

Hy Decore Tiles Pvt.Ltd Vs. None

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Court : Rajasthan Jodhpur

Decided On : Sep-24-2013

Appellant : Hy Decore Tiles Pvt.Ltd

Respondent : None

Judgement :

1 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 1.

S.B.Company Petition No.5/2013 Miraj Multicolour Private LTD.versus None 2.

S.B.Company Petition No.4/2013 Bhagyadeep Enterprises Private LTD.versus None 3.

S.B.Company Petition No.6/2013 Hy DCo.Tiles Private LTD.versus None DATE OF

ORDER

: 24th September 2013 HON'BLE Mr.JUSTICE DINESH MAHESHWARI
Mr.Dinesh Mehta, for the petitioner/s.

Mr.K.C.Meena Official Liquidator is present in person with the counsel Ms.Madhulika Vyas Ms.Garima Chauhan for Mr.V.K.Mathur, for the UOI BY THE COURT: These petitions, being co-related, have been considered together and are taken up for disposal by this common order.

Company Petition No.5/2013 This is a petition filed by Miraj Multicolour Private Ltd., a company incorporated under the provisions of the Companies Act, 1956 [the Act of 1956].having its registered office at B-6, Udhyog Vihar, Sukher, Udaipur (transferee company) under Section 394 of the Act of 1956 for sanctioning the scheme of amalgamation of the petitioner company with Bhagyadeep Enterprises Private Ltd., (transferor company No.1).and Hy DCo.Tiles Private LTD.(transferor company No.2) under Sections 391 and 394.

The transferors companies are also incorporated under the provisions of the Companies Act, 1956 and are having their respective registered offices at 6, Udhyog Vihar, Sukher, Udaipur.

2 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 The petitioner company had earlier moved an application under Section 391 of the Act of 1956, being S.B.Company Application No.1/2013 seeking directions for convening and holding of the meeting of equity shareholders of the company; dispensing with holding of the meeting of secured creditor, one in number; dispensing with holding of meeting of unsecured credit ORS.two in number; and publishing of the notice of proposed scheme of amalgamation and of the meetings.

Therein, by the order dated 05.02.2013, the petitioner company was ordered to convene the meeting of its equity share holders on 16.03.2013 for the purpose of considering and if thought fit, approving with or without modifications, the Scheme of Amalgamation proposed to be made between the applicant company on one hand and aforesaid two transferor companies on the other hand.

When it was noticed that there were only two unsecured credit ORS.who had filed their respective consents, their meeting was dispensed with.

When it was further submitted that there was only one secured creditor, Bank of Baroda, the meeting in relation to said secured creditor was also dispensed with but, the said secured creditor was ordered to be noticed.

The meeting was ordered to be held under the Chairmanship of the Chairman appointed by the Court.

The notices of the meeting were published on 17.02.2013 in Dainik Bhaskar, Udaipur Edition and Times of India (English).Jaipur Edition.

The notices together with copy of scheme were also dispatched through speed post to each of the equity share holders of the petitioner company as per the directions of the Court.

The affidavit of the Chairman dated 01.03.2013 has been filed in this regard.

3 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 The meeting of the equity share holders of the petitioner transferee company in terms of the order dated 05.02.2013 was held at the registered office of the petitioner company on 16.03.2013 at 12:00 noon.

The Chairman of the meeting has submitted his report dated 21.03.2013 pointing out that the meeting was attended in person by 10 members holding 48,75,000/- shares and by proxy for 2 members holding 6,99,990 shares.

Requisite quorum was present.

In the meeting, Shri A.R.Mishra, in the capacity of authorised representative of six member companies as well as proxy of member-shareholder Shri Madan Lal Paliwal proposed an amendment to clauses 11(a) & (b) of the Scheme of Amalgamation with a view to align the contents of the scheme with the mandate of AS-14 read with Section 211 (3A) of the Companies Act, 1956.

The Scheme of Amalgamation alongwith the proposed amendment was read out and explained by the Chairman and the question submitted to the meeting was whether the equity shareholders of the company approve the Scheme of Amalgamation?.

The Chairman has pointed out that the following resolutions were placed for approval:- A.

RESOLVED THAT the amendments suggested in the present meeting in clauses 11(a) and 11(b) of the Scheme of Amalgamation of Miraj Multicolour PVT.LTD.(Transferee Company) with Bhagyadeep Enterprises PVT.LTD.& Hy

Decore Tiles PVT.LTD.(Transferor Companies) and their respective shareholders.secured and unsecured creditors is hereby approved.B.RESOLVED THAT the amalgamation of Miraj Multicolour PVT.LTD.(Transferee Company) with Bhagyadeep Enterprises PVT.LTD.& Hy Decore Tiles PVT.LTD.(Transferor Companies) under the Scheme of Amalgamation (as amended) between the Transferor Companies and the Transferee Company and their respective shareholders.secured and unsecured credit ORS.pursuant to Sections 391 to 394 and other applicable provisions, if any, of the Companies Act, 1956; (as amended upto date) and as 4 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 placed before the meeting and duly initialled by the Chairman of the meeting for the purpose of identification, to be effective from April 1, 2012 be and is hereby approved subject to the said Scheme of Amalgamation being approved by the Honble High Court of Judicature at Jodhpur under Section 391 to 394 of the Companies Act, 1956.

