

(2008) 02 RAJ CK 0104

In the Rajasthan High Court

Case No : Company Application No"s. 6 of 2006 in 9 of 2005

Rajasthan Spinning and Weaving Mills Ltd.

APPELLANT

Vs

None

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 97

Citation : (2008) 3 WLN 204

Hon'ble Judges : Manak Lall Mohta, J

Bench : Single Bench

Judgement

Manak Mohta, J.—Heard

2. An application has been filed by the petitioner-company on 08.05.2006 under Rule 9 of the Companies (Court) Rules, 1959 for clarification that in the light of the scheme of amalgamation which has been sanctioned by this Court, the requirement of fees and stamp-duty in case of increase in capital of transferee Company is not needed.

3. It is submitted that after completing all the legal formalities, a scheme of amalgamation between Jaipur Polyspin Limited (Transferor Company) and Rajasthan Spinning and Weaving Mills Limited (Transferee Company) was placed before this Court and after hearing the parties concerned, the scheme of amalgamation was sanctioned by this Court vide order dt. 22.10.2005 passed in S. B. Company Petition No. 9/2005. It is further submitted that in pursuance of that amalgamation, the authorised share capital of Rajasthan Spinning and Weaving Mills Limited was increased to the extent of authorised share capital of Jaipur Polyspin Limited as per Clause 7.6 of the scheme of amalgamation. It is stated that at the time of sanctioning of the scheme, this Court directed that a notice of intimation of increase of authorised share capital be given to the Registrar of Companies u/s 97 of the Companies Act, 1956. It is further submitted that in this respect a letter dt. 01.02.2006 was issued by the Registrar

of Companies to the petitioner to comply with the requirement of Section 97 of the Act. It is said that in compliance of Section 97 of the Act. the petitioner-Company submitted certified copy of the said order dt. 22.10.2005 passed by this Court along with Form No. 5 vide letter dt. 22.02.2006, but the Registrar of Companies insisted to deposit fees and stamps duty on the increased authorised share capital of the Rajasthan Spining and Weaving Mills Limited though they were not required.

4. It is further submitted that this Court while passing sanction order nowhere specified that the Rajasthan Spinning and Weaving Mills Limited is required to pay fees and stamps duty on the increased authorised share capital as necessary fees and stamp duty had already been paid by the transferor company Jaipur Polyspin Limited. Thus, it is urged that the demand of fees and stamps duty is not in accordance with the provisions of law, therefore, clarification is required in this respect.

5. A reply to this application was filed on behalf of the Registrar of Companies stating that in case of increase in authorised share capital, the petitioner Company was bound to comply with the requirement of Section 97 of the Act. It is submitted that the scheme of amalgamation was subject to compliance of Section 97 of the Act under which the petitioner was to file Form No. 5 along with the requisite fees and stamps duty as prescribed under the law. Thus, the petitioner has rightly been asked in this respect.

6. During the course of arguments, the learned Counsel for the petitioner company reiterated the contentions stated in the petition and submitted that in case of amalgamation where the transferee company has already paid fees and stamps duty as per law, the requirement of paying again fees and stamps duty does not arise at all. During the course of arguments, learned Counsel drew my attention towards Clauses 7.5 and 7.6 of the Scheme of amalgamation and the order passed by this Court in that respect and again stressed on the plea that this Court did not pass any direction to pay fees and stamp duty. The learned Counsel for the petitioner also placed reliance in support of his contentions on the decisions given in cases: [1] Saboo Leasing Private Ltd. in (2003) 117 CC 728 (AP),. [2] Hotline Hol Celdings Pvt. Ltd and Ors. In Re [2005] 127 Comp Cases 165 (Delhi), [3] Jaypee Greens Ltd. In Re [2006] 134 Comp Cases 542 (All), [4] Max Estates Ltd. In Re [2008] 141 Comp Cases 341 (P&H), and [5] Motorola (India) Electronic P. Ltd and Ors. In Re [2008] 141 Comp Cases 26 (P&H). On the basis of the above submissions, again a prayer is made to make clarification that the requisite fees and stamp duty are not needed.

7. On the contrary, learned Counsel for the other side refuted the contentions and submitted that it is legal requirement to pay fees and stamp duty in compliance of the procedure provided in Section 97 of the Companies Act, 1956. It is further submitted that this Court has held that the Scheme is subject to provision of Section 97 of the Act, therefore, no clarification is required.

8. I have considered the rival contention. It is revealed that the scheme of amalgamation has been sanctioned and by that scheme Jaipur Polyspin Limited has been merged in Rajasthan Spining and Weaving Mills Limited and thereby the authorized share capital was to be increased to the extent of authorized share capital of Jaipur Polyspin Limited. It is also stated that Jaipur Polyspin Limited has already paid fees and stamps duty as per the requirement of provisions law.

9. It is revealed from the record that after taking into consideration these all facts following relevant terms have been settled in the scheme of amalgamation, they are reproduced as under:

7.5 The issue of shares in the Transferee Company as provided in this Scheme as an integral part thereof shall be deemed to have been carried out as if the procedure laid down u/s 81 (1A) and any other applicable provisions of the Act or any other law, Statute, Rules, Regulations for the time being in force were duly complied with and without requiring the payment of any additional tax, stamp duty or charge under any law for the time being in force.

7.6 Under the Scheme being effective the Authorized Share Capital of the Transferor Company would add to the Authorized Share Capital of the Transferee Company and the Authorized Share Capital of the Transferee Company would stand increased to that extent.

