

(1997) 03 GUJ CK 0020

In the Gujarat High Court

Case No : Company Petition No"s. 221 and 222 of 1996 with Company Application No"s. 162 and 163 of 1996

Alfa Quartz Limited

APPELLANT

Vs

Cymex Time Limited

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Companies Act, 1956 — Section 349, 391, 394

Citation : (2001) 104 CompCas 71

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Judgement

S.D. Dave, J.—Present orders shall govern the disposal of these two company petitions which are under sections 391 to 394 of the Companies Act, 1956, for amalgamation. The petitioning companies are the transferor-companies. The transferee-company is not before me.

2. In Company Petition No. 221 of 1996, the petitioner-company happens to be M/s. Alpha Quartz Limited, Ahmedabad, a company incorporated under the Companies Act, 1956, having their registered office at Ahmedabad. The petitioner-company was incorporated on March 20, 1995, under the provisions of the Companies Act, 1956, in the name of M/s. Alpha Quartz Limited. The registered office of the petitioner-company is situated at Navrangpura, Ahmedabad-380 009 in the State of Gujarat. The authorised capital of the petitioner-company is Rs. 1,00,00,000 (Rupees one crore only) divided into 10,00,000 equity shares of Rs. 10 each. The issued subscribed and paid-up capital of the petitioner-company is Rs. 20,53,000 (Rupees twenty lakhs fifty-three thousand only). The main objects for which the petitioner-company was incorporated are set out in the memorandum and articles of association (annexure A to the petition) and include the activity of carrying on the business of manufacturers, importers, producers, buyers and sellers, importers and exporters of all type and sorts of quartz, electronic and mechanical watches,

clocks and time pieces and other time showing appliances. The financial position of the transferor-company has been shown in the balance-sheet of the company for the year ended March 31, 1996, a copy whereof is annexed and marked as annexure B to the petition.

M/s. Cymex Time Limited, the transferee-company (not before me) is the company situated at Udaipur within the State of Rajasthan. The transferee-company was originally incorporated as a private limited company on August 8, 1986, and later on it was converted into a limited company and the fresh certificate of incorporation was issued on February 24, 1995.

3. The main objects for which the transferee-company was established are set out in its memorandum and articles of association, a copy whereof is annexed to the petition and has been marked as annexure C. The main objects include the object to manufacture, sell and carry on the business of importers, producers and dealers in all type and sorts of alarm time pieces, mechanical and electronic and wrist watches, other watches, wall clocks and other clocks. The authorised capital of the transferee-company is Rs. 5,00,00,000 (Rupees five crores only) divided into 5,00,000 equity shares of Rs. 100 each. The issued, subscribed and paid-up capital of the transferee-company is Rs. 14,91,900 only. Annexure D annexed to the petition is a copy of the balance-sheet of the transferee-company for the year ended on March 31, 1995.

4. Company Petition No. 222 of 1996 has been filed by another transferor-company, namely M/s. Hightech Precision Products Limited, a company incorporated under the Companies Act, 1956, and having their registered office at Deokinandan Market, Railwaypura, Ahmedabad. The petitioner-company was incorporated on March 28, 1995, under the provisions of the Companies Act, 1956. The registered office of the petitioner-company is situated at Deokinandan Market, Railwaypura, Ahmedabad, within the State of Gujarat. The authorised capital of the petitioner-company is Rs. 15,00,000 (Rupees fifteen lakhs only) divided into 1,50,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up capital of the transferor-company is Rs. 1,43,800 only.

5. The main objects for which the petitioner-company was incorporated are set out in the memorandum and articles of association, annexure A to the petition. The main objects, include the object to carry on and/or any of the business of manufacturers, importers, exporters, buyers, sellers and dealers, etc. of all type and sorts of quartz electronic and mechanical watches, clocks and time pieces, etc.

So far as Company Petition No. 221 of 1996 is concerned, the scheme of amalgamation has been approved by the board of directors of the transferor-company as well as the board of directors of the transferee-company. Annexures E and F are the copies of the board resolutions of the transferor and transferee-company, respectively. So far as Company Petition No. 222 of 1996 is concerned, the scheme of amalgamation has been approved by the board of directors of the

transferor-company as well as the board of directors of the transferee-company. Annexures E and F to the petition are the copies of the resolutions of the board of directors of the transferor and transferee-company, respectively.

6. Both the petitioner-companies ask for the sanction of the scheme of amalgamation, under which they would be amalgamated with M/s. Cymex Time Limited, the transferee-company. The said transferee-company has got the main objects which could be said to be broadly in line with the objects of the two transferor-companies. The circumstances which necessitated the scheme of amalgamation, inter alia, would include the following :

(a) The transferee-company is a broad based limited company having large infrastructure and technological backup in similar product lines. The proposed amalgamation will result in benefits of large scale common overhead expenditure and facilities.

