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In Re: Vast Textiles Ltd.

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Court : Rajasthan

Decided On : Dec-19-2006

Reported in : [2007]78SCL190(Raj)

Judge : Shiv Kumar Sharma, J.

Appellant : In Re: Vast Textiles Ltd.

Judgement :
ORDER

Shiv Kumar Sharma, J.

1. Vast Textiles Limited (in short the Resulting Company) and Associated Stone Industries (Kota) Limited (in short the Demerged Company) have filed the present petitions under Sections 391 and 394 of the Companies Act, 1956 (hereinafter shall be referred to as '1956 Act') for sanctioning the Scheme of Arrangement between the resulting company and demerged company so as to be binding upon all the shareholders, secured and unsecured creditors from the appointed date 16-10-2005 and for passing appropriate orders regarding vesting of assets liabilities between the companies in accordance with the scheme of arrangement.

2. The Resulting Company was duly incorporated under the Companies Act, 1956 as Vast Textiles Ltd. on 22-5-2001 vide certificate of incorporation No. 17-017036 of 2001-02. The company was incorporated with its registered office in State of Rajasthan.

3. The position authorized issued, subscribed and paid up capital of the Resulting Company as on 15-10-2005 is detailed out in para No. 4 of the petition filed by the Resulting Company and para 9 of the petition filed by the Demerged Company.

4. The main objects of the Resulting Company as set out in the object clause of its Memorandum of Association have been detailed out in para No. 6 of the petition.

5. The Demerged Company is a company duly incorporated under the Indian Companies Act, 1913 on 17-1-1945 vide Certificate of Incorporation No. 19 of 1944-45. The company was originally incorporated with its registered office at Kota State.

6. The position authorized issued, subscribed and paid up capital of the Demerged Company as on 15-10-2005 is detailed out in para No. 3 of the petition filed by the Demerged Company.

7. The main objects of the demerged company as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 6 of the petition filed by it.

8. The Resulting Company is primarily engaged in the business of dealers in and as brokers agents, stockist, distributors and supporters of all kinds of yarn fabric, cloth and textiles. The Demerged Company is a listed company engaged in various businesses which comprise of mining, quarrying, processing and polishing of stones etc. manufacture, processing, spinning and trading of all kinds of yarn, fabrics, cloth and textiles.

9. A composite Scheme of Arrangement pursuant to Sections 391 to 394 of 1956 Act has been arrived at in its present form or with any modifications approved or imposed or directed by the shareholders and/or creditors of Demerged Company or Resulting Company or by the High Court. The composite Scheme has been reproduced in para 17 of the petition.

10. The proposed scheme of arrangement, it is averred that it would result in the mining and manufacturing activities being carried on by two independent and separate companies. This would enable the management of the two companies to

focus on their individual operations, result in reduction in overall costs of management and operations and permit strategic investors to invest in both the businesses directly.

11. The proposed scheme of arrangement is divided into three parts. The proposed scheme of arrangement also provides for various other matters consequential or otherwise integrally connected therewith.

12. The Demerged company and the Resulting Company in their respective Board meetings have approved the scheme of arrangement. The Demerged company has filed applications along with the copy of scheme of arrangement to the Bombay Stock Exchange and the Jaipur Stock Exchange.

13. The Resulting Company filed Company Application No. 18 of 2006 and the Demerged Company filed Application No. 17 of 2006 and in both the company applications this Court directed the companies to convene meetings of the Equity Shareholders, secured and unsecured creditors. In

pursuance to the meetings held by the companies the respective Chairmen filed their reports before this Court. In the meeting of the secured creditors none of them attended personally. The Resulting Company submitted that State Bank of Bikaner & Jaipur secured creditors submitted no objection letter and the other secured creditors submitted their approval subsequently.

14. Both the Resulting Company and the Demerged Company have filed these petitions for approving the scheme of Arrangement between them to be effective from 16-10-2005.

15. This Court on 1-9-2006 issued notice to the Regional Director through Official Liquidator and the companies were directed to publish the notice of petitions in the News papers. The notices of the petitions were published in the Financial Express dated 21-9-2006 and Daily News Paper Dainik Bhaskar in Hindi dated 21-9-2006.

16. The Regional Director through Official Liquidator filed affidavit and submitted that the authorised share capital of a company can be increased only after following the procedures prescribed under the relevant provisions of the 1956 Act

and the payment of requisite fees to the Registrar of Companies and Stamp duty to the State Government and this aspect may be considered. It was also submitted that on perusal of Chairman's report of the meeting of the secured creditors of the Transferee Company held on 15-7-2006 none of the secured creditors attended the meeting. The transferee company has received consent from all the 4 secured creditors. The shares of the transferor company are listed at Jaipur Stock Exchange and Bombay Stock Exchanges, but they have failed to submit the no objection to the scheme of arrangement obtained from Bombay Stock Exchange.

