

(2012) 05 CAL CK 0012

Calcutta High Court

Case No: APO 81 of 2012, ACO 17 of 2012, CA 22 of 2012; APO 82 of 2012, ACO 29 of 2012, CA 22 of 2012 and CP No. 630 of 2011

In Re: Satya Ventures (P) Ltd. and
Others

APPELLANT

Vs

RESPONDENT

Date of Decision: May 17, 2012

Acts Referred:

- Companies Act, 1956 - Section 393

Citation: (2012) 4 CompLJ 578

Hon'ble Judges: Sengupta, J; Asim Kumar Mondal, J

Bench: Division Bench

Advocate: S.N. Mukherjee, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. These appeals were preferred against the orders dated 11 January, 2012, and 8 February, 2012 in the same proceeding but at different stages. The appellants numbering four presented the scheme of amalgamation before the learned trial judge by taking out a summons for direction. The learned trial judge by the first impugned order directed that a notice of application be given to the Central Government and the Central Government was asked to cause the revenue authority to enquire into the accounting of the companies involved in the proposed scheme of amalgamation. Being aggrieved by the aforesaid order the appellant preferred appeal and appeal was admitted for hearing. During pendency of the hearing this application on adjourned date came up for hearing and the learned trial judge by a subsequent order has been pleased to dismiss the application altogether in view of the non-compliance of the earlier order.

2. Now the question has cropped up here whether the learned trial judge in absence of any complaint could pass any such order causing an enquiry to be made. In the

affidavit in support of the summons it has been specifically mentioned on oath that there are no proceedings pending against the applicant companies. This statement and averment has not been challenged by any person.

3. Mr. Mukherjee submits in view of above situation that it was not for the court to conduct an enquiry on the basis of surmise and conjecture. Such a direction is at the first instance wholly without jurisdiction. At the threshold the court has to examine whether there has been decision amongst the companies for scheme of amalgamation or not. Whether the meeting of the shareholders was held? Once this procedure is complete the court as a matter of course either to accept the scheme of amalgamation or to pass appropriate order, if necessary. Alternatively, he submits that the court can ask the company to arrange for meeting of all shareholders under the supervision of the special officer/chairperson to be appointed by the court. After the meeting is held it would be published and a report to that effect be submitted before the court. Then the Court can allow such scheme of amalgamation, if such occasion arises. Therefore, the learned trial judge has really put the cart before the horse and this is without jurisdiction. Considering the submission of Mr. Mukherjee we hold that the learned trial judge had no jurisdiction in the subject matter of the cause to pass order directing the Government to make an enquiry or for that matter any notice was required to be served at the threshold. The learned trial judge at the first instance should have gone by the statements and averments made in the affidavit filed in support of the summons for direction. When the statement has been made there has been no complaint or proceeding so enquiry was uncalled for.

4. Therefore, we do not approve the direction of the trial judge giving at the first instance dated 11 January, 2012. The same is accordingly set aside. Subsequently, order was passed in view of non-compliance of the earlier order. We, therefore, hold that the subsequent order is also not sustainable. When the first order is not sustainable the second order will automatically fail. The same is accordingly set aside. We allow the appeal and now we pass the following order:

That a separate meeting of the holders of the equity shares in Satya Ventures (P) Ltd. (hereinafter referred to as the "transferee company") shall be convened and held at the "Gandhi House", 8th Floor, 16, G.C. Avenue, Kolkata-700013. At 4.30 p.m. on 11 August, 2012, for the purpose of considering and if thought fit, approving with or without modification a scheme of amalgamation between the applicant companies and their respective shareholders for the purpose of amalgamation of the transferor companies with the transferee company (the said scheme of amalgamation).

That a separate meeting of the shareholders of Topaz Realcon (P) Ltd. (hereinafter referred to as the first transferor company) shall be convened and held at the "Gandhi House", 8th Floor, 16, G.C. Avenue, Kolkata-700013 at 5.00 p.m. on 11 August, 2012, for the purpose of considering and if thought fit, approving with or

without modification a scheme of amalgamation between the applicant companies and their respective shareholders for the purpose of amalgamation of the transferor companies with the transferee company (the said scheme of amalgamation).

