

In Re: Vijran Hotels and Estates P. Ltd.;

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Court : Chennai

Decided On : Aug-08-2008

Reported in : [2008]146CompCas386(Mad)

Judge : Chitra Venkataraman, J.

Acts : [Companies Act, 1956](#) - Sections 94, 97, 231 to 237, 391 to 394, 542 and 543

Appeal No. : C.P. Nos. 117 and 118 of 2008

Appellant : In Re: Vijran Hotels and Estates P. Ltd.;; in Re: A.R. Foundations P. Ltd.

Advocate for Def. : A. Edwin Prabakar, ACGSC for Regional Director and; M. Jayakumar, Deputy official liquidator present-in-person

Advocate for Pet/Ap. : T.K. Bhaskar, Adv.

Disposition : Petition allowed

Judgement :

Chitra Venkataraman, J.

1. These company petitions are preferred under Sections 391 - 394 of the [Companies Act, 1956](#), for sanctioning the scheme of amalgamation of the

transferor company with the transferee company with effect from April 1, 2007. The scheme of amalgamation is annexed as annexure 3 in the petition.

2. The petitioner in C. P. No. 117 of 2008 is the transferor company and the petitioner in C. P. No. 118 of 2008 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. The certificate from the chartered accountant certifying that there are no secured creditors as far as the transferor company is concerned, petitioner in C. P. No. 117 of 2008, is enclosed as annexure 5. The transferee company, petitioner in C. P. No. 118 of 2008, has obtained consent letters from their secured creditors, which are annexed as annexures Nos. 6 and 7. The copy of the resolution dated February 1, 2008, of the board of directors adopting the scheme of amalgamation is enclosed as annexures Nos. 4 and 5 respectively to the respective petitions.

4. The consent affidavit from the equity shareholders to the scheme of amalgamation for approving the scheme of amalgamation is annexed as annexures Nos. 6 and 8, respectively. By order dated March 31, 2008 in C.A. Nos. 974 of 2007 (transferor company) and 986 of 2008 (transferee company), this Court, dispensed with the convening, holding and conducting of the meeting of the shareholders for the purpose of considering and if thought fit, approving with or without modification, the scheme of amalgamation of the transferor company with the transferee company.

5 On notice, the Regional Director, Ministry of Company Affairs has filed his report raising the following objections:

3. It is stated in Clause 10 of the scheme that in consideration of the transfer and vesting of the undertaking of the transferor company, the transferee company shall issue and allot one equity share of Rs. 100 each for every four equity shares of Rs. 100 each held in the transferor company. But M/s. Murali and Associates, chartered accountants, Chennai, have valued the shares of both the companies and recommended one equity share of Rs. 100 each of the transferee company for every 238 equity shares of Rs. 100 each held in the transferor company. It is

not known on what basis the exchange ratio of 1 : 4 is proposed in the scheme. This requires clarification.

4. There is a prayer for dissolution of the transferor company without winding up in the petition filed by the transferor company. But there is no specific clause for dissolution in the scheme approved by the shareholders. Therefore, the scheme has to be amended suitably.

5. Clause 8 of the scheme contemplates the combining of the authorised capital of the transferor company with the authorised capital of the transferee company which is not tenable on the following grounds:

(a) The authorised capital of the company is a notional limit up to which the company can increase its paid-up capital. Hence, two notional limits cannot be clubbed together.

(b) The authorised capital of the company is not a liability like other liabilities which are to be returned or refunded. Hence, the authorised capital will not come within the purview of transfer of liabilities under the scheme of amalgamation.

(c) The transferor company and transferee company have separate legal entities. On amalgamation, the transferor company will be dissolved and only the transferee company exists. At this stage, if the transferee company on account of scheme of arrangement, increases its authorised capital, it has to comply with the provisions of Sections 94 and 97 of the [Companies Act, 1956](#), by filing relevant returns with the Registrar of Companies with registration fee/filing fee.

