(2008) 05 GUJ CK 0083

In the Gujarat High Court

Case No : C.P. No''s. 107 and 108 of 2007

In Re: Avani Petrochem P. Ltd.

Date of Decision : 08-05-2008

Acts Referred:
Companies Act, 1956 — Section 17, 31, 391, 392, 393

Citation : (2009) 149 CompCas 604

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

Bench : Single Bench

Advocate : Harmish K. Shah, for the Appellant; Iqbal Shaikh, for the Respondent

Judgement

K.A. Puj, J.—These petitions filed by two petitioners for sanction of a scheme of arrangement in the nature of amalgamation of Amishi Petrochem P. Ltd., transferor company with Avani Petrochem Pvt. Ltd., transferee company u/s 391 to Section 394 of the Companies Act, 1956.

2. It has been submitted that both the transferor and transferee companies belong to the same group of management and hence the board of directors of these companies thought it fit to restructure them through amalgamation for achieving synergic advantages. The amalgamated company would be in a position to maximise its profit through optimum utilisation of its resources and minimising the administrative and operative costs. The amalgamated company will have a much larger capital base, which will give it competitive edge and also provide financial requirements. Thus, the proposed amalgamation would create synergy of operations, optimise cost, eliminate unnecessary administrative overheads, results into pooling of financial resources, etc., and all would be to the mutual advantage of all the transferor and transferee companies. It has been further submitted that the scheme is proposed to strengthen the financial position of the transferee company and to minimise the administrative and other expenses. The amalgamation would enable the resultant company to attract superior managerial talents to manage its affairs thereby offer better satisfaction to its consumers and users which would enhance the value of its shareholders and strengthen its market position in the field of business.

3. The transferor company preferred Company Application No. 99 of 2007 before this court praying for dispensation of convening and holding meeting of the shareholders in view of the consent letters obtained from all the shareholders and placed on record of this court and in view of the fact that there are no secured and unsecured creditors of the company.

4. This court vide its order dated February 27, 2007, passed in Company Application No. 99 of 2007 dispensed with the meeting of equity shareholders of the transferor company as required to be convened u/s 391(2) of the Companies Act, 1956.

5. Similarly the transferee company preferred application being Company Application No. 98 of 2007 before this court wherein it was prayed that separate meeting of the secured creditors and unsecured creditors for an amount of more than Rs. 5,000 be held and convened for the purpose of considering, and if thought fit, approving with or without modifications, the arrangement embodied in the scheme. The transferee company sought dispensation of convening and holding the meeting of the members of the company in view of the consent letters having been placed on the record of this court. This court allowed the said application vide its order dated February 27, 2007, passed in Company Application No. 98 of 2007. This court has also dispensed with the publication of advertisement for convening meeting in the Gujarat Government Gazette.

6. The transferee company as directed and required by the order dated February 27, 2007, had sent notices convening the meetings along with a copy of the scheme, and also the copy of the explanatory statement u/s 393 of the Companies Act and the prescribed form of proxy under certificate of posting to the secured and unsecured creditors. The notice of the meetings of the secured and unsecured creditor was also advertised as per the direction of this court in The Indian Express and Sandesh, Baroda edition, on March 22, 2007. A copy of the affidavit of publication is filed before this court on April 6, 2007.

7. The meeting of the secured creditor duly convened in accordance with the order dated February 27, 2007, was held on April 16, 2007. The sole secured creditor did not attend the said meeting. However, they conveyed their consent to the proposed scheme of amalgamation. The meeting of the unsecured creditors held on April 16, 2007, was attended to personally or by proxy or through authorised representatives by 24 unsecured creditors of the aggregate value of Rs. 6,37,85,649.58. The chairman of the meeting has filed a report before this court and the scheme was approved by the requisite majority of the secured as well as unsecured creditors.

8. Both these petitions were admitted by this court on May 11, 2007. They were duly advertised in the newspapers, namely, The Indian Express (English daily) and Sandesh (Gujarati daily), both of Baroda edition. Publication in the Gujarat Government Gazette was dispensed with, as directed in the order dated May 11, 2007. An affidavit dated August 13, 2007, was filed confirming the said

publication. No one has come forward with any objection to the said petitions even after the publication.

