

**In Re: Gwalior Strips Ltd.;**

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**Court :** Madhya Pradesh

**Decided On :** Jan-19-1993

**Reported in :** [1994]79CompCas178(MP)

**Judge :** T.N. Singh, J.

**Acts :** [Companies Act, 1956](#) - Sections 67, 68, 391(1), 392 and 394

**Appeal No. :** Company Petitions Nos. 2 and 3 of 1991

**Appellant :** In Re: Gwalior Strips Ltd.; ;In Re: Spring Steels Limited

**Advocate for Pet/Ap. :** S.C. Gupta, Official Liquidator, in person;M.G. Ramachandran, ;P. Magesh and ;K.N. Gupta, Advs.;N.P. Mittal, Adv.

**Judgement :**

**T.N. Singh, J.**

1. This common order shall dispose finally of two inter-linked petitions under Sections 591(1)(a), 392 and 394 of the [Companies Act, 1956](#) (for short, 'the Act'). On April 5, 1991, in these two quarters, notices were issued to the Registrar of Companies, Madhya Pradesh, Gwalior, and leave to serve the same on Shri N.P. Mittal, standing counsel of that respondent, was allowed. He was heard on June 29, 1991, when the matter was dealt with on that date in accordance with Rule 67 of the Companies (Court) Rules, 1959. A direction was made on that date for

separate general meetings of the shareholders of the companies being held to consider the proposal of amalgamation of the two companies filing petitions separately in that regard in these two matters.

2. Shri R.A. Raman, advocate, was appointed as chairman of both the meetings. He submitted his report which was accepted and the order dated October 11, 1991, was accordingly passed. He reported that all formalities contemplated under the order dated June 29, 1991, were complied with in holding the meetings and that the requisite number of members present in each case of each of the companies, had unanimously approved the proposal of amalgamation. However, on the same date, directions were also made for notice of the petitions to go to the Central Government as contemplated under Section 394A of the Act ; the hearing date of the petitions, November 23, 1991, was fixed and it was directed that in two newspapers (English and Hindi) the notice in that regard shall be published. On January 31, 1992, objections came from the Registrar of Companies that the official liquidator is to be noticed and heard and that the transferor company had to obtain the requisite environmental clearance.

3. The official liquidator, Shri S.C. Gupta, appeared in person on March 25, 1992, when he was heard. At his suggestion, M/s. T.N. Unni and Co., chartered accountants, Indore, were appointed to prepare a report on the affairs of the petitioner, M/s. Spring Steels Ltd. (transferor company) after scrutiny of their books of account and other records and papers. On August 24, 1992, report dated August 20, 1992, of the official liquidator submitted on the basis of the enquiry made by M/s. T.N. Unni, was received in the registry and the matter was listed on September 5, 1992. Thereafter, on September 30, 1992, and November 4, 1992, the official liquidator was heard on his objections. It was found that the Registrar of Companies had to make his stand clear in respect of certain objections and, therefore, further hearing was deferred. On January 9, 1993, on an affidavit coming from the Registrar of Companies and his counsel, Shri N.P. Mittal, and the official liquidator, Shri S.C. Gupta, also being heard on final arguments made by the petitioner's counsel, hearing was concluded.

4. In both petitions, a common scheme of amalgamation is placed. It is exhibit C. The respective memorandum and articles of association of the two companies in each case is exhibit A. In each case, the managing director of the company has filed separately an affidavit stating facts in support of the scheme. These I have perused. The issued, subscribed and paid-up capital of the transferor company (petitioner Spring Steels Limited) is Rs. 35,16,700 while that of the transferee company (petitioner Gwalior Strips Limited) is Rs. 1,93,39,800. Both companies have their registered offices at Gwalior. In the memorandum of association of each of the companies, clause 9 authorises amalgamation with any other company or companies having similar objects, with or without liquidation of the company. The transferor company was incorporated on October 4, 1985, and the transferee company on April 22, 1984. One of the objects stated in the memorandum of the transferee company is to set up steel furnaces and continuous casting and rolling mill plant for producing steel and alloy ingots, steel and steel billets, and all kinds and sizes of re-rolled sections. In the case of the transferor company, in its memorandum one of the objects stated is that of carrying on the business of hardening, tempering and polishing of cold rolled high carbon and alloy steel strips, thinning and/or galvanising cold rolled/hot rolled strips and other allied lines and another object is to set up steel furnaces and continuous casting and rolling mill plant for producing steel and alloy ingots, steel and steel billets and all kinds and sizes of re-rolled sections.

