

(2005) 04 GUJ CK 0094

In the Gujarat High Court

Case No : Company Petition No's. 26 and 27 of 2005

In Re: Glofame Cotspin Industries Ltd.

Date of Decision : 15-04-2005

Acts Referred:

Companies Act, 1956 — Section 391, 391(3), 394, 80

Citation : (2006) 72 SCL 341

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

Bench : Single Bench

Advocate : Jitendra Malkan, Asst. Solicitor General, S.N. Soparkar, for Nanvati and Nanavati, for the Appellant;

Judgement

K.A. Puj, J.—These are the petitions filed by two petitioner-companies for sanction of a scheme of amalgamation of Glofame Cotspin Industries Ltd. (the transferor-company) with Welspun India Ltd. (the transferee-company) and their respective members and creditors, u/s 391 read with Section 394 of the Companies Act, 1956.

2. The transferor-company was incorporated and registered under the Companies Act, 1956, on March 14, 1992, under the name and style of J.M. Patel Sales Private Ltd. Its name has undergone several changes and the present name of the company was adopted from January 15, 2002. The transferor-company is a public limited company and the promoters are holding about 74.82 per cent, of the total issued, subscribed and paid up equity share capital of the company whilst financial institutions and the general public hold the remaining shares. The transferee-company was incorporated and registered under the Act on January 17, 1985, in the State of Maharashtra under the name and style of Welspun Winilon Silk Mills Private Ltd. Its name was changed to Welspun Polysters (India) Ltd. upon change in the status of private limited to a public limited company and thereafter, its registered office was shifted from the State of Maharashtra to the State of Gujarat. The present name of the company was adopted on October 12, 1995. The promoters of the company hold about 34 per cent, of the total issued, subscribed, and paid up equity share capital of the company whilst

financial institutions and the general public hold the remaining shares.

3. The transferor-company is a part of the Welspun group of companies and about 55.60 per cent, of its yarn is consumed by the transferee-company for weaving fabric. Considering the benefits of synergy, current industrial scenario and other benefits enumerated in the petition, it would be beneficial to have a composite unit for both spinning and weaving rather than have a stand alone spinning unit and a stand alone weaving unit, and therefore, it would be in the interest of the transferor-company to amalgamate/merge with the transferee-company as contemplated in the scheme.

4. Company Petition No. 26 of 2005 was admitted on February 11, 2005 and it was observed therein that both the petitioners have sought the order of sanction from this Court to the scheme of compromise and arrangement between the company and all its members and creditors of the company. Meetings of the shareholders and creditors of the company had been convened in pursuance of an order dated January 31, 2005, passed by this Court and the chairman appointed for the said meetings has submitted his report which is at page 459 of this petition. The chairman has reported that the compromise and/or arrangement was read out and explained to the persons attending the meetings and the same has been approved by the shareholders and the creditors. The petition was ordered to be advertised in Indian Express, English daily, Baroda edition and Gujarat Mitra, Gujarati daily, Surat edition along with Western Times (English and Gujarati) editions. Publication in the Official Gazettee was dispensed with. Notice was issued to the Central Government and the official liquidator was permitted to engage a chartered accountant from his panel and obtain the necessary report from him at the cost of the petitioner.

5. Similarly, Company Petition No, 27 of 2005 was admitted on February 11, 2005 and it was observed therein that the meetings of the shareholders and creditors of the company had been convened in pursuance of an order dated January 31, 2005, passed by this Court and the chairman appointed for the said meetings has submitted his report which is at page 462 of the said petition. The chairman has reported that the compromise and/or arrangement was read out and explained to the persons attending the meetings and the same has been approved by the shareholders and the creditors. The court has thereafter passed the order regarding advertisement in the same manner as in the case of Company Petition No. 26 of 2005.

6. Pursuant to the aforesaid orders, affidavit of publication was filed on February 26, 2005, along with which necessary newspaper cuttings were attached.

7. It has been submitted that no objection was received from any one. Even after publication of advertisement, no one has filed any objection before this Court to the said petitions.