(b) The amalgamation will also enable manufacturing of the items under common management, achieve efficiency and economy in the operations and carry on the business more profitably under one company.

(c) The main object of the transferor-company and the transferee-company are identical and by joining hands, the company will have a strong base, better marketing network, improved quality, competent and experienced personnel, better availability of finance, smooth running of the business, increase in production and will therefore gain on all fronts.

(d) The amalgamation would also be in public interest as the same would enable increase in employment potential increase in payment of taxes, duties, etc. to the Government and others.

(e) The amalgamation will be advantageous to both the companies, their respective shareholders and all others concerned.

7. The salient features of the proposed scheme of amalgamation would go to show that on and effect from the transfer date, the undertakings of the transferor-companies shall without any further act or deed be transferred to and vest in the transferee-company pursuant to the provisions of section 394 of the Companies Act, 1956, subject to all the charges and encumbrances. Any suit, appeal or proceedings of any nature whatsoever by or against the transferor-company which would be pending shall not abate or be discontinued or in any way be prejudicially affected by reason of the amalgamation. The transferee-company will on such transfer, take over all the employees of the transferor-company and the members whose names appear in the register of members of the transferor-company after the effective date shall surrender their certificate for cancellation thereof to the transferee-company and simultaneously with the cancellation of the said shares, the transferee-company shall without any further application, act or deed issue and allot to every equity shareholder of the transferor-company, namely M/s. Alpha Quartz Limited 1.33 equity share of Rs.

100 each in the equity share capital of the transferee-company credited as fully paid-up for every ten fully paid equity shares of Rs. 10 each in the equity share capital of the said transferor-company. So far as Company Petition No. 222 of 1996 is concerned, with the cancellation of the shares held by the members of the transferor-company, the transferee-company shall without any application issue and allot to every equity shareholder of the transferor-company 1.5 equity share of Rs. 100 each in the equity share capital of the transferee-company credited as fully paid-up for every one fully paid equity shares of Rs. 10 each in the equity share capital of the transferor-company.

Both the transferor-company upon the order being made u/s 349 of the Companies Act, 1956, shall be dissolved without winding up.

8. The scheme of amalgamation on its perusal shows that the same is not derogatory to the interest of either the shareholders, the creditors secured and unsecured of the companies in question. Nobody has objected to the sanction of the scheme of amalgamation. The scheme as a whole upon a careful scrutiny appears to be in the interest of everybody concerned.

9. The Regional Director, Western Region, Ministry of Finance, Department of Company Affairs, has said in their communication dated February 11, 1997, that, it has been decided not to make any representation in this respect on the examination of the scheme of amalgamation and that, it has been decided that the matter may be left to the court to be decided on its merits. Any how, the communication would bring to the notice of the court certain circumstances. The circumstances relate to the exchange ratio of the shares between the transferor-companies and the transferee-company.

10. It has been pointed out that the shareholders of the transferor-companies are proposed to be allotted more shares which seems to be against the interest of the shareholders of the transferee-company.

11. But against this say, learned counsel Mr. Mavank Buch for the petitioning companies places reliance upon the Supreme Court pronouncement in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* [1996] 87 Comp Cas 792: [1996] 4 Comp LJ 124, with a view to canvass the principle that, it is not for the court to substitute its exchange ratio especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies, or the say of that the shareholders in their collective wisdom should not have accepted the exchange ratio on the ground that it will be detrimental to their interest. The Supreme Court precisely says so. In the petitions on hand there is absolutely no demur by any of the shareholders against the exchange ratio. On the contrary the shareholders of the transferor-companies and transferee-company also have accepted the exchange ratio proposed in the scheme of amalgamation. Therefore, it appears that, it would not be open to me to say that the exchange ratio accepted by the shareholders of the transferor-companies and the transferee-company would be prejudicial or detrimental to their interest.

Therefore, the above said communication should not come in the way of the petitioning companies.

Independently all of these, as a company court, I have been satisfied with the scheme proposed as a whole is just, fair and reasonable from the point of view of all concerned.

Therefore, in my opinion, the present petitions require to be granted. They are hereby granted, by saying that, the proposed scheme is sanctioned by me.

Any how, it shall have to be noticed that the proceedings initiated by the transferee-company having their registered office within the State of Rajasthan have initiated the necessary proceedings before the High Court of Rajasthan. The scheme of amalgamation would stand sanctioned, provided the said proceedings are decided in favour of the transferee-company and the scheme of amalgamation proposed under the present petition is recognised by the High Court of Rajasthan.

12. On the completion of the process of amalgamation, both the transferor-companies shall stand dissolved without winding up.

The petitions, therefore, stand allowed, with no order as to costs.