Twenty One (21) clear days before the day appointed for the meetings an advertisement convening the same be published in:

1. The Times of India (English) Jaipur Edition and

2. Rajasthan Patrika (Hindi), Udaipur Edition.

20. In addition at least twenty one (21) clear days before the meetings to be convened and held as aforesaid, a notice convening the said meetings at the place and times aforesaid together with a copy of the said Scheme of Demerger, a copy of the statement required to be sent u/s 393 of the Companies Act, 1956 and a form of proxy shall be sent by a prepaid letter posted under certificate of posting addressed to each of the secured creditors and unsecured creditors entitled to attend whose meetings are to be held at their respective registered or last known addresses.

21. The voting by proxy is permitted provided proxies in the prescribed form duly signed by the person entitled to attend and vote at each of the said meetings is filed at the registered office of the company not later than forty eight (48) hours before the meeting.

22. The Advocate for the Applicants company above named do file within two weeks of this date in the court the drafts of the advertisement, notices and the statement u/s 393 of the said Act to accompany the notices and the same shall be settled by the Registrar of this Court.

23. The Chairman of each of the meetings shall have all the powers to convene, hold, adjourn and conduct the meetings in a peaceful manner. They shall also have the powers to adjourn the meetings from time to time if so required.

24. The value of each shareholder and creditor shall be in accordance with the books of the Company and where the entries in the books are disputed, the Chairman shall determine the value of the same for the purposes of the meeting.

25. It is further ordered that the Chairman of above meetings do report to this Court the result of the respective meetings within three weeks of the conclusion of the said meetings and the said report shall be verified by the affidavit of Chairman.

26. The Chairman of the meetings shall be paid a sum of Rs. 15,000/-for each meeting. In addition to the same, the actual expenditure as may be incurred by him for conducting such meetings shall be reimbursed by the Applicants Companies as his remuneration for the aforesaid assignment(s).

27. Put up on 06.07.2010.