

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION Nos.273 & 274 of 2015

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Date:02.12.2015

C.P.No.273/2015

Between:

Best India Tobacco Suppliers Private Limited
D.No.9-11-1, Kothapet, Guntur-522001,
Rep. by its Director Mr. Yemparala Venkata Rao.

..... Petitioner/
Transferor Company

C.P.No.274/2015

Between:

K. Mohanarao Estates Private Limited
D.No.9-11-1, Sai Srinivasan Apartments,
Kakumanuvari Street, Kothapet, Guntur
Rep. by its Director Mr. Yemparala Srikanth.

.....Petitioner/
Transferee/Resulting Company

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION Nos.273 & 274 of 2015

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ORDER:

C.P.No.273 of 2015 is filed by Best India Tobacco Suppliers Private Limited (Transferor Company) and C.P.No.274 of 2015 is filed by K. Mohan Rao Estates Private Limited (Transferee Company) for sanction of the proposed scheme of arrangement between itself and the Transferee Company.

In C.P.No.273 of 2015 the Transferor Company averred that it was incorporated under the Act on 11.06.1981 with its registered office situated at D.No.9-11-1, Kothapet, Guntur-522 001; that its authorized

share capital is Rs.3,34,00,000/- divided into 33,400 equity shares of Rs.1000/- each; that the issued, subscribed and paid up capital is Rs.3,24,00,000 divided into 32,400 equity shares of Rs.1000/- each; that its main objects are to carry on the business of Tobacco growing, curing, grading, stripping, redrying, packing, warehousing, selling buying, bartering, importing, exporting and manufacturers, merchants dealers, traders, buyers, sellers, barterers, importers, exporters, in all varieties whether manufactured or not and at all places within and outside India, etc.

The transferor company further averred that it has ten shareholders and all of them have conveyed their consent/no objection for the proposed scheme of arrangement by way of individual affidavits.

The transferor company further averred that it has one secured creditor viz., State Bank of India and the outstanding amount as on 31.03.2015 to the said secured creditor is Rs.28,40,920/-. It has filed a letter, dated 27.06.2015 issued by the secured creditor stating that the credit facilities sanctioned to it not exceeding Rs.22.40 crores have been repaid/satisfied in full on 22.06.2015 and the secured creditor has no objection for the transferor company filing satisfaction charge with the Registrar of the Companies, Hyderabad.

The transferor company further averred that it has nine unsecured creditors for Rs.4,05,51,826/-, out of which it has repaid to three unsecured creditors amounting to Rs.53,092/- and that the remaining six unsecured creditors have given their consent/no objection letters to the proposed scheme of arrangement.

Therefore, the Transferor Company filed Comp.A.No.1278 of 2015 for dispensing with holding of the meeting of the shareholders and unsecured creditors of the Company and the publication of notice in the newspapers, and that this Court by order, dated 17.08.2015 allowed the said Company Application.

In C.P.No.274 of 2015 the petitioner- Transferee Company averred that it was incorporated under the Act on 17.02.2015 with its

registered office situated at D.No.9-11-1, Sai Srinivasan Apartments, Kakumanuvari Street, Kothapet, Guntur – 522 001; that its authorized share capital is Rs.50,00,000/- divided into 50,000 equity shares of Rs.100/- each; that the issued, subscribed and paid up capital is Rs.1,00,000 divided into 1000 equity shares of Rs.100/- each; that its main objects are to enter into, manage, undertake, carry on and engaged in the business of real estate development, land development, area estate and site development, and planners, builders, civil engineers, contractors executing all types of contract works, real estate brokers, agents, brick makers, and to build, construct, own, operate maintain, manage, control and administer, earth works, farmhouses, parks, gardens, row-houses, duplex apartments, commercial, residential or industrial building complexes, retail stores, shopping centers, godowns, market yards etc.

The Transferee Company further averred that it has only two shareholders and both of them have conveyed their consent/no objection for the proposed scheme of arrangement by way of individual affidavits; and that it has no secured/unsecured creditors.

Therefore, the Transferee Company filed C.A.No.1279 of 2015 for dispensing with convening of meeting of the shareholders and to the publication of notice in the newspapers. This Court by order, dated 17.08.2015 allowed the said Company Application dispensing with holding of meeting of shareholders and publication of notice in newspapers in respect thereof.

Both the Companies further averred that the transferor company has two undertakings i.e., Unit No.1-tobacco division and Unit No.2-real estate division and anticipating the above benefits, the Board of Directors of both the companies have passed separate resolutions on 06.06.2015 approving the proposed scheme of arrangement for de-merger and transfer of Unit No.2 of the transferor company to the transferee company.

The rationale of the proposed scheme of arrangement is that

each of the two existing units carried on by Transferor Company have significant potential for growth. The nature of risk and competition involved in each of these units are distinct from other and consequently each undertaking is capable of attracting a different set of business leaders, employees, investors, strategic partners, lenders and other stakeholders. The Board of Directors of the Transferor Company felt that the both the undertaking should be bifurcated and should have independent entities for each undertaking and that the de-merger will provide scope for independent collaboration and expansion without committing the existing organization in its entirety.

This Court by order, dated 21.09.2015 in both the Company Petitions ordered notices of the Company Petitions to the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad. Advertisement was also ordered in both the Company Petitions to be published in two newspapers, viz., 'Business Standard' (English daily) and 'Andhra Bhoomi' (Telugu daily) of Vijayawada editions having circulation in the State of Andhra Pradesh.

In pursuance of the said order, the respective Companies carried out publications in the newspapers and filed proof of such publications through affidavit, dated 26.10.2015, vide USR.Nos.5229 and 5230 of 2015 and no objections/claims are stated to have been received.

In response to the notice, the Regional Director has submitted his report. In the common report, dated 06.11.2015, the Regional Director *inter alia* stated that in pursuance of General Circular No.1 of 2014, dated 15.01.2014, issued by the Ministry of Corporate Affairs, New Delhi, comments from the Income Tax Department were invited by him, vide letter, dated 12.10.2015; that the Income Tax Officer vide letter dated 26.10.2015 has expressed no objection for the proposed scheme of arrangement; that the Transferor Company and Transferee Company involved in the scheme of arrangement are regular in filing the statutory returns and no complaints, no investigation and no

inspection are pending against both the Companies.

Having regard to the report of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, and all the shareholders of the respective companies have given their consent affidavits and no objections/claims have been received in pursuance of the advertisement got published by the Transferor Company and Transferee Company in the newspapers, this Court is of the opinion that the proposed scheme of arrangement is in conformity with the provisions of the Act and the same does not in any manner affect the interests of any of the stake holders including the public.

Therefore, the proposed scheme of arrangement between Best India Tobacco Suppliers Private Limited and K Mohanarao Estates Private Limited is sanctioned with effect from the appointed date i.e., 01.04.2015. The petitioners in respective company petitions shall, within 30 days from the date of receipt of a copy of this order, cause a certified copy of this order to be delivered to the Registrar of Companies, Hyderabad and take all other consequential actions in pursuance of the approval of the scheme of arrangement.

The Company Petition is, accordingly, allowed.

JUSTICE CHALLA KODANDA RAM

02nd December, 2015
Js.