

(2012) 12 SHI CK 0027
In the High Court Of Himachal Pradesh
Case No : Company Petition No. 8 of 2012

M/s Himachal Fine Blank Limited

APPELLANT

Vs

M/s KDDL Limited

RESPONDENT

Date of Decision : 27-12-2012

Acts Referred:

Companies Act, 1956 — Section 16, 235, 251, 391, 394

Citation : (2012) 12 SHI CK 0027

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Rahul Mahajan with Mr. Alok Kumar Jain, for the Appellant; Sanjeev Kuthiala, Advocate, Mr. Vivek Attri, Advocate vice and Mr. Sandeep Sharma, ASGI, for Regional Director, for the Respondent

Judgement

Kuldip Singh, Judge

1. This petition, under sections 391 to 394 of the Companies Act, 1956 (for short the Act) has been filed to sanction the scheme of amalgamation between Himachal Fine Blank Limited and M/s KDDL Limited as per scheme of amalgamation. It has been stated that M/s Himachal Fine Blank Ltd. for short (transferor company) was incorporated as Kamla Appliques Limited on 8.12.1994 with its registered office located in the Union Territory of Chandigarh. The name of transferor company was changed to M/s Himachal Fine Blank Limited and fresh certificate of incorporation was obtained on 27.6.1996. The transferor company also changed its registered office on 22.6.2009. The transferor company is engaged in the business of manufacturing, producing, buying, selling, importing, exporting, exchanging and otherwise dealing in all kinds of appliques, pins, watch dials, watch parts etc.

2. The main objects of the transferor company are set out in memorandum and articles of association to manufacture, produce, buy, sell, import, export, exchange and or otherwise deal in all kinds of appliques, pins and watch dials, watch cases, movement holders, watch stems/straps, crowns, watches, clocks,

watch dials components and other parts and components of watches and clocks and other precision instruments, devices and components, parts and accessories, jewellery and other precious stones and metals or any other edible, non-edible or any other type of goods or material required directly or indirectly for the manufacture of the same made of any material including brass, gold, nickel, silver or any other alloy, brass wire, gold salt, rhodium/palladium salts and diamond tools.

3. The other main objects of the transferor company are to manufacture, produce, buy, sell, import, export, exchange and or otherwise deal in all kinds of brass, nickel, silver, gold, brass wire, gold salt, rhodium salt, palladium salts, nickel salts, diamond tools and other material required for use in appliques, watch dials and other watch or clock parts. To carry on the business of buying, selling, indenting, exchange, converting, assembling, fabrication, altering, importing, exporting, proceeding or otherwise handling or dealing in appliques, pins, clocks, wrist watches, watch components, watch cases, watch dials, straps, measuring instruments, precision instruments, time measuring devices, electronic instruments of all types and descriptions and all components, parts and accessories, materials required directly or indirectly for the manufacturing of the same. To deal in import replenishment, entitlements, earned against under the import Trade Policy, Export Import Policy or any other guidelines of the government. In addition to main objects, the objects ancillary/incidental to the attainment of main objects has also been enumerated in the memorandum and articles of association of the transferor company.

4. The authorized share capital of the transferor company is rupees two crores divided into twenty lacs equity shares of rupees ten each. The issued, subscribed and paid up capital of the transferor company is Rs. 1,52,00,000/- divided into Rs. 15,20,000/- equity shares of Rs. 10/- each. The transferee company is holding 15,19,930 shares of Rs. 10/- each and balance 70 shares are held by its nominees. As such the entire share capital of the transferor company is held by transferee company only as on the date of petition. There has been no change in the capital structure of the company till the date of filing of the petition.

5. The position of the transferor company as per audited balance sheet upto 31.3.2011 is as follows:-

6. The transferee company M/s KDDL Limited was incorporated as Kamla Dials and Devices Limited under the Act on 8.1.1981 in the Union Territory of New Delhi. The transferee company changed its registered office to the State of Himachal Pradesh and certificate to this effect was taken on 7.3.1988. The company subsequently changed its name to KDDL Limited and obtained a fresh certificate of incorporation on 14.9.2007. The registered office of transferee company is situated at Plot No. 3, Sector-III, Parwanoo, Himachal Pradesh-173220.

7. The transferee company is engaged in the business of manufacturing, buying,

selling, indenting, assembling, fabricating, altering, importing, exporting, processing or otherwise handling or dealing in wrist watches, watch cases, watch dials, straps, measuring instruments, precision instruments, clocks, time measuring devices, electronics instruments of all types and descriptions and all components, parts and accessories, materials required directly or indirectly for the manufacturing of the same.

