
(1999) 08 DEL CK 0003

In the Delhi High Court

Case No : Company Petition No's. 5 of 1999

Tecumseh Products India Private Limited

Date of Decision : 13-08-1999

Acts Referred:

Citation : (1999) 5 AD 890 : (1999) 82 DLT 518 : (1999) 51 DRJ 606 : (2000) 1 RCR(Civil) 97

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Mr. R.K.P. Shankardass and Mr. P. Nagesh, Adv Mr. V.K. Verma, Adv Mr. S.K. Luthra, for the Appellant;

Judgement

Dalveer Bhandari, J.—This order will disposed of both the petitions, filed under Sections 391(2), 392, 393 and 394 of the Companies Act, 1956, seeking amalgamation of M/s. Tecumseh Products India Limited (Transferor Company) with M/s. Tecumseh India Private Limited (Transferor Company). The registered offices of both the companies are situated within the jurisdiction of this Court.

2. The scheme of amalgamation provides that all the assets and liabilities of the business of the transferor company shall be taken over by the transferee company, including their workmen and the employees. As per the proposed scheme all the members of the transferor company, immediately on or before the effective date, shall become the staff, workmen and employees of the transferee company and their services shall be deemed to have been continued without interruption or broken by the reason of the said transfer. The service conditions applicable to such staff (workmen or employees) after such transfer shall not in any case be less favourable to them than those as were applicable to them immediately preceding the transfer.

3. It is stated that both the companies are engaged in the same kind of business and the proposed amalgamation will result not only in integration of the activities of both the companies, but there will also be substantial saving on overhead and costs. The amalgamation will also broaden the product base of the transferor company, which will enable it to even out temporary fluctuations in the

profitability and withstand recession more effectively, besides providing it a stronger capital base to raise resources for meeting requirements for further growth, including diversification. It is also averred that as the activities of the amalgamating companies are being complementary, the benefits of research findings would be more gainfully utilised in the amalgamated company.

4. It is submitted by Mr. Shankardass, the learned Senior Advocate for the applicant that the transferor company and the transferee company are in fact wholly owned subsidiaries of Tecumseh Products Company, a company organized and existing under the laws of Michigan, USA having its office at 100 E Patterson Street, Tecumseh, Michigan, 49286, USA. The transferee company, is a direct subsidiary of Tecumseh Products Company. The transferor company is the wholly owned subsidiary of Tecumseh Mauritius Holdings Inc, a company organized and existing under the laws of Mauritius with its registered office c/o BCM Secretaries Limited, 6th Floor, Cerne House, Chaussee, Port Louis, Mauritius, Tecumseh Mauritius Holdings Inc. is in turn a wholly owned subsidiary of Tecumseh Products Company. Accordingly, in terms of section 4(c) of the Act, the transferor company is also a subsidiary of Tecumseh Products Company.

5. Mr. Shankardass also mentioned that the authorised capital of the transferor company is Rs. 40 crores whereas the authorised capital of the transferee company is Rs. 134 crores. According to Mr. Shankardass, the transferor company and transferee company are in fact two divisions of the same management and the objects of the two companies are similar in nature. Both the companies are engaged in the business of manufacture and sale of compressors, condensing units and related controls. The business of the two companies can be more conveniently, and economically carried on together as one single business.

6. Mr. Dass also submitted that the transferor company and the transferee company are both wholly owned subsidiaries of Tecumseh Products Company, and in reality are two divisions of the same management. He further submitted that the amalgamated company will have the benefits of stability in operation and would help to achieve efficient utilization of the resources and facilities. The consolidation of business will achieve rationalization of the management structure and economies of scale for further and stable growth., expansion and diversification and for better and more profitable utilisation of the combined resources.

7. The counsel for the applicant submitted that the amalgamation of the companies will improve the capital base and the combined creditworthiness of the two companies will be beneficial to the business. The amalgamation company will be in a stronger position with the combined financial resources and goodwill of the two companies. The amalgamated company would enjoy an advantage from the combined pool of managerial, financial, administrative and technical resources of all the companies in the group, and the scheme will have beneficial results for the two companies concerned, their shareholders and others.

8. Pursuant to the orders dated 15th October, 1998, by this Court, the meetings of the members and creditors of the two companies have been held and according to the reports of the Chairmen for the meetings, the scheme of amalgamation has been approved by the members and the creditors of both the two companies.

9. The Official Liquidator attached to this Court as well as the Regional Director (Northern Region), Department of Company Affairs, Kanpur have filed their reports, stating that the scheme is not in any manner prejudicial to the public interest or the interests of members of the transferor company and the affairs of the company have not been carried out in any manner prejudicial to the creditors or shareholders or public at large. In the report of the Official Liquidator it has also been stated that in the scheme due care has been taken for the interests of the workmen of the transferor company.

10. Mr. Shankardass has placed reliance on the judgment of Andhra Pradesh, High Court, i.e. Nav Chrome Limited and Nava Bharat Ferro Alloys Limited; (1997) 89 Comp Cas 285. I have carefully considered this judgment. This judgment also strengthens his submissions.

11. Keeping in view the objects for which the amalgamation is sought. I do not find that any public interest is likely to be effected if the two companies are amalgamated for the purpose of more efficient business, particularly when the companies are part of one group.

12. Accordingly, the scheme of amalgamation is approved. It shall be binding on all concerned. It shall be given effect from the date mentioned in the scheme. A certified copy of this order along with the scheme of amalgamation will be filed with the Registrar of Companies within two weeks from the date of this Order.

13. The transferor company, namely, M/s. Tecumseh Products India Limited shall stand dissolved without any process of winding up. The statement of assets be filed within ten days. The formal order shall be drawn by the Registry in accordance with law.

14. Both the petitions are accordingly disposed of.