8. In response to the notice to the official liquidator, he has submitted his report on March 18, 2005, wherein he has stated that the auditors appointed for the

purpose of scrutiny and investigation of the books of account and affairs of the company have submitted their report and accordingly concluded that the affairs of the company have not been conducted in a manner prejudicial to public interest. The auditor has further stated that in view of their conclusion at para. 14 (a) and (b) and also taking into consideration their observation made in para. 6(2), they have stated that in their opinion, the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or the public in general.

9. In para. 6(2) of the report the auditor has observed that the depreciation on the fixed assets is calculated as per Schedule XIV to the Companies Act, 1956, on straight line method. The Income Tax assessment procedure for the year 2002-03 is in the process. There are no pending demand raised against the company except the fact that the Central Excise Department has raised the demand of Rs. 1.74 crores against the company against which the company has filed appeals before the Appellate (Tribunal). The company has been granted tax exemption eligibility certificate by the Industries Commissioner for ad hoc amount of Rs. 1,506 lakhs under the incentive scheme (1995). Against this, the company has availed of exemption under the above exemption certificate for Rs. 3,344.97 lakhs on January 31, 2005 and the final exemption certificate is yet to be issued in favour of the company for the enhanced amount.

10. The auditor has further submitted that except the abovementioned demand, there are no pending demands with any other Central Government authorities. There are no cases filed against the company. The company has not materially defaulted and is adhering to the provisions of the law as verified from the records of the company and as informed by the management. Tax audits are regularly carried out, returns of Income Tax are filed in time and the accounts have been filed with the Registrar of Companies, Gujarat till the year ended on March 31, 2004. The auditor has also observed that the company does not have any subsidiary or it is not a subsidiary to any other company. He has further submitted that the company has not provided for the contingent liabilities in respect of certain items under A to J which are mentioned in the said report.

11. Since no major objection is raised by the auditor against the scheme of amalgamation, the auditor as well as the official liquidator both have stated that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members and public in general.

12. Pursuant to the notice issued by this Court to the Regional Director, Mr. Jitendra Malkan, the learned Assistant Solicitor-General has filed his appearance and produced the Regional Director's report dated March 23, 2005, on the record of this case. An affidavit is filed by Shri Devandra Krishna Patil, an authorised signatory of both the companies dealing with the objections raised by the Regional Director. Mr. Malkan as well as Mr. Soparkar both are heard on the issues raised by the Regional Director. The Regional Director in his report has observed that the Registrar of Companies, Gujarat, has specifically pointed out

that by virtue of scheme of arrangement between the above two companies which was sanctioned earlier by this Court on March 20, 2001, in Company Petition No. 37 of 2001 connected with Company Application No. 12 of 2001, the spinning division of Welspun India Ltd. (WIL) was transferred to M/s, Glofame Cotspin Industries Ltd. (GCIL). In the present petition, the status of the companies is changed and reversed, i.e., to say CGIL is now the transferor-company and WIL is referred as the transferee-company and whatever assets and liabilities transferred to GCIL from WIL by order dated March 20, 2001, more or less same assets and liabilities will now be transferred back to WIL from GCIL through the present scheme of amalgamation and GCIL is proposed to be dissolved without winding up.

13. So far as this objection is concerned, it is stated that there would not be any objection if the same assets have been transferred by the transferor-company to the transferee-company. As a matter of fact, the Regional Director has simply mentioned by way of the facts but while mentioning these facts, he has not raised any objection to that effect. By doing that, there is no breach of any statutory provision and ultimately the managements of both the companies have thought it fit to retransfer the said assets and they have acted accordingly by presenting the scheme before this Court. Since the scheme has been approved by the members and creditors, there is no reason for withholding the sanction.