.C.RESOLVED FURTHER THAT the Board of Directors (which includes any Committee thereof) of the Applicant Company, be and is hereby authorized to do all such acts, deeds, matters and things as are considered requisite or necessary to effectively implement the amalgamation as embodied in the Scheme and to accept such modifications and/or conditions, if any, which may be required and/or imposed by the Honble High Court of Judicature at Jodhpur and/or by any other authority, while sanctioning the amalgamation as embodied in the Scheme.

The Chairman has further pointed out that 100% equity share holders present in person or proxy voted in favour of the resolution and no equity share holder objected in any manner whatsoever to the scheme of amalgamation.

After holding of the meeting and submission of the report, Company Application No.1/2013 was disposed of on 07.05.2013.

Company Petition Nos.4/2013 and 6/2013 These petitions have been filed by the respective transferor companies namely, Bhagyadeep Enterprises PVT.LTD.(transferor company No.1) [CP No.4/2013].and Hy DeCo.Tiles

PVT.LTD.(transferor company No.2) [CP No.6/2013].As noticed, these transferors companies are also incorporated under the provisions of the Companies Act, 1956 and are having their respective registered offices at 6, Udhyog Vihar, Sukher, Udaipur.

These companies had also earlier moved the applications under Section 391 of the Act of 1956 being S.B.Company Application 5 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 Nos.2/2013 and 3/2013 respectively.

By the similar nature order dated 05.02.2013, the respective companies were ordered to convene the requisite meeting/s on 16.03.2013 for the purpose of considering the above-referred scheme of amalgamation.

It may be pointed out that in relation to these transferor companies, there were noticed certain unsecured creditors too and in each of the case, meetings of unsecured creditors worth Rs.10,000/- or above, were also ordered to be convened.

The meetings were ordered to be held under the respective Chairpersons appointed by the Court.

The notices of the meetings were duly published and sent to the respective shareholders/creditors as per the directions of the Court.

The affidavits of respective Chairpersons have been placed on record.

The requisite meetings of equity shareholders and creditors of each of these transferor companies in terms of the order dated 05.02.2013 were held on 16.03.2013.

The respective Chairpersons have filed their reports pointing out the attendance of the meeting by the requisite quorum and scheme of amalgamation having been read out and, thereafter, the resolutions in the same lines, as noticed hereinbefore, having been adopted without any objection in any manner.

After holding of the requisite meetings and submission of the reports, the above-mentioned company applications too were disposed of on 07.05.2013.

Now, these companies have filed the present petitions for sanctioning the aforesaid scheme of amalgamation with the petitioner of Company Petition No.5/2013.

6 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 Upon filing of these petitions seeking sanction of scheme of amalgamation, notices were ordered to be issued on 07.05.2013 and were ordered to be published in a newspaper having wide circulation in the area where the registered office/s of the companies is situated; and in one English newspaper having wide circulation in the State of Rajasthan.

Notices were also issued to the Regional Director, Ministry of Company Affairs, North-Western Region, Ahmedabad for the report.

The learned Official Liquidator appearing in these matters moved an application (IA No.3620/2013) for engagement of Chartered Accountant and Advocate.

In the application so moved, the Official Liquidator was permitted to take the services of Mr.Sachin Choudhary, Chartered Accountant, Jodhpur and Ms.Madhulika Vyas, Advocate.

Upon the Chartered Accountant having submitted his report after scrutinizing the records, the Official Liquidator submitted his report on 19.09.2013 stating that the affairs of the transferor companies have not been conducted in a manner prejudicial to the interest of members and creditors and, therefore, the Official Liquidator has no objection if upon sanctioning of the scheme of merger, the transferor companies are ordered to be dissolved without winding up within the meaning of Section 394(1) (iv) of the Act.

However, the Regional Director, North-Western Region, Ministry of Corporate Affairs has, in his common affidavit dated 10.09.2013, stated the observations/objections to the effect that,- 7 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 (i) All the three companies are having different main objects and the scheme has not provided as to whether the activities of the transferor companies will be continued or not after sanction?.

(ii) The financial position of the companies have been mentioned on the basis of latest audited balance-sheets ended on 31.03.2012 and, therefore, appointed date.

should have been 01.04.2012.

(iii) The companies deserve to be directed to comply with the requirements of Accounting Standard-14 and that the excess of assets over liabilities should be credited to Amalgamation Reserve Account and not to General Reserve Account and such a reserve should not be available for distribution of dividend.

(iv) The transferor companies have not convened the meeting of secured credit ORS. and have not provided for any copy of the order of the Court dispensing with such meeting of secured credit ORS. (v) The transferee company may be directed to show as to whether copy of the notice of the petition has been served on the secured creditor namely, Bank of Baroda.

