
(2007) 12 GUJ CK 0058

In the Gujarat High Court

Case No : Company Petition No's. 167 to 170 of 2007

In Re: Aegis Healthcare P. Ltd.

Date of Decision : 28-12-2007

Acts Referred:

Companies Act, 1956 — Section 391, 394, 94, 97

Citation : (2008) 146 CompCas 53 : (2009) 93 SCL 121

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Sudhir M. Mehta, for the Appellant; Harin P. Rawal, Assistant Solicitor General of India for Central Government, for the Respondent

Judgement

K.A. Puj, J.—These are the petitions filed by four petitioner companies for sanction of the scheme of arrangement in the nature of amalgamation of Aayush Multilink P. Ltd., LNP Financial Services P. Ltd. and Shree Saibaba Finsec P. Ltd., the transferor companies with Aegis Healthcare P. Ltd., the transferee company u/s 391 read with Section 394 of the Companies Act, 1956 (hereinafter referred to as "the Act"). All the petitioner companies belong to the same group of management.

2. The transferor companies and the transferee company belong to the same group of management and are engaged in a similar line of commercial activities in the related sector. Moreover, the business line is similar as well as complementary in nature, hence, the board of directors of all these companies thought it fit to amalgamate them for achieving synergic advantages. It is thought fit to consolidate all the operations under one company. This would lead to benefits of economies of the scale, make administration easier and control systems more efficiently. The amalgamated company would be in a position to maximise its profits through optimum utilisation of its resources and minimising administration and operational costs. This will also result in enhancement of financial strength and flexibility. It will also give the amalgamated entity a competitive edge in the market due to enhanced product range, increased research capabilities and establish distribution network. Thus, the amalgamation

would be in the mutual advantage of both the transferor and the transferee companies.

3. Vide order dated August 2, 2007, passed in Company Application No. 320 of 2007 in the matter of Aegis Healthcare P. Ltd., the transferee company, meetings of equity shareholders and unsecured creditors were dispensed with in view of the written consent letters placed on record. There are no secured creditors and certificate of the chartered accountant for such purpose was produced on the record of the company application.

4. Similarly, vide order dated August 2, 2007, passed in Company Application No. 321 of 2007 in the matter of Aayush Multilink P. Ltd., the transferor company, meetings of equity shareholders and unsecured creditors were dispensed with in view of the written consent letters placed on record. There are no secured creditors and certificate of the chartered accountant for such purpose was produced on the record of the company application.

5. In the same manner, vide order dated August 2, 2007, passed in Company Application No. 322 of 2007 in the matter of LNP Financial Services P. Ltd., the transferor company, meetings of equity shareholders and unsecured creditors were dispensed with in view of the written consent letters placed on record. There are no secured creditors and certificate of the chartered accountant for such purpose was produced on the record of the company application.

6. In the same manner, vide order dated August 2, 2007, passed in Company Application No. 323 of 2007 in the matter of Shree Saibaba Finsec P. Ltd., the transferor company, meetings of equity shareholders and unsecured creditors were dispensed with in view of the written consent letters placed on record. There are no secured creditors and certificate of the chartered accountant for such purpose was produced on the record of the company application.

7. All the four petitions were admitted vide separate orders dated August 8, 2007. Public notices for Company Petitions Nos. 168 and 170 of 2007 were duly advertised in the newspapers, viz., The Indian Express (English daily) and Sandesh (Gujarati daily), both of Ahmedabad edition on September 11, 2007. The publication in the Government Gazette was dispensed with. Common affidavit filed in these three petitions confirms the same. No one has come forward with any objection to the said petitions even after publication. Similarly, public notices for Company Petition No. 167 of 2007 were duly advertised in the newspaper. A separate affidavit is filed in Company Petition No. 167 of 2007 confirming that advertisements were published in English daily, The Indian Express, Ahmedabad edition and Gujarati daily, Sandesh, Ahmedabad edition on September 10, 2007.

