
(2014) 03 GUJ CK 0099

In the Gujarat High Court

Case No : Company Petition No. 313 of 2013 in Company Application No. 271 of 2013

In Re: Ambuja Cements Limited

Date of Decision : 18-03-2014

Acts Referred:

Companies Act, 1956 — Section 100 100 100 101 101

Citation : (2014) 03 GUJ CK 0099

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

Bench : Single Bench

Advocate : Saurabh Soparkar, Mr. Sharad Mathkar, Mr. Tejas Karia, Mr. Nirag Pathak and Ms. Sachi Punani, for A and M and S Shroff Co. for the Petitioner No. 1, for the Appellant; M. Iqbal A. Shaikh, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Disposed Off

Judgement

S.R. Brahmbhatt, J.—Heard Mr. Saurabh Soparkar, learned Senior Advocate along with Mr. Tejas Karia and Mr. Nirag Pathak, learned advocates for Amarchand & Mangaldas & Suresh A. Shroff & Co., on behalf of the petitioner Company. The present petition has been filed by the petitioner Company under Sections 391 to 394, read with Section 100 and other relevant provisions of the Companies Act, 1956 ("Act") seeking sanction to the Scheme of Amalgamation between Ambuja Cement Limited (hereinafter referred to as petitioner Company or Transferee Company) and Holcim (India) Private Limited (hereinafter referred to as Transferor Company) and their respective shareholders and creditors and approval to the reduction of capital of the petitioner Company in terms of the Minute being Annexure V to the Company Petition No. 313 of 2013. The petitioner Company has given in detail the background, circumstances, rationale and significant benefits envisaged due to the Scheme, in its petition.

2. It is submitted on behalf of the petitioner Company that the Scheme inter alia provides for transfer by way of amalgamation of the entire undertaking (defined in the Scheme) of Transferor Company into the petitioner Company, for reduction of capital of the petitioner Company and the dissolution of the Transferor

Company without winding up under Sections 391 to 394, Sections 100 to 104 and other relevant provisions of the Act, as set out in the Scheme.

3. It has been submitted that the petitioner Company in Company Petition No. 313 of 2013 is primarily engaged in the business of manufacturing and marketing of cement and clinker for domestic and export markets and in the business of manufacturing and dealing in Grey Cement, White Portland Cement, Ordinary Portland Cement and Cement of all kinds and varieties, Concrete, Lime, Clay Gypsum and Lime Stone, Sagole, Soap Stone, Repifix Cement and allied products and by products. The petitioner Company is also engaged in the business to establish, construct, acquire, run and operate on any factory for manufacturing cement and allied products. The Transferor Company, in Company Petition No. 313 of 2013 is primarily engaged in the cement business, through its downstream investments in cement manufacturing ventures in India.

4. By an order dated 15th October, 2013 passed in the Company Application No. 271 of 2013, filed by the petitioner Company, this Court had directed that the meetings of the equity shareholders be convened and held at the registered office of the petitioner Company. This Court had granted permission to dispense with the requirement of convening meeting of the secured creditors and unsecured creditors. By the said order, the Chairman appointed for the meeting of the equity shareholders was directed to report the result of the meeting to this Court. Additionally, this Court had also directed the petitioner Company to seek the approval of its public shareholders to the Scheme through voting by postal ballot and e-voting in compliance of the SEBI Circular bearing No. CIR/CFD/DIL/5/2013 dated 4th February 2013 read with Circular number CIR/CFD/DIL/8/2013 dated 21st May, 2013. By the said order, the petitioner Company was directed to place the results of the ballot voting or e-voting before this Court.

5. As directed by this Court, meeting of the Equity Shareholders of the petitioner Company was held. The Chairman of the meeting has filed the Report of the meeting dated 2nd December, 2013 in this Court, stating that the Scheme of Amalgamation was approved with the requisite majority by the Equity Shareholders of the petitioner Company, present and voting, either in person or by proxy. Copy of the said Report has been annexed as Annexure Q to the petition.

6. As directed by this Court, the petitioner Company sought approval of the public shareholders to the Scheme through postal ballot and e-voting. The postal ballot and e-voting process closed on November 19, 2013, and the result were declared on November 21, 2013. The scrutinizer's report, dated November 21, 2013 reflecting that votes cast by public shareholder in favour of the Scheme are more than the votes cast by public shareholders against the Scheme, has been annexed as Annexure R to the petition.

7. Part III of the Scheme deals with cancellation of 15,06,70,120 equity shares of face value of Rs. 2 each of the petitioner Company held by the Transferor

Company in the petitioner Company. Clause 19 of the Scheme postulates cancellation of the existing shareholding of the Transferor Company in the petitioner Company, without any further act of deed, in accordance with provisions of Section 100 to 103 of the Act and the order of the High Court sanctioning the Scheme shall be deemed to be also the order u/s 102 of the Act for the purpose of confirming the reduction.

8. Accordingly the petitioner Company in its extra ordinary General Meeting, held on 23rd November, 2013 passed a special resolution and approved the reduction in the capital of the petitioner Company.