8. The main objects of transferee company as per memorandum and articles of association are to carry on the business of manufacturing, buying selling, indenting, exchanging, converting, assembling, fabricating, altering, importing, exporting, processing or otherwise handling or dealing in wrist watches, watch cases, watch dials, straps, measuring instruments, precision instruments, clocks, time measuring devices, electronics instruments of all types and descriptions and all components, parts and accessories, material required directly or indirectly for manufacturing the same. To carry on business of manufacturers, producers, exporters, importers, buyers, dealers and traders for all types of mechanical, electronic and electrical components part, accessories, appliances and equipments. To deal in import replenishment entitlements earned against export under the import trade control policy.

9. The other main objects of the transferee company are to carry on in India or elsewhere the business of developing, maintaining, servicing, manufacturing, producing, exporting, importing, trading and dealing in and with any and all classes and kinds of software and hardware products, electronic and computer equipments and to act as management R & D and technical consultants for all software and hardware, electronic and computer applications in India or elsewhere.

10. The further main objects of the transferee company are to carry on the business of exporters, importers, buyers, dealers, designers and traders of all types of computers, floppy/disk drive, computer, peripherals and micro processor based system, computer hardware and accessories and related equipment computerized magnetic tapes, magnetic drums, magnetic disks, magnetic cards, magnetic core, magnetic tools, electronic or mechanical equipment alliances, instruments and apparatus for generating, transmitting, receiving, recording, reducing, storing, retrieving, amplifying computing or otherwise processing, audio visual and data signals whether electronically, electrically or by any other means for the purpose of entertainment, business and research and to do e-commerce in all kinds of materials, items, goods including equipments, plants, machinery, display articles, accessories, components, fashion articles and accessories, writing instruments, medical instruments and appliances or any other articles or goods.

11. The further main objects of transferee company are to manufacturer, produce, buy, sell, import, export, exchange and or otherwise deal in all kinds of writing instruments, pens, spectacle frames or other fashion accessories, jewellery and/or their display packaging materials, containers made of cloth,

fabric, jute plastic rubber, metals, wood, leather, paper or any other type of synthetic, natural or man made materials. To acquire, establish, run manage, control or maintain, cafes, hotels, ropeways, motels, restaurants, bars, taverns, holiday homes, clubs, distribution and exhibition of motion pictures, housekeepers, licensed wine, beer and spirit merchants and caterers, public amusement business and cinema houses.

12. The other main objects of the transferee company are to carry on the business of retailers, distributors, exporters, importers, buyers, dealers, designers, traders and consignment Agent, C & F Agent or by E-Commerce all types of items and goods including Crystals and glass products, accessories, jewellery artificial or real made of precious metal or precious stones or any other non precious material natural or man made, eatables, Grocery, garments readymade or others apparels and any products made of leather, fashion items and accessories including perfumes and toiletry, furnishing material including home appliances, white goods, equipments, plant and machinery, components, display articles, writing instruments, medical instruments and appliances or any other articles or goods.

13. The further main objects of the transferee company are to acquire by purchase, lease, exchange or otherwise land, building and hereditaments or any tenure or description whatsoever and any estate or interest therein, and any rights over or connected with land, and to turn the same to account as may seem expedient, and in particular by preparing building sites, and by constructing, reconstructing altering, improving, decorating, furnishing and maintaining offices, flats, houses, factories, warehouses, shops wharves buildings works and conveniences of all kinds, and by consolidating or connecting or subdividing properties and by leasing and disposing. To engage in the business of transporters, courier service, goods carrier, public carrier and all other transport services. In addition to the main objects, objects ancillary/incidental to the attainment of main objects have also been enumerated in the memorandum and articles of association of transferee company.

14. The authorized share capital of the transferee company as on 30.5.2012 is Rs. 12,00,00,000/- divided into 1,20,00,000/- equity shares of Rs. 10/- each. The issued and subscribed capital of the transferee company is Rs. 9,21,10,000/-. The paid up capital of the transferee company is Rs. 9,12,38,600/- as on the date of filing of the petition. The audited balance sheet of the transferee company upto 31.3.2011 was as follows:-

15. The main rationale of the scheme of amalgamation of the transferor company and transferee company and the reasons for justification of amalgamation of two companies have been stated in the petition as follows:-

(a) HFBL was incorporated to manufacture, produce, buy, sell, import, export, exchange and or otherwise deal in all kinds of appliques, pins, watch dials, watch parts and components, accessories, jewellery and other precious stones, metals

etc.

