In Re: Union Services Private Ltd.

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Court : Chennai

Decided On : Apr-11-1972

Reported in : [1973]45CompCas146(Mad)

Judge : N.S. Ramaswami, J.

Acts : Companies Act, 1956 - Sections 39(1) and 394(1)

Appeal No. : Company Petition No. 3 of 1972 with Comp. Application No. 399 of 1971

Appellant : In Re: Union Services Private Ltd.

Advocate for Def. : Central Govt. Standing Counsel for the Company Law Board

Advocate for Pet/Ap. : C. Harikrishnan, Adv.

Judgement :

N.S. Ramaswami, J.

1. This is a petition under Sections 391 and 394 of the Companies Act, 1956, to sanction the scheme of arrangement and amalgamation of the petitioner-company, viz.. Union Services Private Ltd. with another company, viz., the Union Company (Motors) Private Ltd. The two companies are sister-companies and many of the shareholders are common to both the companies. There are 11 shareholders in the petitioner-company (which would be hereinafter referred to as the transferor-

company), of which one shareholder is the Union Company (Motors) Private Ltd. (hereinafter referred to as the transferee-company). The authorised capital of the transferor-company is Rs. 5 lakhs consisting of 5,000 equity shares of Rs. 100 each. The subscribed capital is Rs. 2,62,000 consisting of 2,620 equity shares of Rs. 100 each. Out of this, the transferee-company owns 1,000 shares. The transferor-company has been doing business as repairers, engineers, fitters, founders and painters of motor vehicles. The transferee-company has been carrying on business of distribution of cars and automobile spare parts. Both the companies are having their registered office at No. 29, Mount Road, Madras-2. Both the companies have similar objects as per the respective memorandum of association.

2. It is stated that the management of the two companies have given their attention to schemes of increasing the capacity of the two companies for carrying on more economically and profitably the business of the two companies and also for increasing the volume of business, as a result of which it is now proposed to amalgamate the transferor-company with the transferee-company. As both the companies are under the same management, it is considered that there is no advantage in the transferor-company carrying on business as separate legal entity from that of the transferee-company and that it would be advantageous for all the parties concerned and to the shareholders of both the companies if the transferor-company is amalgamated and merged with the transferee-company. According to the averments in the petition, such amalgamation and merger would enable the (sic) complementary to each other, to be carried on more efficiently and economically.

3. The board of directors of each of the two companies had entered into an agreement dated November 1, 1971, setting out as schedule thereto a scheme of arrangement and amalgamation, which provides for the amalgamation of the two companies by the merger of the transferor-company with the transferee-company and the latter taking the entire undertaking of the former company as a going-concern together with all its assets and liabilities. The said scheme was approved by the board of directors of both the companies at a meeting held on November 19, 1971.

4. In Company Application No. 399 of 1971, this court directed the transferor-company to convene a meeting of the shareholders of the company for the purpose of considering and, if thought fit, approving with or without modification, the abovesaid scheme of amalgamation and arrangement. Thiru K.V. Srinivasin was appointed to act as the chairman at the meeting and to report the result thereof. After due notice of the said proposed meeting, the same was held on December 30, 1971, in which all the shareholders of the transferor-company took part. In the said meeting, the shareholders approved the scheme of arrangement and amalgamation as aforesaid. It is under these circumstances it is now prayed that the said arrangement and amalgamation may be sanctioned by this court so as to be binding on all the shareholders of the transferor-company as well as the said company itself.

5. The Registrar of Companies opposes this petition on the ground that this petition is only by the transferor-company, that by a true construction of Sections 391 and 394 of the Companies Act, the transferee-company also should join in this petition and that there should be a meeting of the shareholders of the transferee-company as well, approving of the scheme of amalgamation.

6. On behalf of the petitioner, viz., the transferor-company it is contended that all the shareholders of the transferee-company are also consenting parties for the scheme of amalgamation of the two companies, that the proposed arrangement is not one between the transferee-company and its members as contemplated under Section 391(1) of the Companies Act, that under the Companies (Court) Rules, there is no rule which contemplates a meeting of the shareholders of the transferee-company in a situation like this and that, therefore, the present petition is in order. The contention is that there is no need for the transferee-company joining as a petitioner in these proceedings, nor for the shareholders of the transferee-company holding a meeting and passing a resolution approving of the scheme.

