

Max Estates Limited and anr. Vs. Malsi Estates Limited

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Court : Punjab and Haryana

Decided On : Jan-18-2007

Reported in : [2008]141CompCas341(P& H); (2007)146PLR395;
[2008]86SCL219(Punj& Har)

Judge : Hemant Gupta, J.

Appellant : Max Estates Limited and anr.

Respondent : Malsi Estates Limited

Judgement :

Hemant Gupta, J.

1. The present petition under Section 391(2) read with Section 394 of the Companies Act, 1956 (hereinafter to be referred as 'the Act') is for sanction of Scheme of Amalgamation between Max Estates Limited (hereinafter to be referred as 'the transferor company') and Malsi Estate Limited (hereinafter to be referred as 'the transferee company').

2. Malsi Estates Limited, the transferee company, was incorporated on January 04, 1999 as a Private Limited Company under the provisions of the Act. Subsequently, on January 25, 1999 the transferee company became a Public Limited Company with its registered office at Bhai Mohan Singh Nagar, Rail Majra, Tehsil Balachaur, District Nawanshahr. The authorised share capital of the

transferee company as on August 01, 2006 was Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each whereas issued, subscribed and paid up share capital was Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each.

3. Max Estate Limited, the transferor company, was incorporated on January 04, 1999 as a Private Limited Company under the provisions of the Act. Subsequently, on January 25, 1999 the transferor company became a Public Limited Company with its registered office at Bhai Mohan Singh Nagar, Rail Majra, Tehsil Balachaur, District Nawanshahr. The authorised share capital of the transferor company as on August 01, 2006 was Rs. 5,00,000/- divided into 50000 equity shares of Rs. 10/- whereas issued, subscribed and paid up share capital was Rs. 5,00,000/- divided into 50000 equity shares of Rs. 10/-each.

4. It has been pointed out that both the transferor and transferee companies are closely held public limited companies under the same management and their shares are not listed on any Stock Exchange in India and both the companies are wholly owned subsidiary companies of M/s Malsi Holdings Limited, a company incorporated under the Act and having its registered Office at MAX House, 1, Dr. Jha Marg, Okhla, New Delhi.

5. With a view to rationalize the business activities and as a part of its corporate restructuring, it has been decided to merge the transferor company with the transferee company. Such merger will result in benefits in terms of better, efficient and economical management, control and running of its business, further development and growth of the business, synergies in operation, stronger and wider financial base for further growth and expansion, enhanced economies of scale, reduction in overheads etc. It is proposed that all the assets, properties and liabilities of the transferor company shall be transferred to the transferee company at the values appearing in the books of transferor company as on the close of business on July 31, 2006. It has also been pointed out that the Board of Directors of the transferor and transferee companies are of the view that the Scheme is in the best interest of the companies, their shareholders and creditors and other stake holders by way of resolution dated 18.09.2006,

In company Petition No. 131 of 2006, this Court vide order dated October 19, 2006, dispensed with the requirements of convening the meetings of the equity shareholders and creditors of the petitioner companies as they had given their consent to the Scheme.

6. Notice of the present petition was ordered to be published in the newspapers, namely, The Tribune, Punjabi Tribune and official gazette of the Government of Punjab. Notice was also ordered to be issued to the Regional Director, Northern Region, Ministry of Company Affairs, Noida as well as to the Official Liquidator attached to this Court. Such notices have been published but no objections have been received.

7. The Official Liquidator in his report has submitted that the affairs of the transferor company i.e. M/s Max Estates Limited have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

8. However, the Regional Director in his report has pointed out that the authorised share capital of a company can be increased only after following the procedure prescribed under the relevant provisions of the Act and payment of requisite fees to the Registrar of Companies and stamp duty to the State Government. It has also been pointed out that exchange ratio has been calculated on the basis of a Valuation Report by the statutory auditors of the company on the Net Worth method at book value as on 31.03.2006 and the market value of the assets has not been ascertained. It has also been pointed out that the appointed date has been fixed as 01.08.2006 whereas exchange ratio is based on the balance sheet as at 31.03.2006. It has been clarified by the petitioner companies that the financial position of both the companies are almost same and are not carrying on any business activities and, therefore, valuation of the assets and liabilities of both the companies and share exchange ratio on 31.07.2006 and 31.03.2006 will remain same.

9. Learned Counsel for the petitioner companies has relied upon a Division Bench judgment of Delhi High Court in Jindal (India) Limited (1998) 93 Company Cases 890 to contend that the valuation based upon book value method is an accepted accountancy concept of valuation and it cannot be said to be illusory. Therefore,

the objection that the market value of the assets has not been ascertained is not tenable in law. Reference is also made to *Miheer H. Mafatlal v. Mafatlal Industries Limited* : AIR 1997 SC506 .

10. After going through the said judgments, I am of the opinion that the valuation of shares following the book value method is accepted as a proper mode of valuation of shares. The concept of book value is an accepted accountancy concept of valuation and that it cannot be said to be illusory. The exchange ratio has been determined by an experienced firm of Chartered Accountants on the basis of known and accepted method of valuation. Therefore, I do not find any justifiable and reasonable ground to reject the said valuation. The valuation of assets or shares of any company is always a matter relating to technicalities and within the realm and ambit of the jurisdiction of experts. Therefore, this Court will not act as a Court of Appeal and sit in judgment over the informed view of the expert Chartered Accountants. This Court has no commercial wisdom exercised by the Chartered Accountants and the members of the company who have consented to the Scheme. The jurisdiction of this Court is peripheral and supervisory and not appellate. Therefore, I do not find any substance in such objections raised by the Regional Director, in respect of the objection that the authorised share capital of the company can be increased only after following the procedure prescribed under the relevant provisions of the Act and on payment of requisite fees to the Registrar of Companies and stamp duty to the State Government need not detain me for long in view of the view taken by me in *Motorola India Private Limited* (2006-2) 143 Punjab Law Reporter 191 and score of other cases where a view has been taken that the Scheme of Amalgamation is a single window and complete code in itself. Since the transferor company has paid the requisite fees to the Registrar of the Companies and stamp duty to the State Governments, therefore, it is not necessary to pay such stamp duty and fee on account of increase in the authorised share capital. In view thereof, even the said objection raised by the Regional Director is not tenable.

11. Thus, I am satisfied that the prayer made in the petition deserves to be allowed. I also do not find any legal impediment to the grant of sanction to the Scheme of Amalgamation. Hence, sanction is hereby granted to the Scheme of

Amalgamation, Annexure P-1, under Section 391(2) read with Section 394 of the Act. Consequent upon the amalgamation, the transferor company shall stand dissolved without resorting to the process of winding up. The order of sanctioning of Scheme shall be duly notified by public notice in the Tribune, Punjabi Tribune and official gazette of the Government of Punjab within 30 days.

12. Any person interested shall be at liberty to approach this Court in the above noted matter for any directions that may be necessary.

13. The petition stands disposed of in terms of the aforesaid order.

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