

(2003) 02 AP CK 0010

Andhra Pradesh High Court

Case No: CP No's. 150 and 151 of 2003

In Re: Compact Power Sources
Pvt. Ltd. and Another

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 27, 2003

Acts Referred:

- Companies Act, 1956 - Section 391, 392, 393, 394

Citation: (2004) 2 ALD 747 : (2004) 2 ALT 735 : (2005) 125 CompCas 289

Hon'ble Judges: N.V. Ramana, J

Bench: Single Bench

Advocate: V.S. Raju, for the Appellant;

Final Decision: Allowed

Judgement

N.V. Ramana, J.

These two Company Petitions have been filed by M/s. Compact Power Sources Private Limited (Transferor Company) and M/s. HBL Nife Power Systems Limited (Transferee Company) under Sections 391 - 394 of the Companies Act, 1956 (for short "the Companies Act") seeking approval of the Scheme of Arrangement.

The Transferor Company was originally incorporated during 1997 in the State of Tamil Nadu under the provisions of the Companies Act and subsequently with effect from 23-5-2003 it was transferred to the State of Andhra Pradesh. The Transferor Company, as is reflected by its Memorandum of Association, was incorporated with the main objects of carrying on business of manufacture, purchase, retail, import, export or otherwise deal in Miners Cap Lamps and Batteries for industries, automobiles, solar systems, railways and other items such as industrial and marine safety equipments, etc. Clause III(A) 14 of the Memorandum of Association enables the Transferor Company to amalgamate with any other company or companies having objects altogether or in parts similar to it.

2. The authorized share capital of the Transferor Company is Rs. 90,00,000/- divided into 90,000 equity shares of Rs. 100/- each and the entire capital has been fully issued, subscribed and paid up.
3. The Transferee Company was incorporated on 29-8-1986 under the provisions of the Companies Act as a Public Limited Company in the name and style of M/s. Sab Nife Power Systems Limited. Subsequently, the name was changed to the present one, The Transferee Company, as is reflected by its Memorandum of Association, was incorporated with the main objects of carrying on the business of manufacture of cells, batteries, energy storage devices, etc.
4. The authorized share capital of the Transferee Company is Rs. 21,00,00,000/- divided into 2,10,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the Transferee Company is Rs. 20,7,23,230/- divided into 2,00,72,323 equity shares of Rs. 10/- each.
5. Pursuant to the approval of the Scheme of Arrangement by the Board of Directors of the Transferor and Transferee Companies on 29-5-2003, the Transferor Company filed application in C.A. No. 563 of 2003 seeking to dispense with the meeting of the shareholders and the Transferee Company filed application in C.A. No. 564 of 2003 seeking to convene the meeting of the shareholders. By order dated 15-7-2003, this Court dispensed with the meeting of the shareholders in respect of the Transferor Company, and in respect of the Transferee Company, directed conduct of the meeting of their shareholders and appointed a Chairperson. The Chairperson having conducted the meeting of the shareholders of the Transferee Company on 23-8-2003 filed his report stating that the shareholders of the Transferee Company have unanimously approved the Scheme of Arrangement.
6. This Court while admitting the Company Petitions, by order dated 16-9-2003, directed publication of notice in newspapers namely "Andhra Jyothi" and "Indian Express" and issued notices to the Central Government and the Official Liquidator. The petitioners having taken out paper publication, filed proof thereof into Court.
7. The Official Liquidator filed his report stating that having perused the books and accounts, records and other papers, he is of the view that the Transferor and Transferee Companies are not conducting their affairs in a manner prejudicial to the interests of their members or the general public.
8. On behalf of the Central Government, the Registrar of Companies, filed common affidavit taking two objections - It is stated that the Transferee Company is a listed Company and though it had addressed letters to the Stock Exchanges of Hyderabad and Mumbai for approval of the Scheme of Arrangement, as required under Clause 24 of the Listing Agreement, it had not received the "No Objection" letters from the said Stock Exchanges. It is also stated that the consent of the secured creditors of the Transferee Company has not been obtained with respect to the proposed Scheme of Arrangement.

