

HON'BLE SRI JUSTICE S.V.BHATT
COMPANY PETITION No.48 OF 2016

ORDER:

Heard learned counsel for the petitioner.

Marino Food Products Private Limited (transferee company) filed this petition under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act') praying for sanction of scheme of amalgamation between petitioner company i.e. Marino Food Products Private Limited and Shah Complex Private Limited (transferor company).

These corporate entities are called, for convenience, transferee company and transferor company respectively.

Learned counsel for the petitioner has placed reliance upon **MIHEER H.MAFATLAL V. MAFATLAL INDUSTRIES LIMITED**^[1], **NEBULA MOTORS LIMITED**^[2] and **ANDHRA BANK HOUSING FINANCE LIMITED V. M/S ANDHRA BANK**^[3] to explain the jurisdiction of this Court under Sections 391 and 394 of the Act.

The gist of the case is as follows:

The transferee company was incorporated for carrying on the business in India elsewhere and to set up, build, establish, erect, promote, undertake, acquire, own, operate, transport, equip, manage, renovate, recondition turn to account maintain keep and to run food processing plants, cold storage plants, storage chambers, ice plants, godowns, warehouses, refrigeration house and freezing houses for storing, warehousing, keeping preserving and commercializing all kinds and varieties of goods for human

and animal consumption etc. The Memorandum and Articles of Association of the transferee company is filed as Annexure-A. The audited balance sheet of transferee company as on 31.03.2015 is filed as annexure-B. Annexure-C is the Memorandum and Articles of Association of the transferor company and the audited balance sheet as on 31.03.2015 of the transferor company is filed as annexure -D. On 27.10.2014, the Board of Directors of transferee company approved the scheme of amalgamation. The transferee company has set out the salient features of the scheme of amalgamation and with the assistance of learned counsel appearing for the petitioner, I have perused the annexures.

The transferee company filed C.A. No.1932 of 2015 under Sections 391 of the Act to dispense with the requirement of convening the meeting of shareholders, secured and unsecured creditors of the transferee company.

On 31.1.2.2015, the application was allowed and the requirement of convening the meeting of shareholders, secured and unsecured creditors was dispensed with. On 11.02.2016, this Court, in the instant company petition, ordered notice to the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad. The petitioner was directed to cause publication of notice of scheme of amalgamation in 'Business Standard' (English Daily) and 'Andhra Bhoomi' (Telugu Daily), Hyderabad editions having circulation in the State of Telangana. The petitioner submits that notice on the statutory authority was served and the advertisement was published in the newspapers on 13.02,2016. On 18.04.2016, the Regional Director, South

East Region, Ministry of Corporate Affairs, Hyderabad filed his report.

Learned counsel for the petitioner submits that the transferee and transferor companies are wholly subsidiary and holding companies respectively. Secured creditors/unsecured creditors of the transferee company have given their consent for the proposed scheme of amalgamation. The jurisdiction of this Court, while approving the scheme of amalgamation, according to Miheer H.Mafatlal's (1 supra) case, is as follows:

"(1) The sanctioning Court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by [Section 391\(1\)\(a\)](#) have been held.

(2) That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by [Section 391\(2\)](#).

(3) That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of the class.

(4) That all necessary material indicated by [Section 393\(1\)\(a\)](#) is placed before the voters at the concerned meetings as contemplated by [Section 391\(1\)](#).

(5) That all the requisite material contemplated by the proviso to sub-section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

(6) That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously x-ray the same.

(7) That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter compromising the same class whom they purported to represent.

(8) That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

(9) Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there could be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction."

Learned counsel appearing for the statutory authority has reported no objection for the proposed scheme

of amalgamation.

I have considered the material available on record, the principles of law enunciated by the Apex Court in ***Miheer H.Mafatlal's*** case (1 supra) and the conclusions/recommendations of the statutory authority through his report dated 29.02.2016.

Having regard to the above material/report, this Court is of the opinion that the proposed scheme of amalgamation is in conformity with the provisions of the Act. The scheme does not affect the interest of stakeholders and the public or public interest and is intended to further the business interests of transferee and transferor companies for more profit and maximum utilization of available resources. Therefore, the scheme of amalgamation approved in the meeting of Board of Directors of transferee company on 27.10.2014 is sanctioned. The transferee and the transferor companies are directed to communicate certified copy of this order to the Registrar of Companies for the State of Telangana and the State of Andhra Pradesh, Hyderabad within 30 days from the date of receipt of a copy of this order. They are further directed to take all consequential and statutory steps required in pursuance of the approved scheme of amalgamation and the Act.

Company petition is ordered accordingly.

S.V.BHATT, J

Date:02.06.2016
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- [\[1\]](#) 1996(87) Company Cases 792,
[\[2\]](#) 2003(5) ALD 327
[\[3\]](#) 2002(3) ALD 654