17. In the course of argument letter No. JSEL/2006/605 dated 9-3-2006 written by Jaipur Stock Exchange Limited to the Company Secretary of the Associated Stone Industries (Kotah) Ltd. (petitioner) was placed for my perusal, wherein it has been stated as under:

In this connection please note that as per Clause 1(f) of SEBI Circular SMD/Policy/list/cir-17/2003 dated 8-5-2004 this Stock Exchange has No Objection in your filing scheme of Arrangement between Associated Stone Industries (Kotah) Ltd. (Demerged Company) and Vast Textile Ltd. (Resulting Company).

It was further stated that the 'approval should not in any be deemed or construed that the scheme has been approved by the Exchange nor does it in any manner warrant, certify or endorse the correctness or completeness of any of the contents of this scheme'.

18. Coming to the case law cited before me, I notice that the Supreme Court in Hindustan Lever Employees Union v. Hindustan Lever Ltd. 1995 Suppl. (1) SCC 499 : [1994] 2 SCL 157 indicated as under:

3. But what was lost sight was that the jurisdiction of the Court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test. A Company Court does not exercise an appellate jurisdiction. It exercises a jurisdiction founded on fairness. It is not required to interfere only because the figure arrived at by the valuer was not as better as it would have been if another method would have been adopted. What is imperative is that such determination should not have been contrary to law and that it was not

unfair to the shareholders of the company which was being merged. The Court's obligation is to be satisfied that valuation was in accordance with law and it was carried out by an independent body. But since admittedly more than 95 per cent of the shareholders who are the best judges of their interest and are better conversant with market trend agreed to the valuation determined it could not be interfered by courts as,

'certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The Court is least equipped for such oversights. Nor, indeed is it a function of the Judges in our constitutional scheme. We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the Court. To do so, is incompetent and improper and, therefore, out of bounds....' (p. 506)

19. In Chemidye Mfg. Co. (P.) Ltd., In re [2006] 69 SCL 10 (Bom.) observed as under:

19. There is nothing either in the Listing Agreement or in the SCR Act which indicates that non-compliance of the terms and conditions of the Listing Agreement would bar a company from making an application under Sections 391 and 394 of the Companies Act for merger or would entail an automatic dismissal of such a petition. Sections 23 and 24 of the SCR Act provide for penalties. These provisions also do not contain a bar of the nature suggested by the intervenor.

21. The consequence of non-compliance with any of the provisions of the Listing Agreement would entail action by the relevant exchange under the provision of the Listing Agreement and SCR Act. For instance, the B.S.E. may initiate action against a defaulting member including by delisting the member. Such non-compliance does not ipso facto entail consequences under the Companies Act of the nature submitted by the Intervenor.

22. Thus non-compliance with the provisions of Clauses 24(f), (g) and (h) of the Listing Agreement does not by itself bar a company from seeking sanction of a scheme of amalgamation under Sections 391 to 394 of the Companies Act. Nor does it entail an automatic dismissal of such a petition. (p. 22)

20. In Compact Power Sources (P.) Ltd., In re/HBL Nife Power Systems Ltd., In re [2005] 125 Comp. Cas. 2891 (AP), it was observed as under:.I am of the considered opinion that the consent of the stock exchange is not compulsorily required to be obtained, and it would suffice if the company files the scheme/petition before the stock exchange a month before it presents the scheme/petition before the court or Tribunal for its approval, and more so when the company under Sub-clauses (g) and (h) of Clause (24) of the Listing Agreement, had agreed that the scheme of arrangement/amalgamation/merger/reconstruction/reduction of capital, etc., to be presented to any court or Tribunal does not violate, override or circumscribe the provisions of securities laws.... (p. 295)

21. It was further observed thus-

In the above view of the matter, no serious objection can be taken to the transferee company, in not receiving the no objection letter from the Stock Exchange of Mumbai, and more so when the transferee company had filed the letter given by the Stock Exchange Hyderabad, which it is said is the parent exchange for the transferee company. (p. 295)

22. In view of ratio indicated in aforequoted judicial pronouncement I do not find any merit in this contention that in absence of no objection certificate from Bombay Stock Exchange, the scheme should not be sanctioned. The main Stock Exchange in present case is Jaipur Stock Exchange and even otherwise the consent of the Stock exchange is not compulsorily required to be obtained. The second objection of the Regional Director that the capital of a company can be increased only after following the procedures prescribed under the relevant provisions of the 1956 Act and payment of requisite fees to the Registrar of Companies and Stamp duty to the State Government has merit. Therefore, para 19(c) of Section 4 of the Scheme providing such increase cannot be ordered to be incorporated in the Scheme.

23. In the result the Scheme of Arrangement as prayed in paras (a) to (b) of the prayer clause omitting para 19(c) of Section 4 is sanctioned. The Resulting Company and the Demerged Company both shall pay Rs. 2,500 each to the Official Liquidator.

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