(b) KDDL was also incorporated for the same purpose as HFBL and is engaged in the similar kind of business activity as HFBL.

(c) HFBL is a wholly owned subsidiary of KDDL and upon the amalgamation KDDL would emerge as a financially and technically sound entity, having a synergy of resources and manpower.

(d) The amalgamation would result in the benefits for all the concerned stakeholders i.e. the shareholders, creditors and employees of both the companies. Some of the benefits are as under:-

1. Achieve benefits arising out of economies of scale and lower operating costs.
2. Diversifying business risk and expansion of operations.
3. Pooling of human talents in terms of manpower, management administration and marketing resulting in considerable saving in terms of costs.
4. Combined capital resources shall result in increasing the leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes.
5. Strengthening of financial position due to consolidation of resources.
6. Amalgamation of the two companies would eliminate duplication of work in many areas like Sales, Accounts, Company Law and Tax Assessments, Common Administrative services resulting in saving of costs.
7. Facilitate technological development and integration of research and development activities.
8. Implementation of a uniform corporate policy as both the Companies are part of the same promoter group.
9. Facilitate inter transfer of resources and costs and optimum utilization of assets.
10. To compete globally with consolidated strength and a diversified product range as the enlarged enterprise will enable the Company to expand its operations in both the domestic and overseas market.
11. Mitigate the risks associated with varied business cycles for different products.
12. Ease in decision making at the Group Level, as the operations of both the Companies shall be ideally brought under single control.
13. Improve the servicing of the equity capital and enhance the shareholder's value in the amalgamated entity.
14. Results in higher turnover, diversified business activities, operations synergies, better utilization of manpower.

15. Effectively meet the market and customers needs with greater flexibility and further strengthen its position in the market.

16. Reduction of overheads and multiple organizational costs would benefit the share holders through increased profitability.

17. Achieve optimum size of business which is essential for better utilization of the available resources thereby ensuring long term economic and financial benefits of the company, their shareholders and employees.

16. It has been stated that scheme of amalgamation has been approved by the Board of Directors of the transferor company and transferee company. The amalgamation of the transferor company with transferee company would result in administrative and operation rationalization, organization efficiency, rationalization in economies of scale, reduction of overheads and other expenses and optimal utilization of various resources. The managerial expertise of both the companies will give additional thrust to the amalgamated company. The combined efforts and resources of both the companies will enable raising of additional financial facilities for better working of business of the amalgamated company. It will ensure a fair return on investment made.

17. It has been stated that upon sanctioning of the scheme of amalgamation of transferor company with transferee company, the same would have the following effects as per clause-3 of Part-B of the scheme of amalgamation, which is as follows:-

(i) With effect from the appointed date, the undertaking of HFBL shall, pursuant to the provisions contained in Section 394 and other applicable provisions of the Act, stand transferred to and vested in or be deemed to be transferred to and vested in, KDDL, without any further act, deed, matter or thing (save as provided in clause 3.2 below) so as to become on the Appointed Date, the Undertaking, including all the Assets (subject to encumbrances and charges, if any, existing thereon) and the Liabilities of KDDL.

Provided always that the scheme shall not operate to enlarge the scope of security for any loan, deposit or facility availed of by HFBL and KDDL shall not be obliged to create or provide any further or additional security therefore.

(ii) All the properties, rights and claims whatsoever of HFBL and its entire undertakings, authorities, privileges and rights in respect of the movable properties, leases, tenancy rights and other assets of whatsoever nature including registrations, approvals, clearances, fittings and fixtures, telephones, telex and other communications, fax connections, cash balances, reserves, security deposits, refunds, outstanding balances stocks, investments, contracts, agreements and other rights and interest of all description in or arising out of such properties as may belong to or be in possession of HFBL and all books of accounts and documents and records relating thereto shall be transferred to KDDL with effect from the appointed date. It is expressly provided that in respect

of such of the Assets as are movable in nature or otherwise capable of being transferred by manual delivery or by endorsement and delivery, the same shall be so transferred by HFBL to KDDL. Further, in respect of such of the Assets as are movable in nature, and in dematerialized form and capable of being transferred in dematerialized form, i.e. shares and other securities, the same shall be transferred in dematerialized form.

(iii) On and from the Appointed Date and subject to any corrections and adjustments as may, in the opinion of the Board of Directors of KDDL, be required, the Assets and Liabilities of HFBL shall be merged with those of KDDL in the same form as they appear in the financial statements of HFBL and shall without any further deed and/or action become the Assets and Liabilities of KDDL.

