

Ansys Software Pvt. Ltd.

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SooperKanoon Citation : sooperkanoon.com/382770

Court : Karnataka

Decided On : Jul-28-2004

Reported in : [2004]122CompCas526(Kar)

Judge : D.V. Shylendra Kumar, J.

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

Appeal No. : Company Application No. 268 of 2004

Appellant : Ansys Software Pvt. Ltd.

Advocate for Pet/Ap. : Pramod Nair, Adv. for Dua Associates

Judgement :

D.V. Shylendra Kumar, J.

1. This is an application filed under section 391 of the [Companies Act, 1956](#) ('the Act' for short), praying for the following reliefs :

'1. Dispensing with the meeting of the secured creditors of the applicant-company in view of the fact that the applicant-company has no secured creditors.

2. Dispensing with the meeting of the secured creditors of the applicant-company in view of the fact that the applicant-company has substantially paid off most of its unsecured creditors and in light of the fact that others have submitted their letters

of consent to the proposed scheme of amalgamation.

3. Dispensing with the meeting of the shareholders of the applicant- company in view of the written consent of the shareholders of the applicant-company to the scheme.

4. Directions may be given as to the manner of holding and conducting the meeting of 1, 2 and 3 above if this hon'ble court is of the opinion that such meetings require to be convened.

5. A chairman or chairmen may be appointed in the event this hon'ble court is of the opinion that such meetings are required to be held, who shall report the result thereof to this hon'ble court.

6. Necessary directions may be given as to the dispensation of the advertisement in newspaper and Karnataka Government Gazette as this hon'ble court may deem fit.'

2. On the application being moved before this court, notices had been ordered to be issued to the Regional Director of the Department of Company Affairs. The Regional Director is represented by Sri A. S. Bopanna, learned standing counsel who submits that at this stage of the proceedings, the Regional Director has nothing to add.

3. Learned counsel for the petitioner-company having pressed for orders on the prayers for dispensing with the holding of the meetings of the creditors, secured and unsecured, as also of the shareholders, this court had directed issue of notices to the shareholders and creditors in terms of order dated June 16, 2004.

4. There are two shareholders and one creditor and Sri Shreyas Jayasimha, learned counsel who has entered appearance on behalf of the shareholders and the creditor submits that the creditor also happens to be a shareholder, who holds 99 per cent, of the shareholding of the company.

5. Sri Shreyas Jayasimha, who appears for these members and creditors submits that they have no objection for the proposal and would support the scheme. These

persons not only support the scheme, but are also agreeable for the dispensation of the holding of the meetings. Sri Pramod Nair, learned counsel for the applicant-company submits that in the circumstances, it is proper for this court to order dispensing the holding of the meetings of the shareholders and creditors and should proceed on the premise that the scheme is approved as required under law by the shareholders and creditors and permit the petitioner-company to proceed further in the matter. Learned counsel in this regard has placed reliance on a decision of this court in *S.M. Holding Finance Pvt. Ltd. v. Mysore Machinery .* (in liquidation) [1993] 78 Comp Cas 432. Sri Nair submits that the provisions of section 391 of the Act are directory in nature ; that it is in the discretion of this court to dispense with the holding of the meetings of the members and the creditors; that the language used in the section being 'may', it is inevitable that it is directory and as such this court can, even while dispensing with the holding of the meetings, take it that the consent letters given by the members and the shareholders in itself is in compliance with the requirement of the holding of the meetings and treat such consent as a substitute for the resolution passed by members or the creditors, as the case may be, supporting the scheme at such meetings.

6. I find it a little difficult to accept this submission. Under the scheme of the Act, an application under section 391 of the Act is contemplated for the purpose of requesting the court for permission to hold a meeting of members and creditors who can have an opportunity to discuss the proposal under the scheme, debate over it and then vote upon it, based on which it can be said the scheme is approved or otherwise in terms of the resolution passed at such a meeting. The whole idea of filing an application is for the purpose of seeking permission of the court to hold such meetings. A prayer for dispensation of holding of such meetings is a contradiction in terms, as, while the provision itself is for a permission sought for from the court to hold such meeting, it is also prayed for dispensing with the holding of meetings.

