

(2003) 02 MP CK 0056

In the Madhya Pradesh High Court

Case No : Company Petition No. 10 of 2002 connected with Company Application No. 7 of 2002

Shriniwas Fertilisers Ltd.

APPELLANT

Vs

Khaitan Chemicals and Fertilisers Ltd.

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Companies Act, 1956 — Section 391, 394

Citation : (2003) 2 CompLJ 27 : (2003) 46 SCL 302

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : P. Bagadia, for the Appellant; B.G. Nema, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is company petition filed by the two companies known as Shriniwas Fertilisers Ltd. (for short, hereinafter called as SFL) as transferor company and Khaitan Chemicals and Fertiliser Ltd. (hereinafter called as KCFL) as transferee company. It is filed u/s 391 according sanction by this court for the scheme of amalgamation of SFL with KCFL (Exh. E). The amalgamation is sought essentially on the ground that both companies are functioning under the same (one) management and are engaged in the fertiliser base business. It is averred in the petition that with a view to reduce avoidable administrative expenses and to carry on the business more effectively and profitably under the umbrella of one company, the amalgamation is proposed. It is averred that in terms of proposed amalgamation, SFL will merge/amalgamate with KCFL.

2. This court while deciding the earlier Company Petition No. 7 of 2002 filed by these two companies had directed convening of the meetings of shareholders as also that of creditors of both the companies referred supra, as contemplated by Section 391/394 of the Act, by appointing Mr. V. Zelawat, Advocate, of this court. Accordingly, Mr. Zelawat as Chairman convened the meeting on 25.3.2002 at the registered offices of the respective companies of the shareholders and creditors

of the companies. The Chairman then submitted his report dated 1.4.2002 (Exh. F) in terms of the rules so applicable and in the manner so required.

3. Similarly, this court in terms of the requirement of the rules, issued notices of this petition to Official Liquidator of this court as also to Registrar of Companies inviting their objection, if any, to the proposed amalgamation. Accordingly, on 12.7.2002, the Official Liquidator has submitted his report indicating that, on due scrutiny of the records, documents and book of accounts of the transferor company were examined and found to be in order. It is, thus, reported that the affairs of the company were conducted in the manner not prejudicial to the interest of its members or the public interest. Likewise, by letter dated 4.2.2003, the Registrar of Companies has also submitted that on examination of the scheme in question along with records of the company, it is noticed that the affairs which are not prejudicial to its members and/or public interest.

4. It is, however, reported by the Chairman in his report dated 1.4.2002 that all shareholders as also creditors of the two companies have consented to the proposed amalgamation except one shareholder of SFL, by name Pradeshiya Industrial and Investment Corporation of U.P. Ltd. holding 3,00,000 shares, who by their letter dated 13.3.2002 has declined to give their consent, Similarly, so far as KCFL is concerned, all shareholders as well creditors of this company have also consented [to] the proposed amalgamation except two shareholders--IFCI Ltd. holding 1,76,650 shares. This court accordingly, issued notices to these dissenting shareholders. Despite service, none has appeared for any of them, nor have any objections, much less, objections in writing been submitted on behalf of any of these objecting/dissenting shareholders/ creditors of these two companies in this petition.

5. Heard Shri P. Bagadia, learned counsel for the petitioner, and Shri B.G. Neema, learned counsel for the respondent.

6. Having heard the learned counsel for the parties and having perused the record of the case, I am inclined to grant sanction to the Scheme (Exh. E) of amalgamation proposed by the two companies.

7. In my considered opinion, I have not been able to notice any infirmity or objectionable feature or any kind of illegality or lacking bona fides in the scheme so pro posed. It also does not appear to have been framed to defeat the rights of creditors or any class of creditors or even any class or group of minority shareholders or to defeat any Government dues. Almost all persons who are directly and indirectly associated and dealing with these companies such as shareholders, creditors, Official Liquidator and Registrar of Companies have given their no objection certificate for approval of the Scheme. The only objection raised against the acceptance of the Scheme is by three shareholders as detailed supra in the meeting which was convened by the Chairman. Since, these three shareholders were in minority, while casting their votes, the resolutions were carried out with majority in favour of the Scheme. Those three shareholders

despite notice sent by this court did not choose to appear in this court by raising any objection ; had they appeared then, this court would have been able to appreciate the nature of their objections and how their rights are likely to be adversely affected in the event of the Scheme being accepted.

8. True, it is that every shareholder and a creditor of the company involved in the merger/amalgamation/compromise scheme has a right to raise an objection to the proposed merger scheme, but then, it must also appear from the objection as to what is the nature of the said objection and how far it is likely to sustain ? Raising an objection is one thing and sustaining of the same is another. When the majority of the shareholders and creditors of the company except these three have given their consent for the approval, then it has to be given effect to. After all, those Schemes are essentially meant for shareholders and the creditors of the company, the wishes of the majority of shareholders and creditors must be allowed to prevail in the absence of any other illegality being noticed by this court within the meaning of Sections 391 and 394 of the Companies Act

9. In my opinion, the merger proposed is more on administrative basis, and it is to enable the companies to run more effectively and economically than what they are presently functioning. It will certainly reduce the expenses which are being incurred today by these two companies. Moreover, the proposed Scheme does take into consideration and safeguard the rights of the creditors of the transferor companies. In other words, none of the liabilities of the transferor company which are in existence, are in any way going to be adversely affected by the Scheme, if allowed to be implemented. So far as the rights of the shareholders are concerned, they also remain intact as they will be paid dividend on their shareholding depending upon the profitability of the company and the business done, as also the shares of the transferee company in terms of Clause (9)(2) of Scheme.

10. I, therefore, allow the application and grant sanction to the proposed Scheme of merger (Exh. E) by overruling the objections raised by the three shareholders/creditors. A separate order as per Rule 84 in Form 42 is accordingly passed. Petitioners to pay fees of the standing counsel for the Central Government--Rs. 10,000.