9. On behalf of the Transferee Company, Sri. V.S. Raju, Advocate, representing them filed memo replying the objections taken by the Central Government. Insofar as the objection taken by the Central Government to the effect that though the Transferee Company is said to have addressed letters to the Hyderabad and Mumbai Stock Exchanges, seeking their approval for the proposed Scheme of Amalgamation as required under Clause 24 of the Listing Agreement, they have not received their consent letters, is concerned, the learned Counsel for the Transferee Company filed letter dated 23-6-2003 addressed by the Hyderabad Stock Exchange to the Transferee Company indicating their no objection to the Transferee Company preferring any application to this Court with respect to the Scheme of Arrangement. Insofar as consent letter from Mumbai Stock Exchange is concerned, he submitted that their consent is awaited. He, however, stated that what all the Transferee Company agreed to under the Listing Agreement in Clause 24 is that it shall file the scheme/petition that is proposed to be filed by it before any Court or Tribunal under Sections 391, 394 and 101 of the Companies Act, 1956, with the Stock Exchange, for their approval, one month before it is presented to the Court or Tribunal, and inasmuch as the present Company Petitions have been filed after the expiry of one month from the date it addressed letters to the Stock Exchanges of Hyderabad and Mumbai, their consent is only formal and not mandatory. He also filed the Certificate dated 19-6-2003 issued by one Sri. Y. Ratan Kumar, Practising Company Secretary, stating that the Scheme of Arrangement does not in any way violate or over-ride or circumscribe the provisions of SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996, the Companies Act, 1956, the Rules and Regulations made thereunder and the Listing Agreement.

10. In reply to the second objection taken by the Central Government to the effect that the Transferee Company has not obtained the consent of its secured and unsecured creditors, the learned Counsel for the Transferee Company submitted that though there are four secured creditors, IDBI being the lead financial institution, had given its no objection to the Scheme of Arrangement, and he filed a copy of the letter dated 19-1-2004 addressed by the IDBI to the Transferee Company communicating their no objection to the proposed Scheme of Arrangement.

11. To consider the objection taken by the Central Government with respect to non-receipt of consent letters by the petitioner from the Mumbai and Hyderabad Stock Exchanges though it had addressed letters in that regard to them, it may be noticed that the Hyderabad Stock Exchange had addressed a letter to the Transferee Company on 23-6-2003 indicating their no objection to the proposed Scheme of Arrangement and the Transferee Company preferring any application in that regard to this Court. Insofar as non-receipt of consent letter from Mumbai Stock Exchange is concerned, the learned Counsel for the Transferee Company submitted that the same is only formal, and at any rate, relying on Sub-clauses (f), (g) and (h), which were added to Clause 24 of the Listing Agreement, he submits that no consent is required, and it would suffice if letters are addressed to the Stock Exchanges thirty

days before presentation of a petition for approval of Scheme of Arrangement before the Court or Tribunal. To analyze this contention, a reference be made to Sub-clauses (f), (g) and (h), which were added to Clause 24 of the Listing Agreement made by SEBI. The relevant Sub-clauses (f) to (h) of Clause 24 read thus:

(f) The company agrees that it shall file any scheme/petition proposed to be filed before any Court or Tribunal under Sections 391, 394 and 101 of the Companies Act, 1956, with the Stock Exchange, for approval, at least a month before it is presented to the Court or Tribunal.

(g) The company agrees to ensure that any scheme of arrangement/amalgamation/merger/reconstruction/reduction of capital, etc., to be presented to any Court or Tribunal does not in any way violate, or circumscribe the provisions of Securities laws or the Stock Exchange requirements.

Explanation :--For the purposes of this sub-clause, "securities laws" mean the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI u/s 55A thereof, the rules, regulations, guidelines etc., made under these Acts and the listing agreement.

(h) The company agrees that in the explanatory statement forwarded by it to the shareholders u/s 393 or accompanying a proposed resolution to be passed u/s 100 of the Companies Act, it shall disclose the pre and post-arrangement or amalgamation (expected) capital structure and shareholding pattern.

