

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2016

DELIVERED ON : 09.11.2016

Coram

The Honourable **Mr. Justice RAJIV SHAKDHER**

C.P.Nos.464 and 465 of 2015

Century Fireworks

a firm being an unregistered company
under Section 390 read with Section 582(2)
of the Companies Act, 1956/Section 375(b)
of the Companies Act, 2013
having its registered office at
"SSD Towers", 1st Floor, No.136A Main Road,
Kovilpatti 728 501
represented by
Mr.K.Ganesh Babu, Partner

... Petitioner in C.P.No.464 of 2015
/ Transferor Company

Century Fire Works Private Limited
a company registered under the Companies Act,
1956 having its registered office at
"136 A SSD Towers", Main Road,
Kovilpatti 728 501
represented by
Mr.D.Krishnamoorthy, Director

... Petitioner in C.P.No.465 of 2015
/ Transferee Company

Petitions filed under Sections 391 to 394 of the
Companies Act, 1956 to sanction the Scheme of Amalgamation.

For Petitioners : Mr.Murugesh Kasivel

Mr.D.Ramesh Kumar
Addl. Central Government Standing
Counsel
for Regional Director
Ministry of Company Affairs, Chennai

Mr.Atchuta Ramaiah,
Official Liquidator

C O M M O N O R D E R

1. These company petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of a partnership firm comprising of eight (8) partners with the transferee company with effect from 01.04.2015. The scheme of amalgamation (in short scheme) is, appended as Annexure '4' to these petitions.

2. The petitioner in C.P.No.464 of 2015 is a firm, which is said to be an unregistered company, (in short the 'firm') and, the petitioner, in C.P.No.465 of 2015 is, the transferee company. सत्यमेव जयते

2.1. Pertinently, it is averred that the firm is an unregistered company under the provisions of Section 582(b) of the Companies Act, 1956 (in short the '1956 Act').

2.2. It is further asserted that an unregistered company is a "Company" for the purposes of Sections 391 and 393, as per the definition of the term "company", given in

Section 390 of the Companies Act, 1956.

3. A perusal of the record shows that the petitioners have complied with the prescribed procedure. It is stated that both the firm and transferee company have one (1) secured creditor each. The certificates of the Chartered Accountant affirming the position are appended as Annexure '6' to their respective petitions.

4. In so far as the unsecured creditors of the firm are concerned, a perusal of the record shows that the firm has 105 unsecured creditors, valued at Rs.3,27,62,039.21. A Chartered Accountant's certificate, affirming the same is appended in the additional typed set of documents, filed in C.P.No.464 of 2015. Out of the said 105 unsecured creditors, 13 unsecured creditors, valued at Rs.2,52,83,085.92, have given their consent to the proposed Scheme, which, in percentage terms works out to 77.17%.

4.1. Insofar as the unsecured creditors of the transferee company are concerned, a perusal of the record shows that the transferee company has 51 unsecured creditors, valued at Rs.3,98,55,296.33. A Chartered Accountant's certificate affirming the same, is appended in the additional typed set of documents, filed in C.P.No.465 of 2015. Out of the 15 unsecured creditors, 13 unsecured

creditors, valued at Rs.53,31,359/-, have given their consent to the proposed Scheme. The consents received in percentage terms works out to 13.38%.

4.2. In the affidavits accompanying the petitions, it is averred that the assets of the firm and the transferee company are more than sufficient to meet the liabilities of both the entities, and that, the Scheme would not adversely affect the rights of any of the creditors of the petitioner companies.

5. A copy of the resolution dated 02.02.2015, passed by the partners of the firm and a copy of resolution dated 02.02.2015, passed by the Board of Directors of the transferee company adopting the scheme are enclosed as Annexure '3' to the respective petitions.

6. The affidavits of the partners of the firm and the affidavits of equity shareholders of the transferee company giving their consent to the scheme are appended as Annexure '8' to the respective petitions.

6.1. This Court, in its order dated 08.09.2015, in C.A.Nos.949 and 950 of 2015, dispensed with the convening and holding of the meeting of the equity shareholders of both the firm and the transferee company, respectively, to consider the proposed Scheme, inter alia, for the reason

that its partners and equity shareholders had given their consent to it.

7. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report, in which, the following observations have been made :

".....

9. It is respectfully submitted that the transferee company has submitted an order of the Hon'ble High Court of Bombay situated at Mumbai in respect of a Company Petition No.935 of 2007 (M/s.Kirthilal Kalidas Diamonds Exports Pvt. Ltd., (2009) 148 Com cases 607 (Bom) wherein one of the transferor entity was a Firm which was having more than 7 members and hence coming under the purview of Section 582(b) of Companies Act, 1956 as an unregistered company. As an Unregistered company is coming under the definition of 'Company' as provided under section 390 (section 391 and 393 of Companies Act, 1956), i.e., a company which is liable to be wound under the Act and as such the Hon'ble High court of Bombay has allowed the Partnership firm being an unregistered company under the provisions of Section 582(b) of the Companies Act, 1956 to be amalgamated with the transferee company as provided u/s 391-394 of the Companies Act, 1956. In the light of the above this Hon'ble High Court may consider the issue.

