HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY PETITION Nos.76 to 81 of 2015

Date:22.06.2015

COMPANY PETITION No.76 of 2015

Between:
M/s Radha Sakku Agro Farms Private Limited,
Guntur, reptd by its Managing Director-
P.Madhu Konark

……Petitioner/
Transferor Company No.1

COMPANY PETITION No.77 of 2015

Between:
M/s Sree Gajalakshmi Poultry Private Limited,
Guntur, reptd by its Director-
P.Venkata Rao

……Petitioner/
Transferor Company No.2

COMPANY PETITION No.78 of 2015

Between:
M/s Sree Shivashakti Poultries Private Limited,
Guntur, reptd by its Director-
P.Venkata Rao

……Petitioner/
Transferor Company No.3

COMPANY PETITION No.79 of 2015

Between:
M/s Kalyanachakravarthy Poultry Complex Private Limited,
Guntur, reptd by its Director-
P.Venkata Rao

……Petitioner/
Transferor Company No.4

COMPANY PETITION No.80 of 2015

Between:
M/s Venkatrama Warehouses Private Limited,
Guntur, reptd by its Director-

P.Venkata Rao

……Petitioner/
Transferor Company No.5

AND

COMPANY PETITION No.81 of 2015

Between:
M/s Kishore Poultries Private Limited,
Guntur, reptd by its Director-
P.Venkata Rao

……Petitioner/
Transferor Company No.6

Counsel for the petitioners: Naresh Kumar Sangam

The Court made the following:

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
COMPANY PETITION Nos.76 to 81 of 2015

COMMON ORDER:

Company Petition Nos.76 to 81 of 2015 are filed by M/s Radha Sakku Agro Farms Private Limited (transferor company No.1), M/s Sree Gajalakshmi Poultry Private Limited (transferor company No.2), M/s Shree Shivashakti Poultries Private Limited (transferor company No.3), M/s Kalyanachakravarthy Poultry Complex Private Limited (transferor company No.4), M/s Venkatrama Warehouses Private Limited (transferor company No.5) and M/s Kishore Poultries Private Limited (transferor company No.6) respectively, under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act'), for sanction of the proposed scheme of amalgamation of transferor company Nos.1 to 6 into the transferee Company-M/s Venkatrama Poultries Private Limited

In Company Petition No.76 of 2015, the petitioner averred that it was incorporated under the Act on 16.11.2010; that its authorized share capital is Rs.30 crores divided into 3 crores equity shares of Rs.10/- each; that its issued, subscribed and paid up capital is Rs.29 crores divided into 2,90,00,000 equity shares of Rs.10/- each; that its main objects, as set out in the Memorandum of Association, are to acquire, exchange or otherwise any land, whether developed or undeveloped and to carry on business of developing land, planting, growing, cultivating, producing and raising plantations of various forest spices or proven utility and maintaining, conserving, protecting, preserving, tending, exploiting and managing in all respects crops and trees raised or come up naturally, or other agricultural, plantation and horticultural crops, medicinal and aromatic plants and to buy, sell, export, import, process, distribute or otherwise deal with all kinds of forest crops, natural products, agricultural, plantation and horticultural crops, medicinal and aromatic plants, etc; and that by resolution, dated 01.01.2015, its Board of Directors has approved the proposed scheme of amalgamation (filed as Annexure-F); and that the appointed date is 01.04.2014.

Transferor Company No.1 further averred that it is 100% subsidiary of the transferee company, i.e., the transferee company is holding 2,89,99,995 equity shares on its own and 5 equity shares are held by the transferee company through its nominee-Sri P.Venkat Rao and that both the transferee company and its nominee have given their consent to the proposed scheme of amalgamation. It has further averred that it has sole secured creditor-Indian Overseas Bank, which has given its consent (filed as Annexure-H); and that it has ten unsecured creditors and out of them, it has already paid to 9 unsecured creditors and obtained No Objection Certificate from the transferee company to the proposed scheme of amalgamation.

Transferor Company No.1 has filed Company Application No.365 of 2015 for dispensing with the holding of meetings of its shareholders, secured and unsecured creditors for considering the proposed scheme of amalgamation. This Court by order, dated 09.03.2015, has allowed the said Company Application.

In Company Petition No.77 of 2015, the petitioner averred that it was incorporated under the Act on 19.12.1988; that its authorized share capital is Rs.1 crore divided into 1,00,000 equity shares of Rs.100/- each; that its issued, subscribed and paid up capital is Rs.48,91,400/- divided into 48,914 equity shares of Rs.100/- each; that its main objects, as set out in the Memorandum of Association, are to carry on the business of poultry farming, hatchery, breeder houses, eggs, producing, distribution centres and construction or poultry houses and stores, etc; and that by resolution, dated 01.01.2015, its Board of Directors has approved the proposed scheme of amalgamation (filed as Annexure-F).

