

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Company Petition No.13 of 2007.

Date of decision:18.01.2008.

Dholadhar Investments Pvt.Ltd. ...Transferee Company

Versus

Subhlagan Securities Pvt.Ltd.Co. ...Transferor Company

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹

For the Petitioner: Mr.Satyen Vaidya, Advocate.

For Official Liquidator: Mr.Sanjeev Kuthiala, Advocate.

**For Regional Director: Mr.Sandeep Sharma, Assistant
Solicitor General of India.**

Dev Darshan Sud,J.

This petition has been filed by the applicant praying for amalgamation of the transferor-Company, Subhlagan Securities Private Limited, having its Registered Office at Mann Filling Station, Kotwali Bazar, Dharamshala, District Kangra, H.P. with Dholadhar Investments Private Limited having its Registered Office at Mann Filling Station, Kotwali Bazar, Dharmashala, District Kangra, H.P.

Company Petition No.7 of 2007 was filed by the applicant prior to the institution of the present

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

petition. By its order dated 11.7.2007, this Court held:

"This petition has been filed by Dholadhar Investments Private Limited under Section 391 (2) and 394 of the Companies Act, 1956 read with the Companies (Courts) Rules, 1959 with the prayer that the scheme of amalgamation at Annexure P-9 with the petition contemplating the amalgamation and merger of Shubhlagan Securities Private Limited with Dholadhar Investments Private Limited. The petitioner has averred that it was incorporated on 5.2.1992 under the Companies Act, 1956. The registered Office of the Company (hereafter referred to as the transferee Company) is at Mann Filling Station, Kotwali Bazar, Dharamshala, District Kangra, H.P. It has seventeen shareholders and is engaged in the business of investment in securities in accordance with the object clause of the Memorandum of Association. The authorized share capital of the transferee Company is Rs. 5.00 Crores consisting of 50 lacs equity shares of Rs. 10/- each. The main objects of the Company are:-

- (i) To carry on in India or elsewhere as its principal business, the business of an investment company and for that purpose to acquire subscribe and hold either in the name of the*

company or in the name of its nominee's shares, stock, debentures, bonds, notes, obligations and securities issued or guaranteed by any company wherever incorporated.

- (ii) To acquire any such shares, stock, debentures, bonds, notes, obligations or securities by original subscription, contract, tender, purchase, exchange, underwriting, participation in syndicates or otherwise and whether or not fully paid-up and to subscribe for the same subject to such terms and condition (if any) as may be thought fit.

The petitioner transferee Company avers that the Board of Directors of the Company vide its meeting held on 30.4.2007 at the registered Office has approved the scheme of amalgamation in its entirety without any modification as detailed at Annexure P-9. The petitioner further avers that there are seventeen share holders who have been allotted 21,43,500 equity shares of Rs. 10/- each. There are 9 secured and unsecured creditors and the total amount of loan due to them is Rs. 41160362/- as detailed in Annexure P-5. The amalgamation is proposed with Shubhlagan Securities Private Limited (hereinafter referred to as Transferor

Company) having its registered office at Mann Filling Station, Kotwali Bazar, Dharamshala. The main objects of the Company are:-

- (i) Subject to the approval of the Securities and Exchange Board of India and other authorities where required, to carry on the business of stock and share broking and its allied matters such as acting as underwriters, sub-underwriters, brokers to issue of securities, dealers in securities, buying, selling, transferring, hypothecating and holding of shares, debentures and securities of all kinds, and description, for the purpose of issue of shares/debentures and securities of all kinds, lead managers, or co-managers, brokers and sub brokers of stocks and new issues of shares, debentures and securities of all kinds and description, Registrar to the issue of securities, Share Transfer agents, Investment Portfolio Management, Corporate Counseling, Investment Counseling, Fixed Deposit brokers, Inter-corporate Investments Canvassers, Financial Consultants and advisors and consultants, to the issue of securities of all kinds and types in all their aspects

in India or outside and to manage/arrange mergers and acquisitions.

- (ii) To invest in, acquire and hold, buy or sell or otherwise dispose of or deal in securities of any kind, shares, Debentures, Debenture Stock, Securities, Properties, bonds, units, Obligations and securities issued or guaranteed by Government, State, Union Territory Municipal or civil body, Financial Institutions, Commercial Papers, negotiable instruments and paper instruments of all types and kinds.*
- (iii) To act as consultants, advisors and experts in factoring, credit investigation, credit rating and market investigation.*

The audit and balance sheet of both the Transferor and Transferee Company have been filed with the petition. It is averred that the scheme of amalgamation postulates the merger of all lease holders' assets, moveable and immoveable, investments stocks etc. and absorption of permanent employees as also liabilities etc. paid by the Transferee Company after merger including defraying of statutory duties etc. After detaining advantages of the merger, the petitioner avers that interest of share holders of both the

Transferor and Transferee Company would not be affected adversely and that the adequate provisions have been made for pay the creditors etc. The resolution passed by the share holders and creditors of both the companies accepting the merger are submitted with the petition.