(d) The Companies Act does not specifically exempt the transferee company on account of scheme of arrangement from payment of registration fee for increase of its authorised capital pursuant to the scheme of amalgamation. Hence, if the transferee company is allowed to increase its authorised capital by clubbing the authorised capital of the transferor company without any further act or deed as contemplated in the scheme, it will be not only against the provisions of the [Companies Act, 1956](#), but it will also involve substantial loss to the Central Government revenue.

(e) The authorised capital of the transferor company to that of the transferee company cannot be a part of the scheme since Section 97 of the [Companies Act, 1956](#), is only a procedural compliance requiring payment of registration fee with the Registrar of Companies and which does not require any permission of the court.

6. The equity shares 10,000 held by the transferor company in the transferee company is proposed to be cancelled and hence there is no justification for clubbing the authorised capital of the transferor company with the transferee company, though new shares of about 14.050 are allotted to two shareholders of the transferor company by transferee company.

6. As regards the third objection of the Regional Director on the clubbing of two notional limits, as rightly submitted by learned Counsel for the petitioners, in the light of the decision of this Court in the case of Cavin Plastics and Chemicals P. Ltd., In re [2006] 129 Comp Cas 915, the objection is no longer res integra and hence, the objection of the Regional Director does not survive for consideration. As regards the objection that the basis of the exchange ratio of 1 : 4 is not disclosed, learned Counsel appearing for the petitioner pointed out that both the companies have common shareholders numbering 2. In the circumstances, the valuation given by the chartered accountants at Rs. 100 of each equity share in the transferee company for every 238 equity shares of Rs. 100 each held in the transferor company was proposed, to which both the shareholders have agreed. He pointed out that the said valuation does not affect the interest of the two shareholders who are common in both the companies. In the circumstances, the valuation done had no serious impact on the holding of the respective shareholders.

7. Consequently, no serious objection could be taken to this. He pointed out that the valuation was done on the basis of the asset position of the companies and hence, the same may be accepted. The reasoning given by learned Counsel as stated above, clearly establishes that the exchange ratio proposed was accepted by the shareholders as beneficial to them. Being a considered decision by the shareholders, the objection of the Regional Director stands rejected.

8. As regards the objection taken in paragraph 4 of the Regional Director's report, there is no specific clause for dissolution of the transferor company. It may be seen that on the amalgamation of the transferor company with the transferee company, the transferor company is no longer in existence as an independent legal entity. In the circumstances, the follow-up on amalgamation is only a dissolution of the transferor company without winding up which the court has to order. In the circumstances, I do not find any merit in the objections taken in the report of the Regional Director. Consequently, they stand overruled.

9. The official liquidator has filed his report along with the report of the chartered accountant. The report of the chartered accountant states that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to public interest and they do not come across any act of misfeasance by the directors attracting the provisions of Sections 542 and 543 of the [Companies Act, 1956](#). It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said chartered accountant. In the absence of any inference that the affairs of the transferor company were being conducted in a manner prejudicial to the interest of its members or public interest, and in the absence of any comments that the affairs of the transferor company were being conducted in a manner prejudicial to its members, the official liquidator has filed his report before this Court for orders.

10. I have perused the scheme filed in the company petitions. The scheme states that there is no objectionable feature in the scheme of amalgamation which is detrimental either to the employees of the transferor company or of the transferee company. The said scheme is not violative of any statutory provisions. The scheme is fair, just, sound and is not against any public policy or public interest. No proceedings are pending under Sections 231 - 237 of the [Companies Act, 1956](#). All the statutory provisions are complied with.

11. Consequently, there shall be an order approving the scheme of amalgamation of the transferor company M/s. Vijran Hotels and Estates P. Ltd., the petitioner in C. P. No. 117 of 2008, with the transferee company M/s. A. R. Foundations P. Ltd., petitioner in C. P. No. 118 of 2008, as provided in annexure 3 in these

company petitions, with effect from April 1, 2007, as the procedure laid down under Sections 391 and 394 of the [Companies Act, 1956](#), are duly complied with. The petitions are allowed.

12. Taking note of the report by the chartered accountant as enclosed by the official liquidator, the transferor company shall stand dissolved without winding up.

13. The learned senior Central Government standing counsel is entitled to a fee of Rs. 2,500 from the transferee company.

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