

(2013) 03 AP CK 0023

In the Andhra Pradesh High Court

Case No : Company Petition No. 123 of 2012 in Company Application No. 446 of 2012

Venturbay Consultants Private Limited and Others

APPELLANT

Vs

Satyam Computer Services Limited

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Companies Act, 1956 — Section 391, 394

Citation : (2013) 03 AP CK 0023

Hon'ble Judges : N.R.L. Nageswara Rao, J

Bench : Single Bench

Judgement

N.R.L. Nageswara Rao, J.—The petition was filed with regard to the amalgamation of Satyam Computer Services Limited with other Companies. The several unsecured creditors have filed objection applications with regard to the scheme of amalgamation. When the matter has been taken up, Sri Venkatesh Dhond, the learned Senior Counsel representing Sri C. Tulasi Krishna, the learned counsel for the objectors has raised a preliminary objection that the report of the Official Liquidator is not in accordance with Section 394 of the Companies Act, 1956 (for short "the Act") since the report does not disclose that the affairs of the company have not been conducted in a manner prejudicial to the interest of the members or public interest. Consequently, according to him, in the absence of such a report, the further proceedings or in order of dissolution of the transferor company can not be proceeded with. In fact he has relied upon the order of this Court on 07.02.2012 whereunder on the same complaint made by the objectors, this Court directed the Official Liquidator to verify the truth or otherwise of the allegations with regard to the accounting system, adopted by the company after the present management came into picture. The Official Liquidator was further directed to scrutinize the books and records of the Chartered Accountants. Consequent to these directions, the Official Liquidator has filed a second report on 26.02.2013. The said report of the Official Liquidator shows that he has been enclosing the opinion of the Chartered Accountant and

as already pointed out by the objectors, it does not contain his opinion about performance of the affairs of the Company. Therefore, according to the learned counsel for the objectors, the further proceedings can not be taken up. Evidently, in case of this nature, when the assistance of the auditors was given and when the Official Liquidator does not defer it shall be treated as part of his report and opinion.

2. The learned counsel for the objectors has relied upon a decision reported in *SESA Industries Limited v. Krishna H. Bajaj and Others* whereunder the provisions of Sections 391 and 394 of the Act have been considered. In that case, Supreme Court was not inclined to accept the report of the Official Liquidator and ultimately upheld the order of the Company Court on the ground that irrespective of the report of the Official Liquidator, the Court has material available with it and passed the order of the amalgamation and restored the order of the Company Court. The importance of the report of the Official Liquidator has been dealt with in para 35 of the judgment in page 234 and ultimately, Supreme Court held that Section 394 of the Act casts an obligation on the Court to be satisfied that the scheme of amalgamation or merger is not prejudicial to the interest of its members or to public interest. In fact, the proviso to Section 394 of the Act does not say that the opinion or report of the Official Liquidator is final and binding. The essential need is only a progressive assessment of the affairs of the Company. It is only a step in aid and not an end at all.

3. Therefore, the paramount consideration which has to be considered by the Court is whether the scheme, if approved, will be beneficial to the members or the public. In the instant case, evidently, though the reports of the Official Liquidator and also the Regional Director on behalf of the Company Board are designedly silent about the requirement u/s 394 of the Act, the reasons being known to both the parties on record because of the flurging of the accounts and also mismanagement of the accounts of the Company by the previous Directors, which is a matter of investigation by the several Investigating Agencies and also serious criminal proceedings.

4. Therefore, in view of the above circumstances, at this stage, the opinion of the Official Liquidator or the Regional Director, about the management of the affairs of the company or its duties against the public interest can only be opinion which can have no value, since the issue has yet to be judged by the competent authorities and Courts. Hence, it cannot be said that there is lacunae in the report of the Official Liquidator or the Regional Director since they have acted within their limitations and submitted the facts to the Court.

5. The question that further arises is that in the absence of any opinion by the Official Liquidator or the Regional Director, further proceedings in the enquiry on amalgamation can be taken up or not, in spite of the report about address. The fact that the reports are given is beyond dispute.

6. Evidently, the provisions u/s 394 of the Act do not say that the report of the Official Liquidator or the Regional Director are final. In fact, in spite of any such respective reports, the Company Court can look into the other aspects of the feasibility of the scheme of amalgamation and ultimately, it has to come to the conclusion of its own. Ultimately as held by the Supreme Court, it is the duty of the Company Court to decide as to whether the amalgamation is for the benefit of the members or in public interest. In fact, in this case, as disclosed in the material papers and by the orders of this Court, the meeting of the shareholders has been called for and majority of the shareholders have also approved the amalgamation proposed by the transferor Company. Therefore, prima facie, the shareholders are not aggrieved about the management of the affairs of the Company and therefore, the lacunae in the report of the Official Liquidator has been complied with by the meeting of the shareholders approving amalgamation.

7. In view of the above circumstances, the preliminary objections raised by the counsel for the objectors are not sustainable and in fact, it is a peculiar case where it is very difficult to expect strict compliance of the provisions from the Official Liquidators or the Regional Director because several facts have to be looked into at the time of amalgamation. Furthermore, there is sufficiently, an expression of opinion by the Company Law Board about the affairs of the transferor Company and public interest which has predominantly taken priority in passing the orders by the Company Law Board when by superseding management and appointing special directors by the management of the affairs of the Transferor Company.

8. Therefore, in view of the above peculiar circumstances, do not find any merit in the objections raised by the counsel for the objectors and it is for the Court to proceed as to whether the scheme of amalgamation can be taken up or not and the objections of the objectors will also be considered while passing final order in the company petition. Post the Company Petition for final hearing on 01.04.2013.