

(2008) 03 GUJ CK 0030
In the Gujarat High Court
Case No : C.P. No's. 175 to 179 of 2007
In Re: Bharatsinh Chudasama Film P. Ltd.

Date of Decision : 12-03-2008

Acts Referred:

Citation : (2008) 143 CompCas 215

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

Bench : Single Bench

Advocate : Iqbal A. Shaikh, Sangeeta N. Pahwa and Navin Pahwa, for the Appellant; Harin P. Raval, for the Respondent

Judgement

K.A. Puj, J.—All these petitions are filed by the petitioner for sanctioning scheme of amalgamation of four transferor companies with one transferee company. Since common issue is involved in all the five petitions, they are being disposed of by this common judgment.

2. Bharatsinh Chudasama Film P. Ltd., Chander Exhibitors P. Ltd., Dharam Cinema P. Ltd., and Rajshri Wood Fields P. Ltd., are the transferor companies and R World Leisure Ltd., is the transferee company. All the transferor companies are to be amalgamated with the transferee company under the scheme of amalgamation.

3. R World Leisure Ltd. ("transferee company") has filed Company Petition No. 179 of 2007 seeking sanction of the scheme. The transferee company filed Company Application No. 375 of 2007 seeking dispensation of the meetings of the equity shareholders and preference shareholders. This Court, vide order dated September 6, 2007, made in Company Application No. 375 of 2007 dispensed with the meeting of the shareholders.

4. Bharatsinh Chudasama Film P. Ltd. ("transferor company") filed Company Petition No. 175 of 2007 seeking sanction of the scheme. The transferor company filed Company Application No. 374 of 2007 seeking dispensation of the meetings of the equity shareholders, secured creditors and unsecured creditors. This Court, vide order dated September 6, 2007, made in Company Application

No. 374 of 2007 dispensed with the meetings of the equity shareholders, secured creditors and unsecured creditors.

5. Chandra Exhibitors P. Ltd. ("transferor company") filed Company Petition No. 176 of 2007 seeking sanction of the scheme. The transferor company filed Company Application No. 372 of 2007 seeking dispensation of the meetings of the equity shareholders and unsecured creditors. This Court, vide order dated September 6, 2007, made in Company Application No. 372 of 2007 dispensed with the meetings of the equity shareholders and unsecured creditors.

6. Dharam Cinema P. Ltd. ("transferor company") filed Company Petition No. 177 of 2007 seeking sanction of the scheme. The transferor company filed Company Application No. 373 of 2007 seeking dispensation of the meetings of the equity shareholders and unsecured creditors. This Court, vide order dated September 6, 2007, made in Company Application No. 373 of 2007, dispensed with the meetings of the equity shareholders and unsecured creditors.

7. Rajshri Wood Fields P. Ltd. ("transferor company") filed Company Petition No. 178 of 2007 seeking sanction of the scheme. The transferor company filed Company Application No. 376 of 2007 seeking dispensation of the meetings of the equity shareholders and unsecured creditors. This Court, vide order dated September 6, 2007, made in Company Application No. 376 of 2007 dispensed with the meetings of the equity shareholders and unsecured creditors.

8. All the company petitions came to be admitted by this Court on September 12, 2007 and directed publication of notice of hearing of the petition in English daily The Indian Express and Gujarati daily Divya Bhaskar both Ahmedabad editions. The court also issued notice to the Regional Director, Western Region, Department of Company Affairs, Bombay, as also the official liquidator in case of the transferor companies.

Pursuant to the notice of the official liquidator in respect of each of the transferor companies, reports dated February, 2008, are filed by the official liquidator. The reports of the official liquidator confirm that the affairs of each of the companies have not been conducted in a manner prejudicial to the interest of their members or the public interest.

9. In response to the notice to the Regional Director, Western Region, Department of Company Affairs, Shri Iqbal A. Sheikh, Central Government standing counsel has appeared and has filed affidavit of the Assistant Registrar of Companies dated October 26, 2007, along with a copy of letter addressed by the Regional Director to the Registrar of Companies. A perusal of the affidavit filed by the Assistant Registrar of Companies would disclose that there are two observations made by the office of the Regional Director. The first observation pertained to filing of latest financial balance-sheet. In response to this, it is submitted that the petitioner has submitted latest available balance-sheet as at March 31, 2007. Latest financial statements as on February 29, 2008, are produced before the court in respect of each of these companies.

10. The second observation pertains to utilisation of the authorised capital of the transferor companies by the transferee company. In response to this, it is submitted that the scheme does not provide for any clause regarding utilisation of the authorised capital of the transferor companies by the transferee company. Without prejudice, in view of the judgment of this hon''ble court in the case of Bazley Finvest Ltd., In re [2005] 64 SCL 480 , in Company Petition No. 41 of 2005 with Company Petition No. 42 of 2005 with Company Petition No. 43 of 2005 and In Re: Shubhlaxmi Dyetex P. Ltd., in Company Petition No. 41 of 2007 with Company Petition No. 42 of 2007 with Company Petition No. 43 of 2007, the utilisation of authorised capital of the transferor companies by the transferee company is not prohibited.

11. Heard Mr. Navin Pahwa learned advocate appearing for the petitioner and Mr. Iqbal A. Sheikh, learned Central Government standing counsel and perused the scheme of amalgamation. The court has also gone through the report submitted by the official liquidator in respect of each of the four transferor companies as well as the affidavit filed by the Registrar of Companies in respect of the five companies. Both the authorities have observed that the scheme is neither prejudicial to the interests of members and creditors nor to the public at large. Certain queries were raised by the Regional Director in his communication which is attached along with the affidavit in reply and necessary details are produced on the record of these petitions. The legal issue raised by the Registrar of Companies is concluded by earlier judgment of this Court which is already referred to hereinabove. The court therefore sanctions the scheme of amalgamation at annexure "C" to the petitioner.

12. The cost of Central Government standing counsel is quantified at Rs. 3,500 per petition. Liberty is given to the transferee company to pay the amount of cost directly by drawing a cheque in favour of Central Government standing counsel Mr. Iqbal Sheikh.