(iv) With effect from the appointed date, all the debts, liabilities, duties and obligations of HFBL shall, pursuant to the orders of the Court u/s 394 and other applicable provisions of the Act and without any further act or deed, be transferred, or deemed to be transferred, to and be assumed by KDDL, so as to become, as from the appointed date, the debts liabilities, duties and obligations of KDDL on the same terms and conditions as were applicable to HFBL. Furthermore, the debts, liabilities, duties and obligations which may accrue or arise after the appointed date but which relates to the period on or upto the date of the appointed date shall be the debts, liabilities, duties and obligations of KDDL including any encumbrance on the assets of HFBL or on any income earned from those assets.

(v) The transfer and vesting of the properties and liabilities and the continuance of the proceedings mentioned herein shall not affect the transactions or proceedings already concluded by HFBL on or after the Appointed Date upto the effective date and that KDDL shall accept all the acts, deeds, bonds, agreements and other instruments of whatsoever nature done and executed by HFBL.

(vi) HFBL is a wholly owned subsidiary of KDDL as all the equity shares of HFBL are held by KDDL and its nominees. Equity shares held by KDDL in the share capital of HFBL as on the appointed date will be extinguished and cancelled upon the Scheme becoming effective. KDDL shall adjust its reserves available if any for this purpose in accordance with the provisions of the Scheme.

(vii) The General Reserve Account, Share Premium Account, Special Reserve Account and other Reserves as on the appointed date in the Balance Sheet of HFBL shall become the General Reserve Account, Share Premium Account, Special Reserve Account and other Reserves of KDDL.

(viii) All permits, quotas, rights, entitlements, licenses, approvals, consents, tenancies, offices and depots, privileges and benefits pertaining to any or all contracts, agreements and all other rights including but not limited to, lease rights, rights under leave and license agreements, licenses, easements, powers and facilities of every kind and description whatsoever, pertaining to the Transferor Company (HFBL) shall stand transferred to the Transferee Company

(KDDL) upon the sanction of this Scheme.

18. It has also been stated that upon the scheme of amalgamation become effective, the transfer of undertaking of the Transferor Company shall be effective in terms of the Scheme and the consideration in respect of such transfer shall subject to the provisions of the scheme be paid and satisfied by the Transferee Company as follows:-

HFBL is a 100% subsidiary of M/s. KDDL Limited and the entire equity share capital issued by HFBL is held by KDDL either by itself or through its nominees. No shares of KDDL are required to be issued or allotted as the entire issued share capital of HFBL shall stand extinguished and cancelled upon the Scheme being sanctioned by the Court and coming into effect. The shareholding and other rights of the members of KDDL shall remain unaffected as no new shares are to be issued.

19. It has been stated in the petition that with effect from the effective date, without any further acts or deeds on the part of transferee company or transferor company and notwithstanding anything contained in sections 94 to 97 of the Act and without any further act or deed the authorized share capital of transferor company as appearing in its memorandum of association on the effective date shall get clubbed with the authorized share capital of transferee company as appearing in its memorandum of association on the effective date and pursuant to this clubbing the Clause V of the memorandum of association of transferee company shall stand altered with effect from the effective date as per clause 10 of part-B of the scheme of amalgamation, which is as follows:-

HFBL has an un-issued authorized capital of rupees 48,00,000.00/- (Rupees Forty Eight Lakhs). As HFBL has already paid the statutory stamp duty upon its entire Authorized Share Capital, hence the unissued authorized share capital shall be transferred to KDDL, upon sanction of this Scheme. Thus upon coming into effect of this Scheme and subject to the provisions of sections 94, 16 and other applicable provisions of the Act, the existing authorized share capital of KDDL shall stand enhanced from Rs. 12,00,00,000/- to Rs. 12,48,00,000/- (Rupees Twelve Crores Forty Eight Lakhs) consisting of 1,24,80,000/- (One crore twenty four lakhs and eighty thousand) equity shares of Rs. 10/- each.

20. It has been stated that in first motion petition being company petition No. 1 of 2012, the High Court vide order dated 20.3.2012 had ordered convening of the meetings of equity shareholders, secured creditors and unsecured creditors of transferor company to be held on 12.5.2012 at the registered office of the company. The said meetings were duly held and the shareholders/secured creditors and unsecured creditors unanimously approved the scheme of amalgamation. On 20.3.2012, the High Court had ordered a meeting of the equity shareholders, secured creditors and unsecured creditors of transferee company to be held on 12.5.2012 at the registered office of the transferee company. The said meetings were duly held and the shareholders, secured

creditors and unsecured creditors unanimously approved the scheme of amalgamation. One secured creditors (IDBI) voted in favour of the scheme subject to modalities mentioned in the writing. The modalities refer to creation of parri-passu charge in favour of the secured creditor on the fixed assets of the transferor company. The High Court on 13.6.2012 allowed the first motion petition.