5. The facts undisputed are that the factories of the two companies are situated in adjacent premises at Malanpur in District Bhind within the jurisdiction of this court. The transferor company is allotted land by Madhya Pradesh Audyogik Vikas Nigam Limited, for short, 'the MPAKVN' and machinery has been installed thereon ; though the trial run of production is over, commercial production is yet to begin for which the requisite permission is awaited and steps are being taken in that regard. On the other hand, the transferee company is an established industrial undertaking in commercial production of cold rolled strips since 1985. It is submitted that the transferor company is supposed to provide the transferee company the use of the raw material produced by it. The transferee company, it is submitted, requires large premises and a land area of a minimum of 3 acres and, therefore, amalgamation and merger of the two companies will be beneficial to all

concerned because the transferor company has land measuring 5.3 acres. The transferee company has already got from the Government of India approval for expansion of licensed capacity from 10,000 MT to 50,000 MT and the amalgamation shall contribute to fulfilment of the plan of expansion of the transferee company, sanctioned by the Government of India. It is also submitted that the proposed amalgamation is a vertical integration of two companies promoted by common promoters. Therefore, it will bring greater economies in the operation of both the companies resulting from optimum utilisation of management and other resources.

6. Shri Gupta, official liquidator, highlighted three objections during the course of hearing on November 4, 1992. He submitted, firstly, that in the absence of clearance of the State Pollution Board which is still awaited, the order of amalgamation passed will be an academic exercise in that the business to be continued by the new venture on amalgamation may not commence eventually for want of clearance. Secondly, he submitted, the terms of the lease which the transferor company got from MPAKVN are violated and the company may lose its tenancy and on that score also, the proposed venture may not take off.

7. The other objection raised by Shri Gupta impugns certain activities of the transferor company, submitting that in 1986, the company engaged in private placement of shares which were subscribed to the extent of Rs. 36 lakhs and that he had listed in annexure F of his report dated August 20, 1991, the complaints of subscribers in that regard, made to the Registrar of Companies. He contended that the transferor company is liable to prosecution under Section 68 of the Act and by the amalgamation now proposed, that is sought to be avoided. Indeed, at para 3(b) of the 'rejoinder' he filed in this matter on October 23, 1992, he has stated the facts on the basis of which prosecution may be launched.

8. It appears from the affidavits dated January 7, 1993, of Shri B.N. Harish, the Registrar of Companies, Madhya Pradesh, Gwalior, and the application dated December 8, 1992, filed prior to that by Shri N.P. Mittal, senior standing counsel, Central Government, appearing for him, that the complaint referred to by the official liquidator was made by one Shri Satyawadi to the Department of Company

Affairs, New Delhi, on which a detailed report was submitted by the Registrar of Companies to the Department of Company Affairs, New Delhi, through the Regional Director, Department of Company Affairs, Bombay. He has also stated that instructions were awaited by him from the Central Government and at para 3 of the affidavit, the following instructions which he has lately received from the Central Government are extracted and consideration thereof by the court in dealing with these matters is prayed for.

'That with regard to the refund of application money to the non-allottees the specified amount should be kept apart in a separate bank account out of the assets of the transferor company and subject to these provision only all the. assets and liabilities of the transferor company should vest in the transferee company. The transferor company should make an advertisement in local newspapers where the registered office of the company is situated as well as in one national newspaper providing that non-allottees of shares of Spring Steels Ltd., who have not yet got their refund may apply to the advertiser for the refund of their money within such period as may be specified by the Hon'ble High Court.

That as regards the alleged violation of Sections 67 and 68 of the [Companies Act, 1956](#), the transferor company may not be dissolved without winding up at least for a period of one year by the time the alleged violation of Sections 67 and 68 of the [Companies Act, 1956](#), would be decided by the Central Government. The Registrar of Companies shall be at liberty to take necessary action if the Central Government decides that the company has violated the said provisions of the Act, and this shall not be prejudiced in any way by sanction of the scheme of amalgamation of the Hon'ble High Court.'

9. Learned counsel appearing for the petitioners, Shri M.G. Ramachandran, submitted that the companies have no objection to take the conditional order as proposed by the Central Government in the passage afore-extracted of the affidavit of the Registrar of Companies. He submitted that at para 12 of the scheme, care is taken to incorporate the modalities and conditionalities of amalgamation, submitting, inter alia, that it shall become effective upon the receipt of the enumerated approvals declarations consistent therewith and that the

amalgamation shall be deemed to be effective on the date on which the last of such approvals/declaration shall have been obtained. He relied on Sub-clause (g) to submit that the transferor company and/or the transferee company is required to obtain 'such other consent or approval as may be required under any statute or contract not specifically referred to in this scheme'. Therefore, according to Shri Ramachandran, no doubt need be entertained in regard to sanction not being obtained from the Pollution Board or renewal or transfer of lease from MPAKVN. This court may sanction the scheme conditionally and this court's order shall not absolve the petitioners of the legal obligations saddled on them under the scheme or otherwise contemplated under law and indeed, he submitted, the amalgamation order will not have the effect of wiping out any default or result in composition of any offence, if any, committed by any of the petitioner companies. He placed implicit reliance on the following passage of the apex court's judgment in the case of *Saraswati Industrial Syndicate Ltd. v. CIT* : [1990]186ITR278(SC) .

