

(2008) 09 GUJ CK 0035

In the Gujarat High Court

Case No : C.P. No's. 174, 175 and 176 of 2008 in C.A. No. 355 of 2008

In Re: C.M. Smith and Sons Ltd.

Date of Decision : 15-09-2008

Acts Referred:

Companies Act, 1956 — Section 297, 391, 394, 58A

Citation : (2008) 146 CompCas 359 : (2009) 89 SCL 377

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : Sudhir M. Mehta, for the Appellant; M. Iqbal Shaikh, for Harin P. Raval, for the Respondent

Judgement

H.N. Devani, J.—These petitions are filed by three petitioner companies for sanction of the scheme of arrangement in the nature of amalgamation of Madhu Auto Cast P. Ltd. and Smith Techno Cast P. Ltd., the transferor companies with C. M. Smith and Sons Ltd., the transferee company u/s 391 read with Section 394 of the Companies Act, 1956 ("the Act"). All the petitioner companies belong to the same group of management.

2. It is the case of the Petitioner companies that the transferor companies and the transferee company belong to the same group of management and are engaged in similar commercial activities in the related sector. According to the petitioners, it would be advantageous to amalgamate the transferor companies with the transferee company as the amalgamation would result in optimum utilization of management and other resources and would reduce the administrative costs. The Resources of the companies would be conveniently merged and pooled together leading to a more effective and centralized management and reduction in the administrative expenses and overheads which are presently being multiplied because of separate entities. The amalgamation will result in the larger pool of financial and other resources, which will enable the amalgamated company to broaden its asset base and in the long run improve financial gearing.

3. Besides that, amalgamation would reflect the new economic value of the

business. On account of amalgamation, operations would be streamlined through new management initiatives. After amalgamation, the merged entity could install and implement adequate and suitable measure for corporate governance. Thus, the amalgamation would be to the mutual advantage of both the transferor and the transferee companies.

4. Vide order dated May 16, 2008, passed in Company Application No. 355 of 2008 in the matter of C.M. Smith and Sons Ltd., the transferee company (copy at page No. 49 (exhibit D) of the compilation of Company Petition No. 176 of 2008), meetings of equity shareholders were dispensed with in view of the written consent letters placed on record.

5. Similarly, vide order dated May 16, 2008, passed in Company Application No. 354 of 2008 in the Case of Madhu Auto Cast P. Ltd., the transferor company (copy at pages 46 to 47 (exhibit D) for the compilation of Company Petition No. 1974 of 2008), 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 May 16, 2008, passed in Company Application No. 353 of 2008 in the case of Smith Techno Cast P. Ltd., the transferor company (copy at pages 46 to 47 (exhibit D) for the compilation of Company Petition No. 175 of 2008), 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 three petitions were admitted vide separate orders dated June 27, 2008. The public notices for Company Petition No. 176 of 2008 were duly advertised in the newspapers, viz., The Indian Express (English daily) and Jansatta (Gujarati daily), both of Ahmedabad edition, on July 12, 2008. The publication in Government Gazette was dispensed with. The common affidavit filed in these three petitions confirm the same. No one has come forward with any objection to the said petitions even after the publication. Similarly, public notices for Company Petition No. 174 of 2008 were duly advertised in the newspaper. A separate affidavit is filed in Company Petitions Nos. 174 and 175 of 2008 confirming that advertisements were published in English daily, The Indian Express, Ahmedabad edition and Gujarati daily, Sandesh, Ahmedabad edition, on July 9, 2008.

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. 174 of 2008 and 175 of 2008 on August 29, 2008, 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. Notice of the petition was also served upon the Central Government through the Regional Director, Corporate Affairs, Mumbai, pursuant to which Mr. M. Iqbal Shaikh, Central Government counsel has filed appearance on behalf of the Central Government. The Deputy Registrar of Companies, Ahmedabad has filed a common affidavit dated September 2, 2008, on behalf of the Regional Director stating that the scheme is not prejudicial to the interest of the creditors, shareholders and public. However, two points are brought to the notice of the court. Firstly, that the company has not complied with the requirements of Section 58A of the Companies Act, 1956 and secondly, that there is contravention of Section 297 of the said Act. The RoC is also directed to initiate separate legal proceedings against the transferee company and its directors.

10. Mr. Ratilal Chimanlal Smith, director of C. M. Smith and Sons Ltd. has t filed an additional affidavit dealing with the aforesaid points. It is stated that the transferee company has already filed a statement in lieu of advertisement as well as return of deposit on August 27, 2008 and informed the RoC as well as RD offices, a copy whereof is annexed with the affidavit. As regards the second point it is stated that the transferee company has already filed an application for compounding of offence with RoC on August 31, 2008. A copy of the application is also annexed to the affidavit. It is further stated that compliance has been made as aforesaid subsequently and therefore, both the above objections do not survive. Mr. Sudhir Mehta, learned advocate for the petitioner companies has submitted that all the statutory and regulatory compliances have been made by the petitioner companies, hence there is no reason to withhold the sanction of the scheme of arrangement.

11. Considering the facts and circumstances noted hereinabove, the submissions advanced by learned advocates for the parties and in the light of the fact that according to the Central Government the scheme is not prejudicial to the interest of creditors, shareholders and the public and according to the official liquidator, the affairs of the petitioner companies have not been conducted in a manner prejudicial to their members and the public, amalgamation would be in the interest of the companies and their members and creditors. The scheme of amalgamation is therefore, required to be sanctioned.

12. However, it is ordered that if any criminal prosecution/legal proceedings are initiated against any of the transferee companies or the directors of any of the transferor companies, this order sanctioning the scheme of amalgamation of these companies with the transferee company shall not come in the way of such proceedings. The fact of amalgamation shall not give any immunity for such past deeds.

13. In the aforesaid premises, Company Petitions Nos. 176 of 2008, 174 of 2008 and 175 of 2008 are hereby allowed in terms of the prayers made in paragraphs 26(a), 21(a) and 21(a) respectively.

14. The petitions are disposed of accordingly. So far as costs to be paid to the

learned Central Government counsel is concerned, the same are quantified at Rs. 3,500 (rupees three thousand and five hundred only) per petition. The same may be paid to Mr. M. Iqbal Shaikh, learned Central Government counsel directly.