(vi) The date of incorporation of transferor company No.2 Hy DeCo.Tiles Private LTD. shown in the petition as well as scheme is 13.12.1999 though the correct date is 13.12.1991.

(vii) The business of petitioner transferee company is relating to media news wherefor the transferee company ought to submit licenses, NOCs, permissions as required by law from the regulatory authorities.

8 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 (viii) There are typographical errors as regards company application number. It is submitted by the Regional Director that he has no objection except those stated above and the Scheme of Amalgamation is not prejudicial to the interest of shareholders of the petitioner companies and public at large.

The affidavit filed by the Regional Director has been responded by the Director of Transferee Company Miraj Multicolour Private LTD. with the submissions, inter alia, that:- (i) The transferor companies do not intend to pursue their objects post amalgamation; and amalgamation would be instrumental in making productive use of the resources of the transferor companies, who are otherwise out of operation in

past three years.(ii) The companies do not resist the revision of appointed date to 01.04.2012 instead of 31.03.2012, which is even otherwise a matter within the discretion of the Court.

(iii) The aspects of creation of Amalgamation Reserve Account as per requirements of Accounting Standard-14 are not seriously contested and it is undertaken that no dividend distribution shall be made from Amalgamation Reserve Account.

(iv) As on 31.03.2012, the transferor companies had no secured creditor; this fact was brought to the notice of the Court on 05.02.2013 wherefor on being satisfied of the position, the Court ordered for convening of the meeting of equity shareholders and qualified unsecured creditors of the transferor companies in the order dated 05.02.2013.

An averment in that regard has also been 9 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 made in paragraph-14 of the petition filed by the transferor companies.

(v) The notice of the petition has been served on the sole secured creditor of the transferor company and the said creditor, Bank of Baroda, has filed No Objection Certificate dated 20.03.2013 through its counsel on 02.04.2013 after giving copy to the counsel for the transferee company.

(vi) The error as regards the date of incorporation of Hy DeCo.Tiles Private LTD.has been inadvertent and such date is required to be read as 13.12.1991.

(vii) The petitioner company only seeks to operate as publishing agency; and in any case, procurement of licenses and permits etc.is not a pre-condition for approval of Amalgamation Scheme.

However, the transferee company undertakes that it will ensure obtaining of all relevant approval and licenses as may be required in its business operations.

(viii) The typographical errors are not disputed and it is prayed that while excusing such inadvertent error ORS.the Court may pass direction for correction, as required.

After having heard the learned counsel for the parties and having perused the material placed on record, this Court is satisfied that the material objections of the Regional Director have been duly taken care of in the response submitted on behalf of transferee company, who shall remain bound by the undertaking stated in the affidavit of its Director dated 19.09.2013.

10 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 So far the questions of objects and the requirement of approval and licences are concerned, such objections cannot operate against the Scheme of Amalgamation, which has otherwise been found to be not prejudicial to the interest of shareholders or to the public at large.

So far the creditors are concerned, the requirements have been duly met by the companies and with the consent of secured creditor of the transferee company having been filed, such objections could only be considered redundant.

The typographical errors could always be corrected in these matters. The date of incorporation of transferor company No.2 Hy DeCo.Tiles Private LTD. shall be read as 13.01.1991 in all the relevant record.

Similarly, the particulars of the company application numbers shall be respectively read as 1/2013, 2/2013 and 3/2013.

So far the question of appointed date is concerned, on the submissions made on behalf of the petitioner, it would be read as 01.04.2012 instead of 31.03.2012.

So far requirements of accounting are concerned, the submissions as made in paragraph-6 of the reply affidavit of the Director of the transferee company is taken as sufficient response thereof.

After having heard the learned counsel for the parties and having perused the material placed on record, this Court is satisfied that the material objections stated by the Regional Director have been duly taken care of and defects/deficiencies have been duly cured/removed.

Therefore, it appears just and proper to sanction the scheme of amalgamation under Section 391-394 of the Companies Act, 1956 subject to the slight modification that the appointed date shall be 11 SB Company Petitions Nos.5/2013, 4/2013, and 6/2013 substituted as 01.04.2012; and typographical errors as noticed above, shall stand corrected.

The scheme so approved is declared binding on all the share holders and creditors of the transferee company as also of the transferor companies.

Needless to observe that sanctioning of the scheme would not absolve any of the parties from any existing legal liability or the liability arising in future with reference to the conduct of the company/companies concerned.

The order in the prescribed Form No.42 be issued separately by the Registrar alongwith the schedules as per Rules 81 and 84 of the Companies (Court) Rules, 1959.

The effective date for the purpose of approved scheme for amalgamation is fixed to be 01.04.2012 The transferor companies shall stand dissolved from that date without winding up in terms of Section 394(1)(iv) of the Companies Act, 1956.

The companies shall file with the Registrar of the Companies, a certified copy of this order within 14 days.

The petitions stand disposed of accordingly.

A copy of this order be placed on the record of each of these petitions.

(DINESH MAHESHWARI),J.

cpgoyal

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