
(1997) 02 CAL CK 0041

In the Calcutta High Court

Case No : Company Petition No. 365 of 1996 with Company Application No. 458 of 1996

Vikram Organics Pvt. Ltd.

APPELLANT

Vs

Anirox Pigments Ltd.

RESPONDENT

Date of Decision : 18-02-1997

Acts Referred:

Companies Act, 1956 — Section 394, 394(1), 394A

Citation : (1997) 88 CompCas 804

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : S.B. Mukherjee, as Amicus curiae, for the Appellant;

Judgement

Altamas Kabir, J.—This judge's summons has been taken out by Anirox Pigments Limited, hereinafter referred to as "the transferee company", for dissolution without winding up of the transferor company, namely, Vikram Organics Private Limited, pursuant to grant of sanction to the scheme of amalgamation with the transferee company.

2. When the matter was taken up a point arose as to whether in view of the provisions of Section 394A of the Companies Act, 1956, a notice of this application was required to be given to the Central Government at this stage also, notwithstanding the fact that such notice had been given at the stage of grant of sanction to the scheme of amalgamation.

3. Having regard to the nature of the question raised, Mr. S. B. Mukherjee, learned senior counsel, was requested to act as amicus curiae in the matter.

4. Mr. Mukherjee submitted that Section 391 of the Companies Act, 1956, provides for the court to sanction a compromise or arrangement between a company and its creditors or members. The procedure in such cases is that first an application has to be made to the court for convening a meeting to consider the proposal of compromise or arrangement, and, thereafter, if such proposal is

accepted by the requisite majority, then a second application has to be made to the court for its approval of the proposed compromise or arrangement.

5. Mr. Mukherjee urged that the question as to whether a notice was required to be given to the Central Government at the initial stage when an application was made for directions, had been considered by this court in the case of *In Re: Bangeswari Cotton Mills Ltd.*, wherein it has been observed that under rule 67 of the Companies (Court) Rules, 1959, such an application was required to be moved *ex parte*. However, at the second stage, namely, for the purposes of considering a proposed compromise or arrangement or a scheme of amalgamation, notice was required to be given to the Central Government so that before sanctioning such compromise, arrangement or scheme of amalgamation, the court could have the benefit of the views of the Central Government in the matter.

6. Mr. Mukherjee also referred to a decision of the Madras High Court in the case of *IV. A Beardsell and Co. (P.) Ltd., In re* [1968] 38 Comp Cas 197(hc) and a decision of the Allahabad High Court in the case of *Hind Auto Indo Ltd. Vs. Premier Motors (P) Ltd. and Another*, , where similar sentiments have been expressed.

7. Mr. Mukherjee urged that since the question of dissolution of the company without winding up was merely a follow-up action to the grant of sanction of a proposed compromise or arrangement or scheme of amalgamation, there was no further necessity of giving a fresh notice to the Central Government at such stage. Mr. Mukherjee submitted that Section 394 only indicates the powers which the court may exercise when a proposed compromise, arrangement or scheme of amalgamation is placed before it for its approval and it does not contemplate the making of any application for the said purpose.

8. Mr. Mukherjee lastly submitted that adequate safeguards had been provided for in the second proviso to Sub-section (1) of Section 394 of the Companies Act which stipulates that no order for dissolution of any transferor company without winding up is to be made by the court unless the official liquidator has, on a scrutiny of the books and papers of the company, made a report to the court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest. Mr. Mukherjee submitted that even as far as the official liquidator is concerned, his report is generally based on the opinion given by a chartered accountant, who has occasion to examine the financial affairs of the transferor company.

9. Mr. Mukherjee urged that in view of such safeguards and since the Central Government is given a hearing at the stage of grant of sanction to the proposed compromise or arrangement or scheme of amalgamation, it could have nothing further to add at the follow-up stage of dissolution of a transferor company without winding up and service of notice on the Central Government at such stage would be wholly redundant.

10. Learned counsel appearing in support of the judge's summons adopted the submissions made by Mr. Mukherjee and prayed for orders in accordance with the judge's summons.

11. There is considerable force in Mr. Mukherjee's submissions that only one notice is contemplated u/s 394A of the Companies Act, 1956, and the Companies (Court) Rules, 1959, at the stage of an application for grant of sanction to a proposed compromise or arrangement or scheme of amalgamation which might simultaneously contain a prayer for dissolution of a transferor company without winding up. The only bar imposed in allowing a transferor company to be dissolved without winding up is contained in the second proviso to Sub-section (1) of Section 394 which provides for such order to be made only upon a report being made by the official liquidator that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest. Accordingly, it appears that except for the single notice to be given to the Central Government at the time when the proposal for compromise or arrangement or a scheme of amalgamation is under consideration by the court, no other notice is required to be given at the subsequent stage which is only a fallout of the sanction granted to the proposed compromise or arrangement or scheme of amalgamation.

12. In the present case, in view of the report of the official liquidator on the basis of the report of the chartered accountant, there does not appear to be any impediment in passing orders as per the judge's summons.

13. Accordingly, there will be an order in terms of prayers (a), (b) and (c) of the judge's summons which is to be signed as of today.

14. Before parting with the case, I must express my appreciation to Mr. Mukherjee for his valuable assistance in the matter.

15. All parties, including the Registrar of Companies, West Bengal, are to act on a signed copy of the minutes of this order on the usual undertaking.