9. The petitioner Company thereafter filed the Company Petition in this Court seeking sanction to the Scheme. By the order dated 18th December, 2013, this Court admitted the petition and kept for hearing on 26th February, 2014 and directed the petitioner Company to give notice of hearing of the petition to the Central Government through the Regional Director, Northwestern Region, Ministry of Corporate Affairs and also directed to publish notice of hearing of the petition in the concerned newspapers. Publication of the Notice of hearing of the petition, in the Government gazette was dispensed.

10. The notice for the hearing of the petition was accordingly published in the newspapers being English daily "Indian Express" (Ahmedabad edition) and Gujarati daily "Gujarat Samachar" (Rajkot edition), dated 7th January, 2014. Pursuant to the said publication in the newspapers, no objections to the petition were filed in this Court. One shareholder, Mr. Dipakkumar J. Shah, had served and un-affirmed copy of an affidavit, raising certain objections, on the petitioner Company. The petitioner Company, vide its affidavit in reply dated 7th February 2014 dealt with and answered the issues raised by the said shareholder, Mr. Dipakkumar J. Shah, and served a copy of the affidavit in reply upon him. The petitioner Company has filed its Affidavit dated 25th February, 2014 to this effect.

11. Notice of the hearing of the petition has been served upon Shri M. Iqbal A. Shaikh, learned standing counsel appearing for the Central Government. Mr. Shambhu Kumar Agarwal, the Regional Director, North-Western Region, Ministry of Corporate Affairs, filed an Affidavit dated 5th March, 2014 raising certain observations on the petition. The same pertains to - (a) amendment to Scheme for issue and allotment of new shares in dematerialized form; (b) non-compliance with the requirements of Accounting Standard - 14 (c) requiring compliance with requirements of SEBI Circular dated 4th February, 2013 and 21st May, 2013; (d) the treatment of the employees of the Transferor Company; (e) placing on record the votes by public shareholders in the postal ballot and highlighting the percentage of votes cast against the resolutions in postal ballot; (f) concern in relation to payment of Rs. 3,500 crore for purchase of 24% shares of the Transferor Company rather than petitioner Company issuing shares to all the current shareholders of the Transferor Company under a scheme; (g) increase in shareholding of the promoter pursuant to implementation of the Scheme; (h) the circular dated 15th January 2014 issued by the Ministry of

Corporate Affairs and compliance with the Income Tax Act and rules framed thereunder; (i) resolution of investor complaints; (j) hearing of a shareholder complaint.

12. The petitioner Company has filed its Affidavit dated 6th March, 2014, dealing with the observations of the Regional Director. The attention of this Court is drawn to the Affidavit, where all the above issues have been dealt with, in paragraphs 4 to 14. I have further heard the submissions made by the learned Senior Advocate Mr. Saurabh Soparkar, appearing for the petitioner Company, as briefly set out hereunder;

13. With regard to the submission on the amendment to Scheme for issue and allotment of new shares in dematerialized form, it is submitted that the Scheme deals with issuance of shares in dematerialized form as well as physical form; but the petitioner Company has no objection to modify the Scheme, if so directed by the Court.

(a) With regard to non-compliance with the requirements of Accounting Standard - 14, it is submitted that the petitioner Company will comply with the same.

(b) With regard to compliance with requirements of SEBI Circular dated 4th February, 2013 and 21st May, 2013, it is submitted that the petitioner Company has complied and will continue to comply with the same.

(c) With regard to treatment of the employees of the Transferor Company, it is submitted that the Transferor Company has only 2 employees and they will be absorbed by the petitioner Company on the scheme being made effective. However if the Court directs the petitioner Company to modify the Scheme as requested by the Regional Director, the petitioner Company shall have no objections to the same. Shri Soparkar, also made a statement that with the employees of the Transferor Company will be absorbed by the Transferee Company.

(d) With regard to placing on record the votes by public shareholders in the postal ballot and highlighting the percentage of votes cast against the resolutions in postal ballot, it is submitted that the same deals with shareholder vote obtained by the petitioner Company in compliance with the circulars dated February 4, 2013 and May, 21, 2013 issued by SEBI. It is submitted that the same was not undertaken under the purview of the Companies Act, 1956, and that in any event, both the resolutions No. 1 and No. 2 highlighted by the Regional Director were approved by a majority of the public shareholders of the petitioner Company.

(e) With regard to concern in relation to payment of Rs. 3,500 crore for purchase of 24% shares of the Transferor Company rather than petitioner Company issuing shares to all the current shareholders of the Transferor Company under a scheme, it is submitted that this is a commercial decision taken by the petitioner Company and it is not prejudicial and therefore in the interest of the

shareholders. It is also submitted that the petitioner Company has a strong balance sheet and the outflow of Rs. 3,500 crores will not adversely affect the future growth of the petitioner Company.

(f) With regard to submission regarding increase in the shareholding of the promoter pursuant to the Scheme, it is submitted that the same will be pursuant to allotment of shares to the promoter in accordance with the share exchange ratio determined by experts in consideration for the shares held by it in the Transferor Company.