14. The second objection raised by the Regional Director is that the main issue raised by the Registrar of Companies, Gujarat is that although both companies have filed the copy of the unstamped order dated March 20, 2001, a copy of the duly stamped order of this Court dated March 20, 2001, has not yet been submitted to the Registrar of Companies as the adjudication order passed by the Collector of Stamps is disputed by these companies. The order dated March 20, 2001 was given effect with effect from April 25, 2001, by both the companies without submitting copy of the duly stamped order u/s 391(3) read with Section 394 of the Act and also before certifying the same by the Registrar of Companies. As the issue relates to the Government revenue and a new scheme is filed before this Court when the earlier stamp matter is disputed and pending, the issue regarding pending adjudication and giving effect to the earlier order is required to be decided by this Court on the merits. Mr. Malkan has relied on the decision of the Honourable Supreme Court in the case of Hindustan Lever and Another Vs. State of Maharashtra and Another,

15. So far as this objection is concerned, Mr. Soparkar has submitted that the petitioner-company has challenged the order of Collector of Stamps dated November 26, 2001 and adjudication of the appeal is pending. A copy of the appeal memo filed by the petitioner is attached along with the affidavit. The transferee-company has undertaken to pay stamp duty as per the final adjudication in the said appeal subject to its further right of appeal. He has, therefore, submitted that the said objection has no bearing on the sanctioning of the present scheme by this Court.

16. The third objection raised by the Regional Director is that in terms of the order passed by this Court on March 20, 2001, in Company Petition No. 37 of 2001 at paras. 2A and 2B of the scheme, GCIL has issued preference shares. Consequent to that scheme and more or less those shares are being transferred back in same form to WIL in the present scheme for issue by WIL. Some of the preference shares are already due for redemption by the transferor-company. In the opinion of the Registrar of Companies in view of the provisions of Section 80 of the Act, these preference shares should be redeemed without issue by the transferee-company.

17. With regard to this objection, Mr. Soparkar has submitted that the transferor-company has outstanding redemption preference shares to the tune of Rs. 80 lakhs as on April 6, 2005. In view of the losses suffered by the transferor-company and in view of the pendency of the present proceedings, the transferor-company has not been able to redeem the said shares. However, the transferee-company undertakes to redeem all preference shares which have fallen due for redemption on or before April 6, 2005, within 30 days from the date of final order being passed in these petitions.

18. Mr. Soparkar has therefore, submitted that having regard to these clarifications and undertakings the court should allow the present petitions and grant sanction to the scheme, as the concerns raised by the Regional Director are satisfied.

19. After having heard learned advocate appearing for the petitioner and after having considered the report submitted by the official liquidator based on chartered accountant's report as well as the report of the Regional Director, the court is of the view that the objections raised by the Regional Director do not merit acceptance and that the scheme of amalgamation presented by the petitioners is not contrary to the public interest nor is it against the interest of the members of the company. All objections raised by the Regional Director as well as official liquidator have been duly explained and they would not in any way affect the scheme in question. The reliance placed by Mr. Malkan on the decision of the Honourable Supreme Court in the case of Hindustan Lever and Another Vs. State of Maharashtra and Another, is uncalled for as nobody claims for dispensation of filing of duly stamped certified copy of the order of this Court passed on March 20, 2001 in Company Petition No. 37 of 2001, nor is anybody claiming exemption from payment of requisite stamp duty. Effect was given subject to the outcome of the adjudication of the claim in appeal and in any case, the transferee-company has undertaken to pay stamp duty as per the decision in appeal, subject to its further right to challenge the said order. By virtue of the present scheme, the liability which may arise as a result of the decision in appeal will not be affected in any manner and even if the transferor-company may be dissolved without winding up, the authority can certainly recover the outstanding stamp duty from the transferee-company. The court, therefore, grants its sanction to the scheme of arrangement between Glofame Cotspin Industries Ltd.

with Welspun India Ltd. The scheme is, therefore, approved and the prayers made in para. 32(1) of the petitions are hereby granted.

20. The petitioners are directed to pay a sum of Rs. 3,500 each being the costs to Mr. Jitendra Malkan, the learned Assistant Solicitor-General appearing for the Central Government.

21. Both these petitions are accordingly disposed of.