'The High Court's view that on amalgamation, there is no complete destruction of the corporate personality of the transferor company but instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one, the transferor company loses its entity as it ceased to have its business. However, their respective rights and liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.'

10. Reliance was also placed on the decision in the case of *Cetex Petrochemicals Ltd., In re* . Shri Gupta relied on *General Radio and Appliances Co. Ltd. v. M.A. Khader* : [1986]2SCR607 .

11. In my view, the pith and substance of law bearing on amalgamation of companies, as pointed out in the case of *Saraswati Industrial Syndicate* [1990] 70 Comp Cas 184 is that the scheme proposed may be sanctioned in such terms as the court may decide and the amalgamation may be made effective under the

order from such date or subject to such contingency as may be specified but in all cases the discretionary jurisdiction is to be exercised reasonably in the best interest of the corporate entities to fulfil the object of the proposed scheme. When merger between them takes place, the transferor company ceases to exist and carry on business the moment amalgamation becomes effective in accordance with the order. In Cetex Petrochemicals the view taken is that the court should be normally satisfied in respect of the requirements statutorily contemplated such as of the resolution being passed by a statutory majority in accordance with Section 391(2) of the Act; in the exercise of its discretion in sanctioning the scheme, the court is to be satisfied that the scheme, as a whole, having regard to the general conditions and background and object of the scheme is a reasonable one though it is not for the court to interfere with the collective wisdom of the shareholders of the company. The decision in General Radio and Appliances Co. : [1986]2SCR607 relied on by Shri Gupta is on the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The landlord under that Act, was held entitled to evict the tenant, the transferee company, for not obtaining the requisite written consent or permission of the landlord to continue to carry on business on the tenanted premises.

12. After hearing Shri Mittal and perusing the affidavit dated January 7, 1993, aforesaid, of the Registrar of Companies incorporating the view expressed by the Central Government on the proposed amalgamation, which I would regard as its 'representation' made in terms of Section 394A of the Act, I have reached, after due deliberation, the conclusion that a conditional order of amalgamation is warranted. I have given due consideration to the submissions which Shri Gupta, official liquidator, has made but I accept Shri Mittal's contention that only when the transferor company is dissolved it ceases to be in existence as a separate entity and that even when the administration of its affairs has passed to the liquidator who seizes its control which he may lose in the event the liquidation is annulled resulting in the company resuming its powers. He has rightly submitted that the Central Government has kept in view that legal position in suggesting that even if an order of amalgamation is passed, the company need not be dissolved at least for a period of one year. I have seen no oblique motive in the scheme of amalgamation. On the other hand, I am satisfied that it is a bona fide scheme to

advance some of the common objects of the two companies floated by a group of common promoters. The terms and conditions of the proposed amalgamation are reasonable and the interest of the shareholders of both the companies is adequately protected. I have seen no legal obstacle in sanctioning the scheme conditionally, giving due weight to the representation of the Central Government and to the objections of the official liquidator. Indeed, due regard must be had to the fact that during pendency of these two petitions for more than last 21 months despite the shareholders of the two companies being apprised adequately by public notice and communication addressed to them by the chairman individually no objection by them is preferred to the approval of the scheme and the Central Government had also favoured the amalgamation even if conditionally.

13. In the result, the petitions are allowed and the proposed scheme of amalgamation is sanctioned conditionally as follows :

(a) Within three months, from the State Pollution Board the requisite clearance shall be obtained to commence and carry on the proposed business of the amalgamated concern in accordance with the scheme.

(b) Within three months, renewal/transfer of the lease standing in the name of the transferor company (M/s. Spring Steels Limited) shall be obtained from the M.P. Audyogik Vikas Nigam to enable the amalgamated concern to commence and carry on the business proposed in the scheme on the land and/or premises leased out to the transferor company by the said Nigam.

(c) Out of the assets of the transferor company, such amount as is required to meet the liability for refunding share money to non-allottees of the said company shall be invested in a separate bank account within one month and appropriations shall be made from that account only for the specified purpose of the refund contemplated.

(d) Within one month, the transferor company shall make an advertisement in a local newspaper and a national newspaper in terms of the requirement proposed by the Central Government in its 'Representation' aforesaid inviting the non-allottees of shares of Spring Steels Limited who have not yet got refund, to make

applications in that regard and within three months refund to the applicants shall be made accordingly out of the funds separately invested in a bank account as contemplated in Clause (c) above.

(e) The transferor company, Spring Steels Limited, Gwalior, shall continue for the time being with undissolved status and it shall not be wound up for a period of one year as represented by the Central Government to allow the Registrar of Companies or the Central Government to take necessary action against the said company in regard to violations complained of Sections 67 and 68 of the Companies Act, if so advised.

(f) The amalgamation shall be effective subject to the above conditions being satisfied and not from the date of this order.

14. Let steps be taken now by the Registry to issue the order in the statutory form incorporating therein the conditions aforesaid.

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