(g) With regard to the circular dated 15th January 2014 issued by the Ministry of Corporate Affairs and compliance with the Income Tax Act and rules framed thereunder, it was submitted that the circular requires the Regional Director to invite comments from the Income Tax Department on the proposed Scheme. The petitioner Company undertakes to comply with relevant Income Tax Act and rules.

(h) With regard to submission regarding resolution of investor complaints, the petitioner Company undertakes to address the same in usual course.

(i) With regard to hearing of a shareholder complaint, it is submitted that the same deals with the complaint received from one independent shareholder, Chandiramani Rekha Mohan. It is further submitted that the petitioner Company has already responded to the complaint, and that the complainant has not filed any objections before this Court.

14. Considering all the facts and circumstances and taking into account all the contentions raised in the Affidavit and the Reply Affidavit and the submissions made during the course of hearing, I am satisfied that the observations made by the Regional Director, Ministry of Corporate Affairs, do not survive.

15. As to the "objections" by shareholder, Mr. Dipakkumar, J. Shah, the same do not deserve to be considered as no such objections are filed in the Registry of this Court. He has also not remained present to oppose the petition. In any case the petitioner Company, vide its affidavit in reply dated 7th February 2014 dealt with and answered the issues raised by the said shareholder, Mr. Dipakkumar J. Shah, I am therefore satisfied that on this count the sanction of the Scheme is not to be withheld.

16. Learned counsel appearing for respondent Regional Director has contended that the affidavit is filed and the requisite statutory statement is also made, however, the same is subject to the points raised thereabout and he submitted that so far as, one shareholder's objection is concerned, he had received information that the information was called for. However, Shri Shaikh representing the Regional Director could not indicate as to whether the said calling of information, which is orally submitted and not forming part of the affidavit, would in any manner amounting to proposed investigation, which in my view could not have been said to be an investigation, there was no answer. Shri Shaikh submitted that after receiving the explanation in the form of affidavit

which is placed on record on behalf of the Company, he specifically called upon the concerned Regional Director as to any addition or alteration is to be made in the stand taken which is spelt out in the affidavit and he received a communication on 12.03.2014, copy whereof is placed on record indicating that the Regional Director adheres to the affidavit already filed and nothing more is to be added.

17. In view of the aforesaid, this Court was called upon to keep in consideration the observation made by the Apex Court in case of *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd.*, with special emphasis upon the observations made on page Nos. 812 to 816 and it was contended that a sole objector who did not raise any specific objection qua any proceedings and has left only a question cannot be said to be an objector requiring any further consideration for creating impediment in the way of amalgamation. The Scheme, as such, is approved by Delhi High Court. The rest of the points raised in the affidavit of Regional Director have been satisfactorily explained and when there is a letter dated 12.03.2014 coming on record there may not be any further impediment in sanctioning the Scheme.

18. This Court is of the view that the said Objector namely Chandiramani Rekha Mohan has clearly evinced from her objection that she is in absolute awareness of the present proceeding and the Scheme proceedings and when she has chosen to give herself away from this proceeding, as no joining party application or no objection is filed so far as these present proceedings are concerned, and when the objections are filed which do not indicate any legal lacuna in the procedure, then bearing in mind the observations of the Apex Court in case of *Miheer H. Mafatlal (supra)*, this Court may safely overruled the same as otherwise it would amount to thwarting the process which has already started. The thwarting is also not unwarranted, if the circumstances so persuade the Court. But in the instant case, the Court is satisfied qua lack of any invalid objection and hence the Court is of the view that the Scheme is required to be sanctioned.

19. Under the circumstances, I hold that the present Scheme of Amalgamation is in the interest of the shareholder and creditors of the petitioner Company as well as in the public interest and the same deserves to be sanctioned.

20. The reduction of share capital of the petitioner Company as envisaged in the petition is approved and the Minute dealing with reduction of the share capital of the petitioner Company being Annexure V is hereby approved.

21. The petition is disposed of accordingly. So far as the costs to be paid to the Central Government, Standing Counsel are concerned, I quantify the same at Rs. 7,500. The same may be paid to the learned Standing Counsel appearing for the Central Government.

22. The petitioner Company is further directed to lodge a copy of this order, the schedule of assets of the Transferor Company as on the date of this order, if any, and the Scheme duly authenticated by the Registrar, High Court of Gujarat, with

the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.

23. The petitioner Company is directed to file a copy of this order along with a copy of the Scheme and the Minute as approved by the Court with the concerned Registrar of Companies, electronically, along with e-form 21 in addition to physical copy as per relevant provisions of the Companies Act, 1956.

24. The petitioner Company is directed to publish notice of requisition of Minute being Annexure V as approved by the Court, with the Registrar of Companies, Ahmedabad, Gujarat, Dadra and Nagar Haveli and publish it once in The Indian Express (Ahmedabad edition) and Gujarati translation thereof in Gujarat Samachar (Rajkot edition) within 21 days of the registration with the Registrar of Companies.

25. Filing and issuance of drawn up orders are hereby dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar, High Court of Gujarat. The Registrar, High Court of Gujarat shall issue the authenticated copy of this order along with Scheme as expeditiously as possible.