7. A situation where non-adherence to the letter of the law construing a substantial compliance as a fulfilment of the requirement of law by resorting to the interpretative process of directory and mandatory requirements, depending on the

words used being 'may' or 'shall' is different from a situation where the entire requirement in itself is sought to be done away. A substantial compliance being construed as a fulfilment of a requirement of law is not the same as no compliance at all also being construed as a fulfilment of the requirement of law. The whole object of making an application under section 391(1) of the Act is for permission to hold a meeting. As indicated earlier, the holding of a meeting, the deliberations that can take place in such a meeting, the discussion, the exchange of ideas amongst the members and after discussion of the pros and cons of the proposal or the merits of the scheme, members voting upon it, cannot be said to be the same as of a mere consent letter issued by such members or creditors by themselves. A consent letter of the type that has now been given by the members and shareholders can never be a substitute for the holding of the meeting of the members and creditors as contemplated in law. When law says that there should be a meeting of the members and creditors for the purpose of discussing and approving a proposed scheme, it has a definite purpose and object. That cannot be done away by a process of dispensation.

8. It is no doubt true that in a situation where the number of members who are not in favour of approving a proposed scheme are less or are very few, the company may find it very convenient to obtain their consent by private circulation. But unfortunately there is no substitute for a meeting that is attended by the members and creditors.

9. I am of the clear view that any dispensation from holding of the meeting of the members and creditors will be clearly a thing which is in conflict with the very provisions of law which provides for the court ordering the manner of holding of the meeting, the place and time for the purpose, the chairman to be appointed, etc.

10. Accordingly the prayers for dispensation of the holding of the meeting of the members and creditors for the purpose of indicating their approval or otherwise in such a meeting, is rejected.

11. Learned counsel for the petitioner-company requests that this court may fix the holding of the meeting of the shareholders and creditors.

12. Such meeting is directed to be held on August 27, 2004, at the registered office of the company. The meeting of the shareholders to be at 10.30 a.m. and the meeting of the creditors to be at 11 a.m. on that day. The managing director of the company Sri Venkatesh Natarajan is appointed as the chairman to preside over both the meetings. The quorum for the meeting is one for creditors and two for the meeting of the shareholders.

13. The petitioner to take out a paper publication of the intended meeting, time and place, the person to act as the chairman by taking out such advertisement in one edition of The Hindu English news daily and one edition of Vijaya Karnataka, Kannada daily. Publication to be taken out on or before August 6, 2004. The petitioner to file a memo before the Registry after taking out the paper publication.

14. The chairman to file a report along with an affidavit of the manner of holding of meeting and the outcome of the meeting within two weeks from the date of holding of the meeting.

6th August, 2004 :

15. In terms of the order dated July 28, 2004, the applicant-company was required to carry out paper publication on or before August 6, 2004, indicating the place, date and time of meeting of the members of the creditors about the proposal of amalgamation of the applicant-company with another company.

16. Admittedly, the applicant-company has obviously not carried out the publication on the ground that certified copy of the order was not made available till today.

17. In the circumstances it has become necessary to fix a fresh date for the proposed meeting for which permission is sought for, and also for paper publication.

18. Accordingly, let the proposed meeting of the members of creditors indicated to be held on September 10, 2004 and paper publication about the same shall not be carried out on or before August 19, 2004.

19. The order dated July 28, 2004, is modified to this extent. All other directions remain the same.

17th August, 2004:

20. Mistakes continue to bedevil the orders. The order dated August 6, 2004, was made for correcting the mistakes in the earlier order dated July 28, 2004. Even this order dated August 6, 2004, is not free from further mistakes and the matter is listed to correct the further mistakes that have occurred in the order dated August 6, 2004. In the last line of page 11 of the order (see above) the sentence-

'Accordingly, let the proposed meeting of the members and the creditors indicated to be on September 10, 2004 and paper publication about the same shall now be carried out on or before August 19, 2004,'

21. is the correct version of the order.

22. It is now to read as indicated above. Except for this correction, the rest of the order remains as it is.

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