

(2012) 03 GUJ CK 0003

In the Gujarat High Court

Case No : Company Petitions No"s. 20 and 21 of 2012 in Company Applications No"s. 518 and 519 of 2011

In Re: Integra India Group Co. Ltd.

Date of Decision : 23-03-2012

Acts Referred:

Companies Act, 1956 — Section 100, 100, 101, 101(2), 102

Citation : (2012) 172 CompCas 289

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

Bench : Single Bench

Advocate : Swati Soparkar, for the Appellant; P.S. Champaneri, for the Respondent

Judgement

R.M. Chhaya, J.—The present petitions are filed for sanction of the composite scheme of arrangement in the nature of amalgamation of Integra India Group Co. Ltd., with Integra Engineering India Ltd., and also for reduction of share capital of Integra Engineering India Ltd., proposed under sections 391 and 394 read with sections 100 and 103 of the Companies Act, 1956. The scheme is produced at annexure C in both these petitions.

2. It has been submitted that both the petitioner companies are the listed public limited companies and the shares are listed on the Bombay Stock Exchange for both the companies and also on the Vadodara Stock Exchange for the transferor company. The approvals from the concerned stock exchanges have already been obtained before filing the proceedings before this court and the same are placed on record. It has been further pointed out that substantial shareholding in both these companies belong to a common foreign company, viz., Integra Holding AG of Switzerland.

3. The petitions give details of the current commercial activities of both the companies. Briefly, Integra India Group Co. Ltd., the transferor company is engaged in manufacturing of railway signaling and control systems and has a turnover of more than Rs. 10 crores during last financial year. Integra Engineering India Ltd., the transferee company has been currently engaged in

manufacturing of draw frames, used in textile mills and has turnover of more than Rs. 4 crores. The petitions provide the historical background of the transferee company and the circumstances under which it has come out of the situation of sick industrial undertaking after paying off all its liabilities. The financial details as presented before the court indicate that both the companies are currently loss making companies. However, it is envisaged that the proposed arrangement shall provide the synergic benefits. Further the expected cost savings and economies of scale shall help the amalgamated company to improve its financial strength. The petitions provide in detail, the commercial advantages that would flow by virtue of the proposed amalgamation. It is visualised by the board of directors of the petitioner-company that this will be beneficial to the shareholders, creditors and investors.

4. Further, the transferee company proposes to recognise its capital structure by reducing its issued and subscribed equity share capital in order to make its balance-sheet realistic by writing off its accumulated losses, as per the provisions of sections 100 to 104 of the Companies Act, 1956. The same is proposed as an integral part of the proposed composite scheme of arrangement.

5. Pursuant to the order dated November 11, 2011, passed by this court (Coram: K.M. Thaker, J.) in Company Application No. 518 of 2011, meeting of the secured creditor of the transferor company was ordered to be dispensed with in view of the written approval of the scheme and separate meetings of the equity shareholders and unsecured creditors of the transferor company were ordered to be convened on December 22, 2011, after issuance of due notices to the concerned parties as well as the public advertisement for the purpose of seeking approval from all the concerned parties to the proposed scheme. Pursuant to the directions issued by this court in Company Application No. 518 of 2011, meetings were held after due notice to the concerned parties as well as the public advertisement on December 22, 2011 and the proposed scheme was duly approved unanimously, i.e., 100. per cent. in number and 100 per cent. in value at the respective meetings of the equity shareholders, secured creditors and unsecured creditors. Pursuant to the said meetings, the chairman appointed for such purpose has filed report along with the affidavit dated January 4, 2012.

6. Similarly, pursuant to the order dated November 11, 2011, passed by this court (Coram: K.M. Thaker, J.) in Company Application No. 519 of 2011, as the consent letter of sole preference shareholder was produced, meeting of the preference shareholder was dispensed with. Pursuant to the directions issued by this court, meeting of the equity shareholders to the proposed scheme was ordered to be convened on December 23, 2011, after issuance of individual notices to the equity shareholders as well as the public advertisement. The result of the said meeting was duly reported to this court by the chairman appointed for such purpose by report and affidavit dated January 4, 2012, together with the copy of the proceedings of the meeting showing that the scheme is approved by 100 per cent. in number and 100 per cent. in value in the meeting of the equity

shareholders. It has also been pointed out that the resolution passed in the meeting of equity shareholders specifically includes the requisite approval as envisaged under several other sections including section 100 of the Companies Act, 1956, also. Vide aforesaid order dated November 11, 2011, in light of the submission that the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and the order of the court sanctioning the scheme shall be deemed to be an order u/s 102 of the Companies Act, 1956, confirming the reduction, separate procedure for reduction of capital and the procedure u/s 101(2) read with rules 48 to 65 of the Companies (Court) Rules, 1959, were dispensed with.