21. It has been stated that sub-clause 14 of clause III-B of the object clause of the memorandum of association of the transferor company permits the amalgamation with another company. There are no proceedings under sections 235 to 251 of the Act against the petitioner company. The submission has been made for sanctioning the scheme of amalgamation.

22. Mr. Ajay Mohan Goel, Advocate was appointed Chairman and Mr. Suneet Goel, Advocate as Alternative Chairman by the High Court on 20.3.2012 to convene the meeting of shareholders of transferor company, they have submitted their report under the signature of Mr. Ajay Mohan Goel, Advocate, Chairman and has stated that as per result of voting 100% shareholders present in person and through proxy voted in favour of the scheme and there was no vote against proposed scheme. Mr. Praneet Gupta, Advocate and Mr. Vishal Panwar, Advocate, were appointed Chairman and Alternative Chairman respectively by the High Court on 20.3.2012 to convene the meeting of shareholders of transferee company, they have submitted report under the signature of Mr. Praneet Gupta, Advocate Chairman and stated that as per the result of voting 100% shareholders were present and through proxy voted in favour of the scheme and there was no vote against the proposed scheme.

23. It has been held in Hindustan Lever Employees" Union Vs. Hindustan Lever Limited and others, that the jurisdiction of the court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test. It exercises a jurisdiction founded on fairness. In Hindustan Lever and Another Vs. State of Maharashtra and Another, it has been held that while exercising its power in sanctioning a scheme of agreement, the court has to examine as to whether the provisions of the statute have been complied with. Once the court finds that parameters set out in section 394 of the Companies Act have been met then the court would have no further jurisdiction to sit in appeal over the commercial wisdom of the class of persons who with their eyes open give their approval even if, in the view of the court better scheme could have been framed. The Supreme Court in Sesa Industries Ltd. Vs. Krishna H. Bajaj and Others, has held the court has to see that the provisions of the Act have been complied with, the statutory majority has been acting bonafide and in good faith and are not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purport to represent and the scheme as a whole is just, fair and reasonable from the point of view of a prudent and reasonable businessman taking a commercial decision.

24. I have gone through the record and scheme of amalgamation. The reports of Mr. Ajay Mohan Goel, Advocate and Mr. Suneet Mohan Goel, Advocate under the signatures of Mr. Ajay Mohan Goel, Chairman of the meeting of shareholders of transferor company and Mr. Praneet Gupta, Advocate and Mr. Vishal Panwar, Advocate under the signatures of Mr. Praneet Gupta, Chairman of the meeting of shareholders of transferee company, which are placed on the record. The official liquidator in its report dated 27.8.2012 has not specifically opposed the amalgamation of the two companies. Similarly, the Regional Director, Northern Region in the affidavit dated 21.8.2012 has not specifically opposed the amalgamation of the two companies. On 6.11.2012, the counsel appearing on behalf of the official liquidator and Regional Director stated in the court that they have no objection in allowing the petition. There appears to be no legal hindrance for approving the scheme of amalgamation of the two companies. It appears scheme does not defeat the provisions of any law nor it is prejudicial to the interest of the creditors, shareholders of two companies and all concerned. The scheme of amalgamation is not against the public interest. The scheme appears to be bonafide. In view of above, the petition is allowed. The scheme of amalgamation Annexure P-1 of transferor company and transferee company is sanctioned. It is directed that all the properties, assets and liabilities of the transferor company mentioned in the scheme of amalgamation without any further act or deed shall transfer and vest in the transferee company with effect from 1.4.2011. The transferee company is directed to comply with all statutory requirements in accordance with law. This judgment shall not exempt the payment of stamp duty or tax or any charges, if payable, in accordance with law nor this judgment shall exempt any permission/compliance or any other requirement which may be specifically required under law. The scheme of amalgamation Annexure P-1 shall be binding on the transferor company and transferee company, their shareholders, creditors and all concerned. The parties to the scheme of amalgamation, other persons interested shall be at liberty to apply to this court for directions that may be necessary in regard to the working of the scheme of amalgamation. The certified copy of this judgment shall be filed with the Registrar of companies within four weeks from the date of judgment. The petition is disposed of on above terms.