(2014) 02 GUJ CK 0070

In the Gujarat High Court

Case No : Company Petition No. 315 of 2013 in Company Application No. 320 of 2013 and Company Petition No. 316 of 2013 in Company Application No. 321 of 2013

In Re: Devarsons Industries Pvt. Ltd.

Date of Decision : 21-02-2014

Acts Referred:
Companies Act, 1956 — Section 391 392 393 394

Citation : (2014) 02 GUJ CK 0070

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Sangeeta N. Pahwa and Mr. M. Iqbal A. Shaikh, for the Appellant;

Judgement

R.M. Chhaya, J.—The present petitions are filed under the provisions of Sections 391 to 394 of the Companies Act, 1956 seeking sanction of the Scheme of Arrangement in the nature of demerger of Investment Division of Devarsons Industries Private Limited into Devarsons Trade in Private Limited. Devarsons Industries Private Limited, the Demerged Company, filed Company Application No. 320 of 2013 seeking dispensation of the meetings of the Equity Shareholders and Unsecured Creditors. By an order dated 17.12.2013 passed in Company Application No. 320 of 2013, this Court ordered dispensation of the meetings of the Equity Shareholders and Unsecured Creditors. It is reported that there are no secured creditors.

2. Devarsons Trade in Private Limited, the Resulting Company, filed Company Application No. 321 of 2013 seeking dispensation of the meeting of the Equity Shareholders. By an order dated 17.12.2013 passed in Company Application No. 321 of 2013, this Court ordered dispensation of the meeting of the equity shareholders. It was further ordered that this being the Resulting Company, the meeting of Creditors was not required to be held.

3. The petitioners thereafter filed Company Petitions seeking sanction of the Scheme of Arrangement.

4. By separate orders dated 26.12.2013, this Court admitted the petitions and

directed issuance of notice to the Regional Director in case of both the companies. This Court also directed publication of notice of petition in local dailies in both English and Vernacular editions.

5. Pursuant to the aforesaid orders, the petitioners have published the notice of petitions in "Indian Express" (English Daily) and "Lok Satta-Jan Satta" (Gujarati Daily), both having circulation in Ahmedabad on 04.01.2014. Both the petitioners have filed separate affidavits dated 20.2.2014 through their Directors in Company Petition No. 315 of 2013 and Company Petition No. 316 of 2013 in support of publication of advertisements.

6. In response to the notice to the Regional Director, Western Region, Department of Company Affairs, Mr. M. Iqbal A. Shaikh, learned Senior Central Government Counsel has appeared and has filed an affidavit of the Regional Director dated 19.02.2014. A perusal of the report would show that there are four observations made by the Regional Director.

7. In response to the report of the Regional Director, the petitioner in Company Petition No. 316 of 2013 has filed its reply dated 20.02.2014. In response to the first observation, the petitioner has stated that there will be no transfer of any employee from the Demerged Company to the resulting company. As such, this observation may ''not warrant any consideration.

8. In response to the second observation, the petitioner has stated that there is no accounting standard in relation to Demerger. It is open to the companies to follow such accounting policy/ practice as they deem fit. However, the Scheme is in compliance with the Accounting Standards. Mr. Pahwa further relied on the decision of the In Re: Gallops Realty P. Ltd., and submitted that Accounting Standard is applicable only in cases of amalgamation and not in case of Demerger.

9. In response to the third observation, the petitioner has stated that it is now settled vide series of decisions of various High Courts that transfer of part of the Authorized capital of the Demerged Company into the Resulting Company is permissible. Mr. Pahwa Ld. Counsel for the petitioner also cites Common Oral Judgment dated 06.12.2013 delivered by this Hon''ble Court in Company Petition No. 120 of 2013 with Company Petition No. 121 of 2013.

10. In response to the fourth observation, the petitioner has stated that the petitioner company had applied with the Citi Bank for sanction of loan. It is also stated on affidavit that the petitioner company have never availed loan from Citi Bank and thus the Citi Bank is not the creditor of the company.

11. In response to the last observation, the petitioner has stated that there is no response from the Income Tax Department to the proposed scheme. Without prejudice, it is stated on behalf of the petitioners that the petitioners will comply with applicable provisions of the Income Tax Act. There is no other observation made by the office of the Regional Director.

12. Having heard Mr. Navin K. Pahwa, learned Counsel for the petitioner companies, Mr. M. Iqbal A. Shaikh, learned Senior Central Government Counsel for the Regional Director and upon perusal of the report of the Regional Director, affidavit in reply filed on behalf of the petitioner Company and having considered the Scheme of Arrangement in the nature of demerger and the relevant documents on record, the Court finds it appropriate to grant sanction to the present Scheme of Arrangement in the nature of demerger.

13. The cost of the petitions are determined at Rs. 7,500/- per petition, which shall be paid by both the petitioners respectively, by drawing a Pay Order in favour of Mr. M. Iqbal A. Shaikh, learned Senior Central Government Counsel.

14. The Petitioner Companies are further directed to lodge a copy of this order, the schedule of assets of the De-merged undertaking as on the date of this order and the Scheme duly authenticated by the Registrar of this Court, 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.

15. The Petitioner Companies are directed to file a copy of this order alongwith a copy of the scheme with the concerned Registrar of Companies, electronically, along with E-Form 21 in addition to physical copy as per relevant provisions of the Act.

16. 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 alongwith Scheme as expeditiously as possible.