I have heard learned counsel for the petitioner and gone through the record. In the facts and circumstances of the case, it is ordered that:-

(I)

- (a) Meeting of the shareholders of the Transferee Company is directed to be convened for the purpose of considering and if thought appropriate for approving with or without modification the proposed scheme of amalgamation filed as Annexure P-9. The meeting will be held on 8th September, 2007 at 10.30 a.m. at Hotel Holiday Home, Shimla.*
- (b) Notice of convening the meeting will be published in two daily news papers having wide circulation in Himachal Pradesh, namely "The Daily Tribune" and "Dainik Bhaskar" as well as in the Official Gazette of the State of Himachal Pradesh. It shall be*

stated clearly in the notice that a copy of the proposed scheme of amalgamation is to be placed before the share holder will be available at the Registered Office of the Transferee Company or such other place as is convenient both for the companies as also the share holders.

- (c) Notices to each of the share holders will also be sent by registered and UPC post. A clear notice of 21 days convening the meeting will be given. The list of share holders is at annexure P-4.
- (d) For conducting the meeting Shri Ashwani Kumar Sharma, Advocate is appointed as Chairperson and Shri N.K. Thakur, Advocate is appointed as Co-Chairperson. The fee payable to the Chairperson is assessed at Rs.25,000/- and for Co-Chairperson at Rs.20,000/-. Chairperson and Co-Chairperson shall file the report of the meeting after seven days of the holding of the meeting and the report will be duly

verified by their affidavits.

Actual secretarial expenses, if any, incurred by them shall be paid by the petitioner Transferor Company. The Registry is directed to supply the copies of this order to the Chairperson and Co-Chairperson, appointed by this Court along with the list of shareholders.

Liberty is granted to file a petition in accordance with Section 394 of the Act read with Rule 79 of the Companies Act (Court) Rules, 1959.

(II)

It is also directed that

- (a) Meeting of the secured and unsecured creditors of the company will be held at Hotel Holiday Home on 8th September, 2007 at 11.30 a.m.
- (b) For conducting this meeting, Shri Rajan Dewan, Advocate is appointed as the Chair Person and Shri Rakesh Jaswal, Advocate as the Co-Chairperson. The fee payable to the Chairperson is assessed at Rs.25,000/- and the Co-Chairperson at Rs.20,000/-. They shall file their report after seven days of the holding of the meeting

and the report will be duly verified by their affidavits.

- (c) Actual secretarial expenses, if any incurred by them, shall be paid by the petitioner - transferor company.
- (d) The Registry is directed to supply copies of the order to the Chairperson and Co-Chairperson appointed by this Court alongwith the list of the secured and the unsecured creditors at Annexure P-5 of the petition.
- (e) A clear 21 days notice shall be given to the creditors both secured and unsecured, to be sent by registered post and UPC.
- (f) Notice of convening the meeting will be published in two daily news papers having wide circulation in Himachal Pradesh, namely "The Daily Tribune" and "Dainik Bhaskar" as well as in the Official Gazette of the State of Himachal Pradesh. It shall be stated clearly in the notice that a copy of the proposed scheme of amalgamation is to be placed before the share

holder will be available at the Registered Office of the Transferee Company or such other place as is convenient both for the companies as also the share holders".

Pursuant to the orders passed by this Court, the report of the Chairman and Co-chairman along with affidavits have been filed in this Court stating therein that the Scheme has been duly approved by 8 shareholders of the company, present in person or through their authorized representative, constituting 76.94% of the total equity shares of the petitioner-Company (Annexure-F with the petition). The motion for amalgamation was adopted unanimously. The report of the Chairman and Co-chairman appointed for conducting the meeting of the creditors discloses that the Scheme has been adopted without any modification (Annexure-G with the petition).

In these circumstances and having regard to the averments made in the petition duly supported by the affidavit of the authorized signatory and the material placed on the record as also the fact that no objection has been filed by the shareholders or by the Official Liquidator and the Regional Director, Northern Region, Ministry of Corporate Affairs, I do not find any legal impediment in the way of sanctioning the Scheme filed by the Company. The

Official Liquidator and the Regional Director have also not brought to my notice any objection or factor which indicates or shows that the scheme is in any way prejudicial to the shareholders, creditors or the General Public etc. The amalgamation proposed is also not against the financial interest of the Transferor and the Transferee Company.

Accordingly, the Scheme of amalgamation is hereby sanctioned in its entirety under Sections 391 to 394 of the Companies Act, 1956. Permission has been granted to the transferor Company in Company Petition No.12 of 2007.

With these directions the petition is disposed of.

It is directed that the expenses incurred to the extent of Rs.10,000/- as fee of the Chartered Accountant, Rs.11,000/- counsel fee and other miscellaneous expenses amounting to Rs.5,000/- shall be paid by the applicant.

January 18, 2008.
(aks)

(Dev Darshan Sud)
Judge.