That a separate meeting of the shareholders of Visual Vincom (P) Ltd. (hereinafter referred to as the second transferor company) shall be convened and held at the "Gandhi House", 8th Floor, 16, G.C. Avenue, Kolkata-700013 at 5.15 p.m. on 11 August, 2012, for the purpose of considering and if thought fit, approving with or without modification a scheme of amalgamation between the applicant companies and their respective shareholders for the purpose of amalgamation of the transferor companies with the transferee company (the said scheme of amalgamation)

That a separate meeting of the shareholders of Emerge Vinimay (P) Ltd. (hereinafter referred to as the third transferor company) shall be convened and held at the "Gandhi House", 8th Floor, 16, G.C. Avenue, Kolkata-700013, at 5.30 p.m. on 11 August 2012, for the purpose of considering and if thought fit, approving with or without modification a Scheme of Amalgamation between the applicant companies and their respective shareholders for the purpose of amalgamation of the transferor companies with the transferee company (the said scheme of amalgamation).

That at least twenty one clear days before the meetings to be held at aforesaid, a notice convening the said meetings at the place and time as aforesaid together with a copy of the said scheme of amalgamation, a copy of the statement required to be sent u/s 393 of the Companies Act, 1956, and the prescribed form of proxy be served through the registered post upon each of the holders of the said equity shares in the applicant respective companies at their respective or last known address.

That, in addition, at least twenty one days before the day appointed for the meeting, an advertisement convening the same and stating that the copies of the said scheme of amalgamation and statement required to be furnished pursuant to the section 393 and the forms of the proxy can be obtained free of charge at registered office of the applicant companies or at their aforesaid advocate office, be inserted once in "The Business Standard", Calcutta edition, and once in "Aajkal" publication of the notice of meeting in Calcutta gazette is dispensed with, that advocates for the applicant companies do within seven days from this day file in the court the form of the notices and same shall be settled by the Assistant Registrar (Company) of the court.

That Mr. Debjit Mukherjee, Advocate of Bar Association, and failing which Mrs. Smriti Kana Mukherjee, Advocate of Bar Association, shall be the chairman/chairperson of the said meeting of the equity shareholders of transferee

company/chairperson to be held at aforesaid at a remuneration of 600 GMs. for such meeting.

That Mr. Pradip Kumar Roy, Advocate of Bar Association, Room No. 2, and failing which Mr. Shailendra Nath Chakraborty, Advocate of Bar Association, Room No. 2, shall be the chairman/chairperson of the said meeting of the equity shareholders of first transferor company/chairperson to be held at aforesaid at a remuneration of 800 GMs. for such meeting. That Mrs. Jayshree Chakraborty, Advocate of Bar Library Club, and failing which Mrs. Soma Roy Chowdhury, Advocate, of Bar Association, Room No. 2, shall be the chairperson of the said meeting of the equity shareholders of second transferee company/chairperson to be held at aforesaid at a remuneration of 800 GMs. for such meeting.

That Mr. Ansar Ali Mondal, Advocate, of Bar Association Room No. 10, and failing which Mr. N.I. Khan, Advocate, of Bar Association, shall be the chairman of the said meeting of the equity shareholders of third transferee company/chairperson to be held at aforesaid at a remuneration of 700 GMs. for such meeting.

The notice shall be dispatched under the personal supervision of one of the directors of the transferee company who shall prove such dispatch by filing an affidavit of service: That the quorum of each of the said meeting shall be two either personally or by proxy. That voting by proxy be permitted, provided that a proxy in the prescribed form only signed by the person(s) entitled to attend and vote at the meeting, is filed with the applicant companies at their registered office not after than forty-eight hours before the said meeting. The chairpersons shall have the power to adjourn the meeting, if necessary. That the value of each share shall be in accordance with the books of applicant companies and where entries in the books are disputed, the respective chairpersons shall determine the value for the purpose of meeting.

That the chairperson do report to this court, the result of the said meetings, within seven days from the date of conclusion of the meetings and their report shall be verified by their respective affidavits.

5. The chairpersons will respectively hold a meeting and venue of that meeting should be at the appropriate place as per their choice but not in any company's office or its advocate on record's office. However, the cost factor of the venue shall be borne in mind having regard to the financial condition of the company and after having meeting a report shall be submitted before the learned trial judge and the company shall take steps in accordance with law. The original proceedings will restore and the report of the respective chairpersons shall be circulated to the parties.

6. Therefore, the learned trial judge will proceed in accordance with law. Thus both the appeals are disposed of. Chairpersons and all parties shall act on a xerox signed copy of this order on usual undertakings.