12. A reading of the aforementioned sub-clauses would disclose that under Sub-clause (f) what the company had agreed is that at least a month before it presents a scheme/petition under Sections 391, 394 and 101 of the Companies Act, before the Court or Tribunal, it shall file the scheme/petition proposed, before the Stock Exchange, for approval. It is nowhere stated in the said sub-clause that consent of the Stock Exchange is compulsorily required to be obtained from the Stock Exchange before preferring the scheme/petition before the Court or Tribunal by the company or such consent is mandatory for preferring such scheme/petition before the Court or Tribunal. Under Sub-clause (g) the company had agreed that it shall ensure that any scheme of arrangement/amalgamation/merger/reconstruction/reduction of capital, to be presented to any Court or Tribunal, will not violate, override or circumscribe the provisions of the securities laws, namely the laws mentioned in the explanation appended thereto, or the stock exchange requirements, and under Sub-clause (h), the company agreed that it shall disclose the pre and post-arrangement or amalgamation (expected) capital structure and shareholding pattern in the explanatory statement to be forwarded by it to the shareholders u/s 393 or accompanying a proposed resolution to be passed u/s 100 of the Companies Act.

13. Inasmuch as the Transferee Company under Sub-clause (f) had merely agreed to file scheme/petition for approval before the Stock Exchange at least a month before the same is presented before the Court or Tribunal, and had, in fact, filed the scheme/petition for approval before the Stock Exchange one month before it presented before this Court, as is required under Sub-clause (f) of Clause 24 of the Listing Agreement, 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 (as mentioned in the explanation appended thereto) or the stock exchange requirements, and also agreed to disclose the pre and post-arrangement or amalgamation (expected), capital structure and shareholding pattern. This apart, the Transferee Company to prove that the scheme of arrangement does not violate, override or circumscribe the provisions of the securities laws, has filed the certificate dated 19-6-2003 issued by Sri. Y. Ratan Kumar, Practising Company Secretary, certifying to the following effect:

On a perusal of the Scheme of Amalgamation of Compact Power Sources Private Limited with HBL Nife Power Systems Limited and on the basis of information and explanations given to me, I certify that the said Scheme of Amalgamation does not in any way violate or override or circumscribe the provisions of the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996, the Companies Act, 1956, the Rules, Regulations and guidelines made/notified, under these Acts and the provisions/clauses of Listing Agreement or the requirements of the Stock Exchanges.

14. 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 of Hyderabad, which it is said is the parent Exchange for the Transferee Company.

15. Insofar as the second objection taken by the Central Government to the effect that the consent of the secured and unsecured creditors of the Transferee Company to the proposed Scheme of Arrangement, has not been obtained, the learned Counsel for the Transferee Company submitted that the Transferee Company has four secured creditors, namely IDBI, SBI, SBH and IDBI Bank Ltd., IDBI being the lead Bank, had by its letter dated 19-1-2004 indicated its No Objection to the proposed Scheme of Arrangement, and as such, the consent of other three secured creditors is not necessary, and insofar as the unsecured creditors is concerned, he

submitted that the Transferee Company has two unsecured creditors, namely M/s. Beaver Engineering Limited and M/s. M.S.S. Srinath, and had filed their letters dated 31-5-2003, addressed by them to the Transferee Company indicating their No Objection to the proposed Scheme of Arrangement.

16. In view of my finding that obtaining of No Objection letter from the Stock Exchanges in terms of Clause 24 of the Listing Agreement, having regard to the language used in Sub-clause (f) is not mandatory and that the Transferee Company had merely agreed to file the scheme/petition before the Stock Exchange a month before it presents the scheme/petition before the Court or Tribunal for its approval, and having regard to the fact that the Transferee Company had produced the consent letters of the lead bank, namely IDBI in respect of its secured creditors, and its unsecured creditors, which are placed on record, the objections taken by the Central Government stand met, and having regard to the report filed by the Official Liquidator to the effect that the Transferor and Transferee Companies have not conducted their affairs in a manner prejudicial to the interests of the shareholders or the general public, I am of the considered opinion that the Scheme of Arrangement, as approved by the Board of Directors and Shareholders of the Transferor and Transferee Companies, is required to be approved by this Court, and it is accordingly approved.

17. In the result the Company Petitions are allowed. As a corollary, the Transferor Company shall stand dissolved and get amalgamated with the Transferee Company without going through the process of winding up. The petitioners shall cause a copy of this order on the Registrar of Companies, Andhra Pradesh, Hyderabad within a period of 30 days from the date of its receipt. No costs.