Transferor Company No.2 further averred that it is 100% subsidiary of the transferee company, i.e., the transferee company is holding 48,907 equity shares on its own and 7 equity shares are held by the transferee company through its nominee-Sri P.Venkat Rao and that both the transferee company and its nominee have given their consent to the proposed scheme of amalgamation; and that it has no secured and unsecured creditors.

Transferor Company No.2 has filed Company Application No.366 of 2015 for dispensing with the holding of meeting of its shareholders for considering the proposed scheme of amalgamation. This Court by order, dated 09.03.2015, has allowed the said Company Application.

In Company Petition No.78 of 2015, the petitioner averred that it was incorporated under the Act on 19.12.1988; that its authorized share capital is Rs.1 crore divided into 1,00,000 equity shares of Rs.100/- each; that its issued, subscribed and paid up capital is Rs.33,50,000/- divided into 33,500 equity shares of Rs.100/- each; that its main objects, as set out in the Memorandum of Association, are to carry on the business of poultry farming, hatchery, breeder houses, eggs, producing, distribution centres and construction or poultry houses and stores, etc; and that by resolution, dated 01.01.2015, its Board of Directors has approved the proposed scheme of amalgamation (filed as Annexure-F).

Transferor Company No.3 further averred that it is 100% subsidiary of the transferee company, i.e., the transferee company is holding 33,493 equity shares on its own and 7 equity shares are held by the transferee company through its nominee-Sri P.Venkat Rao and that both the transferee company and its nominee have given their consent to the proposed scheme of amalgamation; and that it has no secured and unsecured creditors.

Transferor Company No.3 has filed Company Application No.367 of 2015 for dispensing with the holding of meeting of its shareholders for considering the proposed scheme of amalgamation. This Court by order, dated 09.03.2015, has allowed the said Company Application.

In Company Petition No.79 of 2015, the petitioner averred that it was incorporated under the Act 20.12.1988; that its authorized share capital is Rs.1 crore divided into 1,00,000 equity shares of Rs.100/- each; that its issued, subscribed and paid up capital is Rs.39 lakhs divided into 39,000 fully paid up equity shares of Rs.100/- each; that its main objects, as set out in the Memorandum of Association, are to carry on the business of poultry farming, hatchery, breeder houses, eggs, producing, distribution centres and construction or poultry houses and stores, etc; and that by resolution, dated 01.01.2015, its Board of Directors has approved the proposed scheme of amalgamation (filed as Annexure-F).

Transferor Company No.4 further averred that it is 100% subsidiary of the transferee company, i.e., the transferee company is holding 38,991 equity shares on its own and 9 equity shares are held by the transferee company through its nominee-Sri P.Venkat Rao and that both the transferee company and its nominee have given their consent to the proposed scheme of amalgamation; and that it has no secured and unsecured creditors.

Transferor Company No.4 has filed Company Application No.368 of 2015 for dispensing with the holding of meeting of its shareholders for considering the proposed scheme of amalgamation. This Court by order, dated 09.03.2015, has allowed the said Company Application.

In Company Petition No.80 of 2015, the petitioner averred that it was incorporated under the Act on

23.04.1999; that its authorized share capital is Rs.2,50,00,000/- divided into 2,50,000 equity shares of Rs.100/- each; that its issued, subscribed and paid up capital is Rs.13,50,000/- divided into 13,500 fully paid up equity shares of Rs.100/- each; that its main objects, as set out in the Memorandum of Association, are to carry on anywhere in India the business of warehousing, transporting and carrying of goods and to provide storage and protection of goods against insects, ants, rats, moisture, rain, fire and other natural and manmade calamities, etc; and that by resolution, dated 01.01.2015, its Board of Directors has approved the proposed scheme of amalgamation (filed as Annexure-F).

Transferor Company No.5 further averred that it is 100% subsidiary of the transferee company, i.e., the transferee company is holding 13,495 equity shares on its own and 5 equity shares are held by the transferee company through its nominee-Sri P.Venkat Rao and that both the transferee company and its nominee have given their consent to the proposed scheme of amalgamation; and that it has no secured and unsecured creditors.

Transferor Company No.5 has filed Company Application No.369 of 2015 for dispensing with the holding of meeting of its shareholders for considering the proposed scheme of amalgamation. This Court by order, dated 09.03.2015, has allowed the said Company Application.

