

(2016) 02 GUJ CK 0136

In the Gujarat High Court

Case No : Company Petition No. 432 of 2015 in Company Application No. 332 of 2015 and Company Petition No. 433 of 2015 in Company Application No. 331 of 2015

In Re: Digjam Textiles Limited

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) 02 GUJ CK 0136

Hon'ble Judges : Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Dharmishta Raval, Advocate, for the Appellant; Kshitij Amin for Devang Vyas, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Abhilasha Kumari, J.—1. Learned advocate for the petitioner submits that page-89 in Company Petition No. 433/2015 has been wrongly annexed, as it is a duplicate of page-90. She prays for permission to replace page-89 with the correct page. Permission to do so, is granted. Learned advocate for the petitioner further submits that insofar as Company Petition No. 432/2015 is concerned, page-83 has been wrongly annexed, as it is a duplicate of page-84. She prays for permission to replace page-83 with the correct page. She is permitted to do so.

2. These petitions have been filed by the Petitioner Companies for the sanction of the Scheme of Amalgamation between Digjam Limited and Digjam Textiles Limited and their respective creditors and shareholders ("Scheme") under Sections-391 to 394 of the Companies Act, 1956, along with the corresponding provisions of Companies Act, 2013.

3. Digjam Limited ("DL" or "Transferor Company") is a listed public limited company and the shares of DL are listed on BSE Limited ("BSE") and National Stock Exchange of India Limited ("NSE"). Digjam Textiles Limited ("DTL" or "Transferee Company") is an unlisted public limited company, the entire share capital of which is held by DL and its nominees.

4. The said Scheme is proposed in order to provide greater financial strength and flexibility which would result in maximizing overall shareholder value and improve the economic and competitive position of the combined entity; achieve greater efficiencies in operations with optimum utilization of resources, better administration and reduced cost; better financial, business and operational aspects and improved administrative control of the Amalgamated Company. The petitions give, in detail, the benefits envisaged due to the Scheme.

5. It is further the case of the petitioners that DL is a public limited company. The shares of DL are listed on BSE and NSE. In compliance with clause 24(f) of the listing agreement, DL had approached the concerned stock exchanges, and the approval/clearances obtained from the said exchanges had been placed on record.

6. With respect to DL, pursuant to order dated 02.11.2015, passed by this Court in Company Application No. 331 of 2015, the meeting of the Equity Shareholders of DL was held as per the directions given in the said order and the Scheme was unanimously approved by the Equity Shareholders. The Chairman had submitted a report dated 12.12.2015 in respect thereof. The meetings of the Preference Shareholders, Secured Creditors and Unsecured Creditors were dispensed with. This Court has also dispensed with the meeting of the Secured Creditors and directed the Transferor Company to send individual notices to the Secured Creditors of DL. The affidavit dated 14.12.2015, confirming the said compliance, had been placed on record.

7. Further, with respect to DTL, pursuant to the order dated 02.11.2015, passed by this Court in Company Application No. 332 of 2015, the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors was dispensed with.

8. The substantive petitions filed by the petitioner Companies were admitted, vide an order dated 18th December, 2015. The public notices for the same were duly advertised in the Ahmedabad edition of the English daily newspaper "Indian Express" and in the Gujarati daily newspaper "Jansatta", on 30.12.2015. The publication in the Government Gazette was dispensed with. The above facts are confirmed by two affidavits, both dated 23.01.2016, filed on behalf of the petitioner companies.

9. The petitioner-Transferor Company has also filed an Affidavit before this Court, wherein it is stated that individual notices dated 10th November, 2015 were served on the three Secured Creditors i.e. UCO Bank, State Bank of India and HDFC Bank Limited. It is submitted before this Court that in pursuance to the notices being served, no objections have been received from any of the Secured Creditors. It is further submitted that HDFC Bank has given its consent to the said Scheme.

10. Notice of the petition has been served upon the Regional Director (Western Region), in response to which Shri Devang Vyas, Assistant Solicitor General of India has filed his appearance in all the petitions and an affidavit dated 2nd

February, 2016 has been filed by the Regional Director, North- Western Region, Ministry of Corporate Affairs.

11. In the above affidavit, the Regional Director has, inter alia, made the following observations:

"a) The Hon"ble Court may be pleased to direct the petitioner companies to comply with the SEBI circulars as conveyed by NSE and BSE.

b) Hon"ble Court may therefore be pleased to direct the transferee company to ensure about the compliances of FEMA and RBI guidelines, in the matter, from time to time.

c) It is therefore submitted that the petitioner transferee company should pay the necessary fees including other fees and charges for alteration of its name to M/s. Digjam Limited in compliance of Section 13 of the Companies Act, 2013. The Hon"ble Court may therefore be pleased to direct the petitioner transferee company to comply with the relevant provisions of the Companies Act, Name availability guidelines and ensure the payment of applicable fees/charges for alteration of the name of the petitioner transferee company as M/s. Digjam Limited, besides payment of Stamp Duty payable as per rules of transfer of assets to transferee company on amalgamation.

d) The Hon"ble Court may therefore be pleased to direct the petitioner companies to undertake compliance of Income Tax Act and Rules in the matter."

