(2010) 05 GUJ CK 0021

In the Gujarat High Court

Case No : C.P. No''s. 117, 118 and 119 of 2009 and CA No''s. 173, 174 and 175 of 2009

In Re: Colourtex Marketing (P.) Ltd.

Date of Decision : 03-05-2010

Acts Referred:
Companies Act, 1956 — Section 20, 21, 391(2)

Citation : (2010) 102 SCL 426

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Navin K. Pahwa and Sangeeta N. Pahwa, P.S. Champaneri, Asstt. Solicitor General of India, for the Appellant;

Judgement

M.R. Shah, J.—Company Petition No. 117 of 2009 is filed by the petitioner-Colourtex Marketing Private Limited (Transferor-Company) for an appropriate order of sanctioning the Scheme of Amalgamation of Colourtex Marketing Private Limited and Vakharia Silk Mills Private Limited (Both Transferor-Companies) with Dhanesh Enterprise Private Limited (Transferee-Company).

2. Company Petition No. 118 of 2009 is filed by another Transferor-Company i.e., Vakharia Silk Mills Private Limited for sanctioning the Scheme of arrangement in the nature of Amalgamation of aforesaid two Transferor-Companies with the Transferee-Company u/s 391(2) of the Companies Act, 1956. It is submitted that all the petitioner Companies belong to the same group of management. It has been submitted that pursuant to the order passed by this Court in Company Application No. 173 of 2009, the meeting of the Equity Shareholders and Unsecured Creditors of one Transferor-Company-Colourtex Marketing Private Limited were ordered to be dispensed with, having obtained and produced on record the consent of the Equity Shareholders and Unsecured Creditors of the said Company in writing. It is submitted that there were no Secured Creditors of the said Company.

It has been submitted that similarly pursuant to the order passed by this Court in Company Application No. 174 of 2009, the meetings of the Equity Shareholders and Unsecured Creditors of the Vakharia Silk Mills Private Limited were also ordered to be dispensed with, having obtained and produced on record the consent of the Equity Shareholders and Unsecured Creditors of the Company in writing. It is submitted that there were no Secured Creditors of the said Company.

It is further submitted that pursuant to the order passed by this Court in Company Application No. 175 of 2009, having procured and produced on record the consent of the Equity Shareholders of the Company in writing, the meeting of the Equity Shareholders to approve the proposed Scheme of Amalgamation was ordered to be dispensed with. It is submitted that the petitioner of Company Petition No. 119 of 2009 being Transferee Company, the meeting of the Creditors was not required to be held.

3. All the Company Petitions were admitted and the admission and date of final hearing were ordered to be published in two newspapers namely ''Indian Express'', English daily in Vadodara Edition and ''Gujarat Mitra'', Gujarati daily in Surat Edition. It is reported that nobody has submitted any objection to the proposed Scheme of Amalgamation.

4. As per the order of admission made on 11-5-2009 in all these Petitions, the Notices were issued to the Regional Director and the Official Liquidator in case of Colourtex Marketing Private Limited and Vakharia Silk Mills Private Limited (Transferor-Companies).

5. In response to the Notices issued by this Court, a common Affidavit has been filed by one Mr. R.K. Dalmia, Deputy Registrar of Companies, Office of the Registrar of Companies, Ahmedabad along with Communication addressed by Joint Director for Regional Director dated 2-9-2009. It has been submitted in the said affidavit that as per clause 19 of the Scheme, the name of the Transferee-Company shall stand changed to ''Colourtex Marketing Private Limited'' (Transferor-Company''s name). However, Transferee-Company may be directed to comply with the provisions of Sections 20 and 21 of the Companies Act, 1956 in respect of filing of necessary forms with the Registrar of Companies, Gujarat and the proposed new name will be subject to availability of the same by the Registrar of Companies, Gujarat, since under the MCA 21 System, systemically it is not possible to reserve the names.