In Company Petition No.81 of 2015, the petitioner averred that it was incorporated under the Act on 19.12.1988; that its authorized share capital is Rs.1 crore divided into 1,00,000 equity shares of Rs.100/- each; that its issued, subscribed and paid up capital is

Rs.44,56,800/- divided into 44,568 equity shares of Rs.100/- each; that its main objects, as set out in the Memorandum of Association, are to carry on the business of poultry farming, hatchery, breeder houses, eggs, producing, distribution centres and construction or poultry houses and stores, etc; and that by resolution, dated 01.01.2015, its Board of Directors has approved the proposed scheme of amalgamation (filed as Annexure-F).

Transferor Company No.6 further averred that it is 100% subsidiary of the transferee company, i.e., the transferee company is holding 44,559 equity shares on its own and 9 equity shares are held by the transferee company through its nominee-Sri P.Venkat Rao and that both the transferee company and its nominee have given their consent to the proposed scheme of amalgamation; and that it has no secured and unsecured creditors.

Transferor Company No.6 has filed Company Application No.370 of 2015 for dispensing with the holding of meeting of its shareholders for considering the proposed scheme of amalgamation. This Court by order, dated 09.03.2015, has allowed the said Company Application.

In all the Company Petitions, the petitioners averred that the proposed scheme of amalgamation would result in better and efficient utilization of resources of the transferor companies and the transferee company, reduction in overheads and other expenses resulting in synergy of operations and economies of scale and create a stronger base for future growth of the amalgamated entity, etc.

This Court by separate orders, dated 13.04.2015, in Company Petition Nos.76 to 81 of 2015 ordered notices to the Official Liquidator and the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad. Advertisement was also ordered to be published in two daily newspapers, *viz.*, ‘Business Standard’ (English) and ‘Andhra Bhoomi’ (Telugu) having circulation in the States of Andhra Pradesh and Telangana.

In Company Petition Nos.76 to 81 of 2015, the respective petitioners have filed proof of publication through memos, dated 30.05.2015, vide USR.Nos.2007 to 2012 of 2015, respectively and no objections are stated to have been received.

In response to the notice, the Official Liquidator has filed his common report, wherein it is stated that the affairs of the transferor and transferee companies involved in the proposed scheme of amalgamation are not conducted in a manner prejudicial to the interests of its members or to the public interest.

In response to the notice, the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad has filed his common report, dated 19.06.2015.

In his common report, the Regional Director has *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 05.05.2015, and that no comments/objections from the Income Tax Department have been received in response to the said notice; and that the transferor and transferee companies are regular in filing the statutory returns and that no inspection or investigation are pending against both the companies. However, he has made an observation that the objects of the transferee company, *viz*., M/s Venkatrama Poultries Private Limited are not in consonance with the objects of all the transferor companies.

Sri Naresh Kumar Sangam, the learned counsel for the petitioners, submitted, and in my view rightly, that all the transferor companies, except transferor company No.5, have the common main object, *viz*., carrying on the poultry business and that transferor company No.5 has the main object of construction and maintenance of godowns, warehouses, cold storages, etc. He has pointed out that in respect of the transferee company, one of the objects is construction and maintenance of warehouses and cold storage, etc. He has relied upon the judgment of this Court in ***Golkonda Engineering Enterprises Ltd Vs. Ginni Vyappaar Ltd***[1], wherein this Court has *inter alia* held that irrespective of the object clauses, the Court is empowered to sanction the scheme of amalgamation, provided it does not prejudice or harm the public interest. This judgment has, in turn, placed reliance on the judgment in ***Canara Bank Ltd. In re***[2], wherein it was held that there is no restriction as to the kind of companies with which there can alone be amalgamation.

The learned counsel invited this Court's attention to Section-8(10) of the Companies Act, 2013, wherein a restriction as to amalgamation has been found only among the companies with similar objects. However, as rightly pointed out by the learned counsel for the petitioners, Section-8 is confined to companies with charitable objects only.

In the light of the above discussion, this Court is of the opinion that the objects of the transferee company are not in conflict with the objects of any of the transferor companies, as none of these companies have the charitable objects. Even in the event of any variation in the objects among the transferor and transferee companies, the law does not prohibit amalgamation of such companies. Hence, there is no need for amendment of the objects of the transferee company.

Having regard to the reports of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Official Liquidator and as no objections/claims have been received in pursuance of the advertisement for approving the proposed scheme of amalgamation, this Court is of the opinion that the proposed scheme of amalgamation 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 amalgamation is sanctioned with effect from the appointed date i.e., 01.04.2014. The petitioners shall, within 30 days from the date of receipt of a copy of this order, cause a certified copy of the same to be delivered to the Registrar of Companies for the State of Telangana and State of Andhra Pradesh, Hyderabad and take all other consequential actions in pursuance of the approval of the scheme of amalgamation.

The Company Petitions are, accordingly, allowed.

JUSTICE C.V.NAGARJUNA REDDY

22nd June, 2015
DR

[1] (1997) CompLJ404(AP)

[2] (1973) 43 Comp Cas157