

Bombay High Court Mahaamba Investments Ltd. vs Idi Limited on 31 January, 2001 Equivalent citations: 2001 105 CompCas 16 Bom Author: D Chandrachud Bench: D Chandrachud JUDGMENT D.Y. Chandrachud, J. 1. The only question which arises at the present stage is as regards the office objection that no petition has been filed by the transferee-company. In the company petition, the petitioner which is a transferor-company is sought to be amalgamated with IDI Limited, which is the transferee-company. The transferee is the holding company of the transferor which is thus its 100 per cent, subsidiary. Clause 10 of the proposed scheme of amalgamation postulates that since the entire share capital of the transferor is held by the transferee, upon the scheme becoming finally effective, the said share capital of the transferor will stand automatically cancelled and no shares will be allotted of the transferee-company to the shareholders of the transferor-company. That is because the transferee-company holds 100 per cent, of the share capital of the transferor-company. 2. The question which arises on the office objection is covered by a decision of a learned single judge of this court in Bank of India Ltd. v. Ahmedabad Manufacturing and Calico Printing Co. Ltd. [1972] 42 Comp Cas 211 and by a judgment of a learned single judge of the Delhi High Court in the matter of Sharat Hardware Industries P. Ltd., In re [1978] 48 Comp Cas 23. The learned single judge of this court held as follows (page 219) : "... if a scheme by way of transfer of undertaking does not affect the rights of the members or creditors of the transferee-company, as between themselves and the company, or does not involve a reorganisation of the share capital of the transferee-company, no application by the transferee-company under Section 391 or Section 394 would be necessary." 3. In the case which was decided by the learned single judge of this court, the transferee-company was pursuant to the scheme to issue a new type of equity shares to the shareholders of the transferor-company. Consequent upon this it was held that an application by the transferee-company was necessary. In the judgment of the Delhi High Court referred to above, the learned single judge held as follows (page 26) : "The assets and liabilities of the petitioner-company will be appropriated under the scheme by the transferee-company, the shareholding and other rights of the members of the transferee-company will be unaffected, because no new shares are being issued and there is not going to be any change in the capital structure of the transferee-company." 4. In the present case, having regard to the relevant clauses of the proposed scheme and particularly the provision whereby no new shares are sought to be issued to the members of the transferor-company by the transferee-company, the scheme will not affect the members of the transferee-company. The creditors of the transferee-company are not likely to be affected by the scheme in view of the financial position of the transferee-company. In paragraphs 13 and 14 of the affidavit in support of the company application, the financial position of the transferor and transferee-companies has been set out and which would show that in so far as the transferor-company is concerned, it has an excess of assets over liabilities to the extent of Rs. 508 lakhs whereas in the case of the transferee-company, there is an excess of assets over liabilities to the extent of Rs. 6,900 lakhs. 5. In the circumstances, the office objection is accordingly disposed of with the clarification that filing of a

separate petition by the transferee-company is not necessary, in the facts and circumstances of the present case.