6. In response to the Notices issued by this Court, the Official Liquidator attached with this Court has also submitted his report in Company Petition Nos. 117 and 118 of 2009. Official Liquidator has raised certain objections by submitting report in Company Petition No. 119 of 2009. As mentioned in Paras 14 and 15 of the said report dated 21-12-2009 with respect to change of face value of shares from Rs. 1,000 to Rs. 10, the Official Liquidator seems to have some reservation. However, in view of the statement made by learned advocate appearing on behalf of the petitioner to the effect that by changing face value from Rs. 1,000 to Rs. 10, the share capital is not likely to be changed, meaning thereby, the

share capital will remain same and specific provisions made in clause 9.1 of the Scheme, the aforesaid can be taken care, which shall be dealt with hereinafter. Except aforesaid, no objections raised either by the Regional Director or by the Official Liquidator to the proposed Scheme of Amalgamation of the Transferor-Companies to the Transferee-Company.

7. Heard Mr. N.K. Pahwa, learned advocate appearing on behalf of the petitioner Companies; Official Liquidator and the Mr. Pankaj Champaneri, learned Assistant Solicitor General of India appearing for the Central Government. Having gone through the petitions, affidavits filed and documents produced on record and considering the submissions made in this behalf, this Court is satisfied that the amalgamation is in the interest of the Company, its members and Creditors of the Companies. As stated hereinabove, so far as Regional Director is concerned, he has no objections to sanction the proposed Scheme of Amalgamation of the Transferor-Companies with the Transferee-Company subject to comply with the provisions of Sections 20 and 21 of the Companies Act, 1956 with respect to filing of necessary forms with the Registrar of Companies, Gujarat and proposed new names will be subject to availability of the same by the Registrar of Companies, Gujarat.

Mr. Navin Pahwa, learned advocate appearing on behalf of the petitioner has stated at the bar that proposed new name shall be subject to the availability of the same and if the name as suggested is not available, the petitioner shall not insist for the same.

8. Now, so far as objections submitted by the Official Liquidator in Company Petition No. 118 of 2009 is concerned, Mr. Pahwa, learned advocate appearing on behalf of the petitioner has made statement at the bar that by changing face value of the Equity Shares from Rs. 1,000 to Rs. 10, the share capital will remain the same and considering clause 9.1 of the proposed Scheme of Amalgamation, it is clear that the scheme provides for issuance of shares at Rs. 10 each. Clause 9.1 provides that upon the Scheme becoming finally effective and in consideration of the transfer and vesting of the Undertaking of the Transferor-Companies in Transferee-Company, the Transferee-Company shall subject to the provisions of the Scheme and without any further application, act or deed, issue and allot at par the Equity Shares of Rs. 10 each credited as fully paid-up in the capital of the Transferee-Company to the Equity Shareholders of the Transferor-Companies, whose names appear to be recorded in the Register of Members of the respective Transferor-Companies. The objections submitted by the Official Liquidator is thus taken care. In the report, Official Liquidator has submitted that explanation and clarifications furnished by the petitioner companies do not seem that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or the public interest. However, how the affairs of the Companies have not been conducted in a manner prejudicial to the interest of its members or the public interest is not stated. Still considering the statement made on behalf of the petitioner, as stated hereinabove, the aforesaid objections

submitted by the Official Liquidator can be taken care.

9. For the reasons stated hereinabove, Company Petition Nos. 117,118 and 119 of 2009 are allowed. Prayers in terms of para 12(A) of all Company Petition Nos. 117,118 and 119 of 2009 are hereby granted with a clarification that the petitioners have to comply with clauses 20 and 21 of the Companies Act, 1956 in respect to filing of necessary forms with the Registrar of Companies, Gujarat and proposed new name will be subject to availability of the same with the Registrar of Companies, Gujarat.

10. In light of provision in the Scheme, the Transferor-Companies are hereby directed to be dissolved without winding upon the Companies filing certified copy of the order of this Court. The matter stands disposed of accordingly.

11. The cost to be paid by the petitioner companies to the Assistant Solicitor General of India, is quantified at Rs. 5,000 per petition and cost to be paid to the Official Liquidator is quantified at Rs. 4,000 per petition filed by two Transferor-Companies.