9. Notice of the petition was served upon the official liquidator for the transferor company. A report dated August 7, 2007, has been filed by the official liquidator and the same confirms that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members, creditors or public interest.

10. Notice of the petition has been served upon the Central Government and Mr. Iqbal Shaikh, learned Central Government standing counsel appears for the Central Government. An affidavit dated August 1, 2007, has been filed by Mr. V.K. Khubchandani, Registrar of Companies along with the letter of Regional Director dated July 26, 2007, wherein same observations are made with regard to the proposed scheme of amalgamation. The issue so raised have been dealt with vide affidavit dated August 13, 2007, filed on behalf of the petitioner-company.

11. Mr. Harmish K. Shah, learned advocate appearing for the petitioner-company submitted that the issues raised vide letter dated July 26, 2007, by the Regional Director are covered under widely accepted principles of "single window clearance". He has further submitted that in the scheme of amalgamation u/s 391/394 of the Companies Act, 1956, it is not necessary for the transferee company to comply with the provisions of Section 94/97 read with Schedule X of the Companies Act, 1956, for increase in the authorised share capital to enable it to issue the shares to the share holders of the transferor company in terms of the scheme of amalgamation. He has further submitted that the proceedings under SECTIONs 391 to 394 of the Companies Act, 1956, are in the nature of a single window clearance and there does not appear to be any reason for separate formalities to be followed. The share capital of the transferor company becomes the authorised share capital of the transferee company on sanction of the scheme by this court. He has further submitted that the transferee company would comply with the requirements of Section 94/97 of the Companies Act, 1956, for any increase in its authorised share capital beyond the amount of the combined authorised share capital of the transferor and transferee company. He has further submitted that the latest financial position of the transferee and transferor company are submitted along with the affidavit-in-reply filed on August 13, 2007. He has also submitted that no alterations either in domicile or in the object clauses of the memorandum of association of the transferee company are sought to be made. It is, therefore, not necessary to comply with the provisions of Section 17 of the Companies Act, 1956. The Clause 12 of the scheme aims to alter the capital clause of the memorandum of association of the transferee company consequent upon the increase in its authorised share capital sought to be made by Clause 13 of the scheme. Clause 13 of the scheme clearly stipulates that the capital clause of the memorandum of association stands altered accordingly. He has, therefore, submitted that the transferee company is

not required to comply with the provision of Section 17 of the Companies Act.

12. The same issues raised by the Regional Director have been dealt with by this court in Company Petition No. 54 of 2008 and the said petition was disposed of on May 6, 2008 (Mekaster Valves and Engineering Services P. Ltd., In re [2009] 149 Comp Cas 593), wherein the issue regarding single window clearance was involved. So far as the present petitions are concerned, the company in its affidavit has raised the issue in relation to Clauses 12 and 13 of the proposed scheme of amalgamation proposing changes in the capital clause of the memorandum and articles of association of the company. The court has dealt with such issues in the above referred company petition. For the reasons stated therein and in view of the various authorities considered by the court in the said decision, the court is satisfied that since all these changes are proposed to be effected as an integral part of the scheme, the approval granted by the shareholders at the meeting to the scheme as a whole amounts to approval to all such incidental proposals and no separate procedure is required to be followed as envisaged by Sections 17, 31, 94, and 97, respectively. It goes without saying that when this court sanctions the scheme, the scheme is sanctioned as a whole with all its clauses and proposals. The certified copy of the order sanctioning the scheme by this court, when filed with the Registrar of Companies, shall be treated as intimation to the Registrar of Companies and it shall take note of all the changes proposed and sanctioned by the court. In view of the same, no separate compliances of the aforesaid provisions of the Companies Act, 1956, are necessary.

13. Having gone through the petitions and being satisfied that the amalgamation would be in the interest of the companies and their members and creditors, prayer in terms of paragraph 22(a) of the Company Petition No. 107 of 2007 and paragraph 22(e) of the Company Petition No. 108 of 2007 are hereby granted.

14. The petitions are disposed of accordingly. So far as the costs to be paid to the learned Central Government standing counsel is concerned, the same are quantified at Rs. 3,500 per petition. The same may be paid to the learned advocate Shri Iqbal Shaikh.