12. In response to the first observation made by the Regional Director, Ms. Dharmishta Raval, learned advocate for the petitioners has submitted that DL has already complied with the said circulars of SEBI and has obtained NOC from the stock exchanges who have, in turn, obtained the same from SEBI, which have been placed on record. It is further stated that all the requirements of the circulars and all circulars of SEBI, as applicable, would be scrupulously adhered to by DL and DTL.

13. In view of the fact that the petitioners have already complied with the circulars of SEBI and have obtained NOC from the stock exchanges, who have in turn obtained the same from SEBI, the observation made by the Regional Director stands addressed. However, DL and DTL are directed to comply with the SEBI Circulars and the rules.

14. With reference to the second observation, Ms. Raval has submitted that Transferee Company would comply with the applicable FEMA and RBI guidelines at the time of issue of shares to the Non-Resident shareholders, pursuant to the sanction of the Scheme of Amalgamation.

15. With reference to the third observation, Ms. Raval, relying on a Judgment of this High Court in the matter of Mekaster Valves Engineering Services Private Limited (, [2009] Comp. Cases 593), submitted that under the settled principle of Single Window Clearance, all the changes proposed as an integral part of the

Scheme become operative upon the Scheme becoming effective by virtue of the fact that the Shareholders of the Transferee Company, while approving the Scheme as a whole, have also accorded the relevant consents as required respectively under Sections-13 and 14 of the Companies Act, 2013 and Section-394 of the said Act, or any other provisions of the statute, and there is no reason to undertake separate formalities for change in the name of the petitioner companies. Having regard to the undertaking given by the petitioner companies in the affidavit filed before this Court, to pay the necessary fees and charges, no further directions are required to be issued to the petitioner companies in this regard.

16. Dealing with the fourth observation, the petitioner companies undertake to comply with all the applicable provisions of the Income Tax Act and Rules. No further directions are required to be issued to the petitioner companies in this regard.

17. It may be noted that the Regional Director has, in his affidavit, also stated that as per the report of the Registrar of Companies, there is no complaint against the petitioner companies.

18. In response to the notice issued by this Court, the Official Liquidator has filed his Report dated 5th February, 2016, wherein, it is, inter-alia, stated that the Official Liquidator solicited certain details from the petitioner-Transferor Company, which were supplied. The Official Liquidator obtained investigation report dated 31st March, 2015 from M/s. Suresh R. Shah & Associates, Chartered Accountants, who submitted such investigation report after scrutinizing the books of accounts and affairs of the petitioner-Transferor Company. The Official Liquidator, after examining the details and the comments offered by the Chartered Accountants, has opined that in view of the report of the Chartered Accountants, the affairs of the petitioner-Transferor Company have not been conducted in a manner prejudicial to the interest of its members or to the public interest in terms of the second proviso to Section-394(1) of the Companies Act, 1956 and, therefore, DL may be dissolved without being wound-up.

19. As regards the observation raised by the Official Liquidator in his report under paragraph-19, stating that the petitioner-Transferor Company be directed to preserve its books of accounts, papers and records and not dispose the same without prior permission of the Central Government as per Section 396A of the Companies Act, 1956, it is submitted by Ms. Raval, upon instructions, that as observed by the Official Liquidator the books of account and papers would be preserved by the petitioner-Company as per Section-396A of the Companies Act, 1956.

20. In view of the above discussion, the observations made by the Regional Director having been addressed and the Official Liquidator having opined that the affairs of the petitioner-Transferor Company have not been conducted in a manner prejudicial to the interest of its members or to the public interest, in the

view of this Court, there does not appear to be any impediment in granting sanction to the Scheme of Amalgamation. From the material on record and on a perusal of the Scheme, the Scheme appears to be fair and reasonable and not in violation to any provisions of law or contrary to public policy. The amalgamation under the proposed Scheme appears to be in the interest of the companies and their members and creditors, therefore, the Scheme deserves to be sanctioned. Accordingly, the Scheme as proposed by the petitioner companies is hereby sanctioned. It is however, clarified that the sanctioning of this Scheme would not absolve the petitioners or anyone who is otherwise liable for any responsibility or liability, only on account of this sanctioning.

21. The petitioner companies shall pay towards professional charges to learned Assistant Solicitor General Rs. 10,000/- in respect of DL being listed company and Rs. 7,500/- in respect of DTL. The Official Liquidator shall be paid costs of Rs. 7,500/-, in respect of the petition filed by DL.

22. The petitioner Companies are further directed to lodge a copy of this order, the schedules of immovable assets pertaining to DL as on the date of this order and the Scheme duly authenticated by the Registrar, High Court of Gujarat, 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.

23. The petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-From INC-28 in addition to physical copy as per relevant provisions of the Act.

24. Filing and issuance of drawn up order is hereby dispensed with.

25. 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 along with Scheme as expeditiously as possible.

26. Registry to maintain copy of this order in each of the company petitions.