(2014) 04 GUJ CK 0043

In the Gujarat High Court

Case No : Company Petition No. 5 of 2014 in Company Application No. 333 of 2013 and Company Petition No. 6 of 2014 in Company Application No. 334 of 2013

In Re: AIA Engineering Limited

Date of Decision : 04-04-2014

Acts Referred:
Companies Act, 1956 — Section 391, 392, 393, 394
Income Tax Act, 1961 — Section 2(1B)

Citation : (2014) 04 GUJ CK 0043

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Mihir Joshi, Sr. Advocate, Mr. Sandeep Singhi, Advocates for Singhi and CO, Advocate for the Appellant; B.C. Meena, LD. Official Liquidator, Mr. M. Iqbal A. Shaikh, Advocate for the Respondent

Judgement

S.R. Brahmbhatt, J.—These are the petitions filed by the Petitioner Companies seeking sanction of the Scheme of Amalgamation of DCPL Foundries Limited (Transferor Company) with AIA Engineering Limited (Transferee Company) (Scheme). The Petitioner of the Company Petition No. 5 of 2014 i.e. AIA Engineering Limited, had filed an application in this Court being Company Application No. 333 of 2013 for requisite directions for dispensing with the convening and holding the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the said Company. This Court vide its order dated 20.12.2013, dispensed with the meeting of the Equity Shareholders in view of the facts that the rights of the Equity Shareholders of the said Company were not affected as no new shares were being issued, there would be no change in the capital structure of the said Company and the Scheme did not involve any reorganization of the share capital of the said Company. Further, this Court also dispensed with the meetings of Secured Creditors and Unsecured Creditors of the said Company in light of the fact that no compromise was offered to any of the creditors, whether Secured or Unsecured, neither any liability of the Creditors under the Scheme was being reduced or extinguished and the rights and interest of the Secured Creditors and Unsecured Creditors of the said Company were not affected by the Scheme.

2. The Petitioner of the Company Petition No. 6 of 2014 i.e. DCPL Foundries Limited, had filed an application in this Court being Company Application No. 334 of 2013 for requisite directions for dispensing with the convening and holding the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the said Company. This Court vide its order dated 20.12.2013, dispensed with the meeting of the Equity Shareholders in view of the consents and approvals to the Scheme received from all the Equity Shareholders. Further, this Court had also dispensed with the meetings of the Secured Creditors and Unsecured Creditors of the said Company in light of the fact that no compromise was offered to any of the creditors, whether Secured or Unsecured, neither any liability of the Creditors under the Scheme was being reduced or extinguished and the rights and interest of the Secured Creditors and Unsecured Creditors of the said Company were not affected by the Scheme.

3. The Petitioner Companies thereafter filed Company Petition Nos. 5 and 6 of 2014, seeking sanction of the Scheme. This Court by its order dated 8.01.2014 admitted both the aforesaid Company Petitions and directed issuance of notice to the Regional Director in case of both the Petitioner Companies and to the Official Liquidator in the case of DCPL Foundries Limited. This Court also directed publication of notice of petition in "Indian Express", Ahmedabad Edition and in "Sandesh", Ahmedabad Edition.

4. Pursuant to the orders dated 8.01.2014, the Petitioners have published the notice of hearing of the petition in "Indian Express", Ahmedabad Edition on 18.01.2014 and in "Sandesh", Ahmedabad Edition on 18.01.2014. Affidavits, dated 20.01.2014, have been filed on behalf of the Petitioner Companies confirming the publication of the notices in the newspapers as directed and also of the notice of hearing of the petitions being served upon the Regional Director and the Official Liquidator.

5. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director has filed his common affidavit dated 7.03.2014. A perusal of the affidavit of the Regional Director discloses that there are two observations made by the office of the Regional Director. The first observation is with regard to directing AIA Engineering Limited, being a listed company, to comply with the SEBI Circular Nos. CIR/CFD/DIL/5/2013 dated 4.02.2013 and CIR/CFD/DIL/8/2013 dated 21.05.2013. The second observation is with regard to directing both the Petitioner Companies to comply with the Income Tax Act and the Rules thereunder.

6. Pursuant to the notice to the Official Liquidator in respect of DCPL Foundries Limited, a report dated 27.03.2014 has been filed by the Official Liquidator in Company Petition No. 6 of 2014. In the said report at paragraph 21 it is, inter alia, stated by the Official Liquidator that the affairs of Petitioner Company have not been conducted in a manner prejudicial to the interest of its members or the

public interest.

7. Heard Mr. Mihir Joshi, Senior Advocate with Mr. Sandeep Singhi for Singhi & Co. on behalf of the Petitioner Companies Mr. M. Iqbal A. Shaikh, appearing for the Central Government and Mr. B.C. Meena, the Official Liquidator.

8. Mr. Mihir Joshi, learned Senior Advocate, has submitted that AIA Engineering Limited has complied with the aforesaid SEBI circulars as required in the facts of the present case. Mr. Joshi referred to paragraph 14 of the Company Application No. 333 of 2013 in this regard. With regard to the second observation of the Regional Director, Mr. Joshi has submitted that the present Scheme is in compliance with Section 2(1B) of the Income Tax Act, 1961 and the Accounting Standard 14. Mr. Joshi referred to Part II and Clause 12 of the Scheme in this regard. Having considered the aforesaid, I am of the view that the observations made by the Regional Director in its common affidavit dated 7.03.2014 stand satisfied.

9. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the proceedings, it appears that the requirements of the provisions of Sections 391 to 394 of the Companies Act, 1956 are satisfied. The Scheme is genuine and bonafide and in the interest of the shareholders and creditors. I, therefore, accordingly sallow the Company Petitions and approve the Scheme. The Scheme is hereby sanctioned. Prayers made in the respective Company Petitions are hereby granted. This sanctioning of the Scheme, however, shall not absolve any concerned of his, her or its liability inuring in accordance with law only on account of the sanctioning of the Scheme.

10. The Petitioner Company of Company Petition No. 5 of 2014 shall maintain the Statutory records as mentioned in paragraph no. 21 of the report of the Official Liquidator in accordance with law

11. The petitions are thus allowed accordingly. Fees of Mr. M. Iqbal A. Shaikh are quantified at Rs. 7,500/- in each of the petitions and for the Official Liquidator are quantified at Rs. 7,500/- in the case of DCPL Foundries Limited. The said fees would be paid by the Petitioner Companies. Filing and issuance of drawn up order is dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar, High Court, Gujarat. The Registrar, High Court of Gujarat shall issue the authenticated copy of this order along with Scheme within 7 days of passing of this order.