10) It is respectfully submitted that

violations, if any, noticed from the documents filed by the company will be dealt with in accordance with the provisions of Companies Act, 1956.

11) I respectfully submit that the petitioner transferor firm M/s.Century Fireworks (Firm) seeks dissolution without winding up. In para 2 of Part III of the scheme seeks a direction to the Registrar of Firms, Palayamkottai, Tirunelveli District to transfer all the documents relating to the transferor firm to the Registrar of Companies Chennai who will maintain the file on the sanction of the amalgamation.

12) It is respectfully submitted that part II Clause 11(f) of the scheme provides that main objects of the transferor firm will form part of the main objects of the Memorandum of Association of the transferee company. In this connection the transferee company may be directed to file the necessary eform with the Registrar of Companies, Chennai for recording the same in his records.

11) The scheme of amalgamation filed with the petitions have been examined and it has been decided not to make any objection. This Hon'ble Court may dispose of the petitions on merits subject to the observations made in para 9 and 12 of the affidavit and pass such order as deemed fit and proper."

8. In defence of the aforesaid observations made by the Regional Director, learned counsel appearing for the petitioner companies has placed reliance on the decision of the Bombay High Court in ***M/s.Kirthilal Kalidas Diamonds Exports Pvt. Ltd., (2009) 148 Com cases 607 (Bom)***

8.1. The record shows that the firm comprises of eight (8) partners, which includes seven (7) individuals and the transferee company. The seven (7) individuals are shown as partners of the firm in the partnership deed dated 01.03.2014. The transferee company, on the other hand, as it appears, was inducted as a partner in the firm, by virtue of a subsequent partnership deed dated 07.07.2015.

8.2. Therefore, as per the provisions of Section 582 (b) of the 1956 Act, the firm, in the instant case, will have to be treated as an unregistered company.

8.3. Furthermore, as per the provisions of Section 583 of the 1956 Act, an unregistered company can be wound up under that very Act, like any other company, subject to the exceptions contained in the said Section.

8.4. Resultantly, when these Sections are read in conjunction with Section 390, which finds place in Chapter V of the 1956 Act, it is clear that, a firm, which is an

unregistered company, could form part of a Scheme of amalgamation and/or arrangement. This is so, as clause (a) of Section 390 states that a "company" means any company, which is liable to be wound up under the said Act. As alluded to above, an unregistered company can be wound up under Section 583 of the 1956 Act.

8.5. In the aforementioned judgement, the Bombay High Court, in somewhat similar circumstance has sanctioned a Scheme involving a firm which was treated as an unregistered company.

8.6. It is important to note that Chapter V of the Companies Act, 1956, which deals with compromise, arrangement and amalgamation, is a complete code in itself. The legislative recognition of a partnership firm, comprising of seven (7) or more partners, as an unregistered company under Section 582(b), and the inclusion, in turn, of an unregistered company in the definition of "Company" in Section 390, should put to rest any doubt that one may entertain, that the provisions of Chapter V of the Companies Act, 1956 would not apply to a partnership firm having seven (7) or more partners.

8.7. Furthermore, in view of the unanimous approval accorded to the scheme by the partners of the firm and the

shareholders of the transferee company, as also, by the majority of the creditors of both entities, there is, to my mind, no impediment in granting sanction to the proposed Scheme, on this score.

9. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. The Chartered Accountant, in his report, states that the affairs of the firm have not been conducted in a manner prejudicial to the interest of its members or to public interest, and that, he has not come across any act of misfeasance by the partners attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant. In the absence of any material that the affairs of the firm were being conducted in a manner prejudicial to the interest of its members or public interest, the Official Liquidator has filed his report before this Court for appropriate orders.

10. I have perused the proposed scheme filed along with the captioned petitions as also the affidavits placed on record. I find that the Scheme as proposed is not prejudicial to the interest of any person or entity, which

has a stake/interest in the aforementioned entities. The said scheme, as framed, is not violative of any statutory provision.

11. The scheme as formulated is fair, just, sound and is not contrary to any public policy or public interest. No proceedings appear to be pending under the provisions of Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions appear to have been complied with.

12. Consequently, there shall be an order approving the scheme of amalgamation between the firm, viz., M/s.Century Fire works and the transferee company, viz., M/s.Century Fireworks Private Ltd., with effect from 01.04.2015, subject to the filing of the necessary e-forms with the Registrar of Companies, Chennai, as also complying with the extant provisions of law including Sections 391 to 394 of the Companies Act, 1956.

13. Taking note of the report of the Chartered Accountant, as enclosed by the Official Liquidator, in terms of the order passed by this Court, the firm, that is, the unregistered company shall stand dissolved, albeit, without winding up.

14. It is made clear, that this order will not be construed as an order granting exemption from payment of

stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

15. The learned Senior Central Government Standing Counsel will be entitled to a fee of Rs.5,000/-, which shall be paid by the transferee company.

16. The above petitions are disposed of in the aforementioned terms.

sd/.R.S.A.J

09.11.2016

//Certified to be a true copy//

Dated this the day of 2016

S.S/14.11.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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