8. Notices of the petition of the petitioner-transferor companies were served upon the official liquidator attached to this court. Vide his separate reports filed in Company Petitions Nos. 168 of 2007 to 170 of 2007 on December 19, 2007, it is observed that the affairs of the company have not been conducted in a manner

prejudicial to the interest of their members or to the public interest.

9. Notices of the petitions have been served upon the Central Government and Shri Harin P. Raval, learned Assistant Solicitor General appears for the Central Government. A common affidavit was filed by Shri P.L. Malik, Assistant Registrar of Companies, from the office of the Registrar of Companies, Ahmedabad dated October 31, 2007, in Company Petitions Nos. 167 to 170 of 2007, wherein certain observations are made by the Regional Director. A further affidavit is filed by Mr. R.K. Dalmia, Deputy Registrar of Companies from the office of the Registrar of Companies, Ahmedabad. An additional affidavit is filed by Mr. Girish Kantilal Chudasama, director of Aegis Healthcare P. Ltd., wherein issues raised by the Regional Director were dealt with.

10. So far as the first objection is concerned, a copy of latest audited financial statement for the year ended on March 31, 2007, for the transferee company as well as the transferor companies were annexed along with the said additional affidavit.

11. So far as the second issue is concerned, it is submitted that in case of increase of share capital or transfer of share capital of transferor companies to transferee company or combined authorised capital not exceeding authorized capital of all the three companies, no further fee or stamp duty is required to be paid, because the requisite fee has already been paid on the authorized capital of the transferor companies and merely because of their merger with the transferee company, there is no reason why the same fee should be paid again by the transferee company on the same authorized capital. The scheme provides that authorized capital of the transferor companies would be merged to the authorised share capital of the transferee company without requirement of payment of any RoC fees/stamp duty/registration charges, as such charges have already been paid in the past by the respective companies. Moreover, articles of association of the transferee company empowers the transferee company to increase its share capital. It is also stated in the said affidavits that Section 391 of the Act is a complete code in itself. A scheme of arrangement/amalgamation falls squarely within the four corners of the said section. The scheme of arrangement/amalgamation can be sanctioned even if it involves doing acts for which the procedure is specified in other Sections of the Act. It is also stated that on the issue of payment of stamp charges/registration fees, it has been held by various High Courts that since the transferor company has already paid due registration fees at the relevant point of time, it is not necessary for the transferee company to pay the same fees/charges again on amalgamation of transferor company with the transferee company. It is permissible and not necessary to follow the procedure u/s 94/97 of the Act, read with Sections 391 and 394 of the Act, under which the scheme has to be sanctioned. In support of submissions, Mr. Sudhir M. Mehta, learned advocate appearing for the petitioner-companies relied on the decision of the different High Courts:

(1) Jaypee Cement Ltd. In re [2004] 124 Comp Cas 854 (All);

(2) Saboo Leasing P. Ltd. In re [2003] 117 Comp Cas 728 (Bom);

(3) In Re: Ashim Investment Co. Ltd.,

(4) In Re: Pmp Auto Industries Ltd.,

12. Since the Regional Director himself has not objected to the share exchange ratio between the transferor companies and the transferee company and it was made clear in the affidavit filed by Mr. R.K. Dalmia, Deputy Registrar on November 6, 2007, there is no need to call for any explanation from the petitioner-companies on this issue.

13. I have heard Mr. Sudhir M. Mehta, learned advocate appearing for the petitioner-companies and Mr. Harin P. Raval, learned Assistant Solicitor General of India appearing for the Central Government, submissions have been made by him explaining the issues raised by the office of the Regional Director. Considering the same along with affidavit placed on record, I am satisfied that the observations made by the Registrar of Companies do not survive and the scheme of arrangement would be in the interest of the companies, their members and creditors. The prayers in terms of paragraphs 31(a), 21(a), 21(a) and 21(a) made in Company Petitions Nos. 167, 168, 169 and 170 of 2007, respectively, are hereby granted.

14. So far as costs to be paid to the learned Assistant Solicitor General is concerned, I quantify the same at Rs. 3,500 per petition. The same may be paid directly to Mr. Harin Raval, learned Assistant Solicitor General of India.

All these petitions are accordingly disposed of.