

(2004) 04 BOM CK 0126

Bombay High Court

Case No: Company Petition No. 139 of 2004 and Company Application No. 51 of 2004

In Re: Bhilosa Synthetics (P) Ltd.

APPELLANT

Vs

RESPONDENT

Date of Decision: April 27, 2004

Acts Referred:

- Companies Act, 1956 - Section 394

Citation: (2004) 53 SCL 400

Hon'ble Judges: Anoop V. Mohta, J

Bench: Single Bench

Advocate: Rajesh Shah, S.R. Kom, for the Appellant; R.C. Master, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Anoop V. Mohta, J.

The Petitioner Company, Bhilosa Synthetics Pvt. Ltd. (for short "Petitioner-Company" or the "Transferor-Company" or "BSPL"). In fact the provisions of Sections 391 to 394 of the Companies Act, 1956 for obtaining sanction of their scheme of Amalgamation with Bhilosa Tex-N-Twist Pvt. Ltd. (for short "Transferee-Company" or "BTPL"). The petitioner-company's office is situated at 122, 2nd floor, Trishla Building, Zaveri Bazar, Mumbai. Both the companies have placed on record the details of their authorised share capital, as on 31st March, 2003 based on Auditor's report, as of that date, with detailed summarised financial position.

2. In pursuance, to the objects, as set out in the Memorandum of Articles of Association, of both the companies, they have decided to propose, the Scheme of Amalgamation in question. The whole purpose of such scheme is that, as the nature of business of both the companies are identical and are under common management with common shareholders, therefore, to optimum utilisation of its management and its resources and to further reduce the administrative costs. They have decided to utilise and explore business energy, communication skills and

integrated operation. This will also enable them to optimum utilisation of various infrastructure, facilities, managerial and technical resources and definitely the object to have further expansion or development of business. Therefore, the Directors of the Company, have approved the Scheme of Amalgamation by Resolution, dated 31st January, 2004. The Scheme of Amalgamation taken into consideration all the necessary and requisite details of said Scheme of Amalgamation which includes the date of scheme, transfer of undertaking with debts, liabilities, loan, securities, other obligations, legal proceedings, contract, duties, business and property in trust, in addition to staff, workmen and employees of transferor-company. The appropriate issue of share in pursuance to said scheme of amalgamation and allotment of proportionate of share have been taken care of and the effect is also given to the account treatment, dividend profits, bonus, rights and effect of resolution of transferor-company.

3. The scheme, as averred, is in the interest of both the companies, their shareholders, employees and to all the concerned. The Companies are not registered under the Monopolies and Restrictive Trade Practice Act and no investigation is pending against any of these companies under Sections 235 to 251 or other provisions of Companies Act. Therefore, the present company petition has been filed on 16th February, 2004, convening and holding of meeting of equity shareholders, secured creditors, unsecured creditors have been dispensed with in view of the consent, given by all the equity shareholders, and secured and unsecured creditors, also in view of the averments, made in paras 15 and 18 of the affidavit, in respect of summons for direction dated 11th February, 2004 (Company Application No. 51/2004). The due notices as per the law have been issued and published.

4. By the order dated 20th February, 2004 the petition was admitted and fixed for final disposal on 1st April, 2004. The necessary notices have been published, including notices u/s 394A to the Regional Director, and u/s 394(1) upon the Official Liquidator, High Court, Bombay.

5. Affidavit of service of the notice of hearing of petition to the Regional Director and Official Liquidator, dated 25th March, 2004 is filed on record, by another affidavit dated 29th March, 2004 the publication of service of notice of petition and its necessary compliance have been placed on record.

6. By report dated 24th March, 2004 an Official Liquidator has submitted its report based on the Auditors Books and other relevant documents. In view of the observations, made by the Auditors in their reports, the Official Liquidator has also submitted, that the affairs of the Transferor-Company namely M/s Bhilosa Synthetics Pvt. Ltd. have not been conducted in a manner prejudicial to the interest of its members or to public interest.

7. That the Regional Director of Western Region, Department of the Company Affairs has filed its affidavit dated 31st March, 2004 and after considering and examining the report of Registrar of Companies, confirmed that the Scheme is not prejudicial to the interest of creditors and shareholders.

8. The petition was called out and the Counsels were heard. No objection of any sort have been received or pointed out by the petitioners or their respective Counsels. In all, no illegality, unfairness or unreasonableness, in the Scheme of Amalgamation in question have been pointed out or found. In view of objects of the Companies, and considering the object and purpose of the Scheme, and as all competent authorities have also endorsed, that the Scheme is not prejudicial to the interest of public and/or its shareholders, it is also a fit case, where arrangement of amalgamation, as prayed, is required to be sanctioned.

9. The Commercial exigencies and need of particular Company and its shareholders and reason for the respective decisions or Resolutions, in absence of any serious objection or prejudice to anybody, the Court will not sit over to reassess the wisdom of the Scheme. The scope of judicial review in such matters is very limited and definitely is not as that of an Appellate jurisdiction, unless whole scheme is unfair, unreasonable, contrary to law and public policy.

10. All the requisite and necessary and statutory legal formalities have been complied with and there is no objection of any sort to that effect on record.

11. In view of the fact, that there is no objection of any kind on record and as all relevant and material documents have been placed before the concerned parties, at relevant time, and as there is no fault or illegality pointed out, the Court in such situation, may not be in position to give its own independent opinion or interfere with such Scheme of the Amalgamation which has been approved and based on wishes of the respective shareholders, creditors, experts, professionals, apart from competent authorities, after scrutiny of all relevant accounts and affairs of the company. In view of this, the Company Petition No. 139/2004 is allowed in terms of prayer Clauses (a) to (k), with liberty in accordance with law.

12. Costs of Rs. 2,500 each to the Regional Director and as well as the Official Liquidator to be paid by the petitioner within four weeks from today.