7. The learned counsel for the Registrar of Companies relies upon the decision in In re Canon Tea, Co. Ltd., [1966] 2 Comp. L.J. 278 (Cal.) in support of his contention that the transferee-company should also hold the statutory meeting and

join as a petitioner in these proceedings. In that case, the Calcutta High Court points out that each of the amalgamating companies must comply with the requirement of Section 391(1) of the Act by obtaining direction, inter alia, for holding a meeting of the shareholders of the company, for, Section 394A throws them back to Clause (1) of Section 391. It is also pointed out that if one of the two amalgamating companies is not before court, any arrangement sanctioned and directions given under various sub-clauses of Clause (b) of Section 394(1) of the Act may be set at naught by the company which is not before court, and that such a situation is intolerable. No doubt, there are various distinguishing features between the case decided by the Calcutta High Court and the present case. That was a case where the court held that the scheme of amalgamation itself was bad. Several sections of the shareholders of the company which held the statutory meeting were against the proposed scheme of amalgamation of that company with another company. Considering the various factors in that case, the court, on merits, held that the scheme of amalgamation was bad. But, that is not the situation as far as the present case is concerned. Here, both the companies are private limited companies having a small number of shareholders, many of whom are common to both the companies. As far as the transferor-company is concerned, all the shareholders have unanimously resolved in favour of the scheme of amalgamation. There are 13 shareholders in the transferee-company. All the 13 shareholders have filed affidavits consenting for the proposed amalgamation. It is not the case of the Registrar of Companies that the scheme of amalgamation is not beneficial or that it should not be approved on any ground on merits. The only objection is that the statutory requirement of the shareholders of the transferee-company holding a meeting and approving of the scheme, has not been done. Even so, the question is whether the above-said technical objection raised on behalf of the Registrar of Companies is not to be upheld. I am clearly of the view that even as far as the transferee-company is concerned the scheme of amalgamation is an arrangement as contemplated under Section 391(1)(b) of the Act. It is undoubtedly an arrangement between the transferee-company and its members, because the transferee-company is taking not only the assets and liabilities of the transferor-company but also inducting more shareholders and thereby changing; at least to a certain extent, the voting rights of the shareholders

of the transferee-company. It is only for the sake of convenience the Union Company (Motors) Private Ltd. is referred to as the transferee-company, while the Union Services Private Ltd. is referred to as the transferor-company. As far as the question of amalgamation is concerned, I think both the companies stand on the same footing because the two companies are amalgamating and forming into one company. No doubt, as far as the transferor-company is concerned, it would lose its identity and merge with the transferee-company, while the latter company would not lose such identity. Even so, the fact remains that the transferee-company is amalgamating with the other company and as such it is an arrangement between the company and its members as contemplated under Section 391(1)(b). Under Section 394(1), the court is entitled to give directions to the transferee-company as well as to the transferor-company. Under Section 394(1)(b), Sub-clause (iii), the court may make provision for the continuation by or against the transferee-company of any legal proceedings pending by or against any transferor-company. That clearly shows that the transferee-company also should be before court. The learned counsel for the petitioner-company contends that there is no rule in the Companies (Court) Rules contemplating a meeting of the transferee-company as per the provisions of Section 391 of the Act, I think he is not right in that respect. Rules 67 to 87 of the Companies (Court) Rules deal generally with compromise or arrangement under Sections 391 to 394. These rules do not say that they are applicable only to the transferor-company and not to the transferee-company, in cases where the arrangement as contemplated under Section 391(1) is an amalgamation of two companies. Therefore, if the relevant rules apply to the transferor-company, they would equally apply to the transferee-company as well.

8. Under all these circumstances, I am of the view that the transferee-company should also hold the statutory meeting of its shareholders. However, this petition is not to be dismissed. In the Calcutta case referred to above, the petition for approving the scheme of amalgamation came to be dismissed not on the ground that the transferee-company had not held the statutory meeting of its shareholders but on merits. Further, in the present case, as already seen, all the 13 shareholders of the transferee-company have given affidavits of consent for the approval of the scheme of amalgamation. The only lacuna is that the statutory

meeting of the shareholders of the transferee-company has not been held. Therefore, I think it is but proper to keep the petition pending and give an opportunity to the transferee-company to satisfy the statutory requirement.

9. The petition is adjourned by two weeks to enable the transferee-company to take necessary steps in order to satisfy the statutory requirements.