10. u/s 97 of the Company Act it is mentioned that in case of increase in the share capital or of members notice of things will be given to the concerned authority in prescribed Form No. 5 and as per further procedure provided, notice is required along with fees and stamp duty but in this case the transferor company has been merged in transferee company and authorized share capital has not been increased over and above the authorized share capital of transferor company and transferor company since has already paid fees and stamp duty, therefore, the requirement of again paying fees and stamp duty is not required. The concerned authority has not appreciated the issue in right perspective. The contentions of learned Counsel for the respondent that u/s 97 of the Company Act these are necessary and this Court in its earlier order has observed that the scheme is subject to provision of Section 97, therefore, action is justified but considering the above factual position, this Court has not directed to deposit any fees or stamp duty and the observation that scheme is subject to Section 97 of the Act does not make them entitled to demand fees and stamp duty. The said observation is not disputed in each case of increase in capital, Section 97 will apply and notice is required but the demand of fees and stamps duty is different issue depending upon the other circumstances. Thus, it is made clear that in this case no fee and stamp duty is required on such increase of authorized share capital. The contentions of the respondent are not tenable. This conclusion also finds support from the authorities cited by the applicant. In case of Saboo Leasing Pvt. Limited (supra), it was held that in case of amalgamation filing of certified copy of the order of Court is sufficient compliance of Section 97 of the

Act. The relevant para is quoted is under:

The present scheme of arrangement or amalgamation if it is sanctioned by this Court, the certified copy of the order of this Court is required to be filed before the Registrar within 30 days from the date of the order under Sub-section (3) of Section 394 of the Companies Act, for the purpose of its registration. The object behind such intimation, which is required under law either u/s 95 or u/s 97 or u/s 394(3) of the Companies Act, appears to be one and the same. Again the default in not filing certified copy of the order of this Court before of the Registrar within 30 days entails penal consequences. Well, when the certified copy of the order sanctioning the scheme by this Court is required to be filed before the Registrar for the purpose of its registration, there is no reason as to why it shall not be treated as notice to the Registrar as envisaged Under Sections 95 and 97 of the Companies Act in as much as, as discussed hereinabove, the object being the same, the necessary changes that are required to be made in the concerned register by the Registrar of Companies can be effected after receiving the certified copy of the order of this Court sanctioning the scheme. The sanction of the scheme by this Court has its own effect. It is not a mere act of the parties individually and volitionally. The scheme upon being sanctioned by this Court, it becomes operational by virtue of the orders passed by this Court. In order words by operation of law, such changes would come into effect.

11. In case of Hotline Hol Celdings Pvt. Ltd. (supra), it was held by the Delhi High Court that where share capital of transferor company is becoming share capital of transferee company, in such increase no registration fees and stamp duty is necessary. In case of Jaypee Greens Ltd. (supra), the Allahabad High Court held that in case of amalgamation on increase of authorized share capital no further fee or stamp duty is required. The relevant portion is quoted as under:

The submission has force and no good reason has been shown why the two merged companies should be required to pay duty again on the same authorized capital on which duty has already been paid by the JPI. Regarding the increase of authorized share capital by merger of the authorized capitals of the two companies, an order be passed u/s 391 of the Companies Act itself. This has been done by the Bombay High Court in the case of Vasant Investment Corporation Ltd. v. Official Liquidator, Colaba Land and Mill Co. Ltd. [1981] 51 Comp. Cas 20 (at page 35).

12. In case of Max Estates Ltd. (supra), a recent decision of 2008, Punjab and Haryana High Court held that where transferor company paying required fees and stamp duty as in this case also stated further need not to pay stamp duty on the increased authorized share capital. The relevant para is quoted as under:

In respect of the objection that the authorized share capital of the company can be increased only after following the procedure under the relevant provisions of the Act and on payment of requisite fees to the Registrar of Companies and stamp duty to the State Government need not detain me for long in view of the

view taken by me in *Motorola (India) Electronics P. Ltd. In re* [2006] 2 PLR 191 (P&H) : [2008] 141 Comp Cas 26 , and score of other cases where a view has been taken that the scheme of amalgamation is a single window and complete code in itself. Since the transferor company has paid the requisite fees to the Registrar of Companies and stamp duty to the State Government, therefore, it is not necessary to pay such stamp duty and fee an account of increase in the authorized share capital. In view thereof, even the said objection raised by the Regional Director is not tenable.

13. In the case of *Motorola (India) Electronics P. Ltd. (supra)*, the Punjab and Haryana High Court relying on the judgment given in *Jaypee Cement Ltd.* observed that in case of merger fees is not required to be paid. The relevant observation is quoted as under:

Relying upon a judgment of the Allahabad High Court in Company Petition No. 25 of 2003 in the matter of *Jaypee Cement Ltd. In re* [2004] 122 Comp Cas 854, decided on 10.03.2004, it was held that if the authorized share capital of the transferee company is increased with the merger of the authorized share capital of the transferor company, the fee is not required to be paid again as the fee stands paid by the transferor company. Therefore, I do not find any merit in the said objection.

14. On the basis of the aforesaid discussion the application filed by the appellant-company deserves to be allowed and is hereby allowed and sought clarification is made out that demand of fees and stamp duty in particular circumstances of the case is not required. The contentions of respondent are hereby rejected. The application stands disposed of.