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**In Re: Electro Carbonium Private Ltd. Vs. in Re: Electric Materials Company Private Ltd.**

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**SooperKanoon Citation : [sooperkanoon.com/370275](http://sooperkanoon.com/370275)**

**Court : Karnataka**

**Decided On : Aug-17-1979**

**Reported in : [1982]52CompCas234(Kar)**

**Judge : M.P. Chandrakantaraj, J.**

**Acts : [Companies Act, 1956](#) - Sections 391, 391(1), 394, 394(1) and 394A**

**Appellant : In Re: Electro Carbonium Private Ltd.**

**Respondent : In Re: Electric Materials Company Private Ltd.**

**Advocate for Pet/Ap. : W.K. Sundar Murthy, Adv.**

**Judgement :**

**Chandrakantharaj URS, J.**

1. Heard the learned counsel on the office objection. The office objection is to the effect that a petition by only one of the companies, under s. 391(1)(b) of the Companies Act, is not maintainable when the prayer is for amalgamation of the petitioner-company and another company. The two companies have filed a common petition.

2. It is contended for the applicants-companies that a common petition is maintainable since the statutory requirement of holding a meeting of the shareholders for approving the scheme of amalgamation has been complied with by both the companies. The counsel for the applicants-companies has relied upon the decision of the Madras High Court in the case of *In re Union Services Private Ltd.* [1973] 43 Comp Cas 319. In the said case for the Registrar of Companies, reliance was placed on the decision of the Calcutta High Court in *In re Carron Tea Company Ltd.* [1966] 2 Comp LJ 278 (Cal). It was distinguished by the Madras High Court on the sole ground that, in the Calcutta case, the court held the scheme of amalgamation itself to be bad and, therefore, the petition was not maintainable. In my opinion, it is not sufficient to decide the question whether the application should be made by both the companies separately or a common petition is maintainable. The scheme of s. 391 is such that it provides for one company taking over the assets right to manage another company and amalgamate the same with itself. The process can be reversed by the transferor-company. In both the Calcutta and Madras cases aforementioned, the courts have also held that both the companies must be before the court. Therefore, the question is narrowed down to decide on the point whether both the companies can maintain joint petition or should file two separate petitions. Having regard to s. 394A of the Companies Act which requires that on any application made under s. 391 or s. 394, notice shall be taken out to the Central Government, it is indicative that both the companies which are distinct entities must take out that notice to the Central Government. Therefore, I am inclined to take the view that a common petition is not maintainable but two separate petitions must be filed by the transferee and transferor-companies though for the same purpose. This view is further strengthened by the prov. to clause (b)(vi) to sub-s. (1) of s. 394, which contemplates that no order for amalgamation and any scheme in connection therewith may be sanctioned by the court, unless the court receives a report from the Company Law Board or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest. In other words, the proviso contemplates that there must be a report in respect of each of the companies, in regard to the management of its affairs, until the date of amalgamation.

3. In this view of the matter, the office objection is upheld and the applicants are directed to make two separate applications for amalgamation under s. 391 of the Companies Act.

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