7. The substantive petitions for sanction of the scheme were filed by the petitioner-companies, which were admitted on January 23, 2012. The notice for the hearing of the petitions were duly advertised in the newspapers being The New Indian Express and Divya Bhaskar both Ahmedabad editions of February 6, 2012 and the publication in the Government Gazette was dispensed with as directed in the said orders. Pursuant to the said publication in the newspapers, no objections were received by the petitioner or its advocate. However, communication entered into with one of the shareholders holding 200 shares of the transferee company has been placed on record which indicates that the said shareholder had asked for information and copies of the petitions which were duly supplied by the company and no objections have been filed by the said shareholder thereafter with regard to the scheme.

8. Notice of the petition have been served upon the Central Government and Mr. P.S. Champaneri, learned Assistant Solicitor General appears for the Central Government. An affidavit dated March 1, 2012, has been filed by Mr. Kashmir Lal Kamboj, the Regional Director, (In Charge) Northwestern Region, Ministry of Corporate Affairs, whereby several observations are made. The same pertain to-- (a) the approval to the scheme from the creditors of the transferee company; (b) the accounting treatment to be followed by the transferee company; and (c) clause 10.2.5 of the scheme whereby, the transferee company has provided that "the company shall not be required to add "and reduced" after its name".

9. The attention of this court is drawn to the additional affidavit dated March 13, 2012, whereby, all the above issues have been dealt with. I have further heard submissions made by Mrs. Swati Soparkar, the learned advocate appearing for the petitioners as follows:

(a) It has been submitted that the said transferee company has no secured creditors. So far as the unsecured creditors are concerned, their rights and interests are not likely to be affected in any manner due to the proposed scheme of amalgamation. As explained vide paragraph 7.3 of the petition, the amalgamation is proposed between two companies belonging to the same group of management which are involved in the commercial activities of the same nature. It is envisaged that the economies of scale and synergic benefits shall be

achieved which will be in the interest of the shareholders as well as the creditors of the amalgamated company. The said contention is further supported by the fact that even after the publication of notice of petition in newspapers both at Ahmedabad and Vadodara, no creditor has come forward with any objections. Considering the facts and circumstances, it is not found necessary to issue any such directions to obtain the approval of the unsecured creditors of the transferee company and the observation of the Regional Director is hereby overruled.

(b) It has been undertaken by the transferee company that upon the scheme being effective, the transferee company shall pass the necessary accounting entries under the pooling of interest method, in compliance with the Accounting Standard 14, issued by the Institute of the Chartered Accountants of India and in compliance with section 211(3A) of the Companies Act, 1956. The transferee company is hereby directed that upon scheme being effective, it shall pass the accounting entries in its books in compliance with the said Accounting Standard 14 and section 211(3A) of the Companies Act, 1956.

(c) It has been observed by the Regional Director that the hon"ble court should direct the petitioner-company to add the words "and reduced" as suffix to its name for a period of five years or more in order to enable the prospective investors, other shareholders and general public dealing with the company to know the said fact, even in future. As regards the objection raised by the Regional Director, it is pointed out on affidavit that as such, the whole scheme was placed before the equity shareholders in the meeting so held. As per the order passed by this court, as aforesaid, all the relevant information were supplied to the shareholders. It was pointed out that, in fact, the resolution has been passed whereby, the scheme of amalgamation is approved by 100 per cent. in number and 100 per cent. in value in the meeting of equity shareholders and no one has raised any such objection while exercising their commercial wisdom on any objection or any other issue in this regard. As it can be seen from the order dated November 11, 2011, passed by this court in Company Application No. 518 of 2011 that even this fact was pointed out before this court, as noted by this court in the said order that as the company is listed with the Bombay Stock Exchange as well as the Vadodara Stock Exchange, no objection certificates from both the stock exchanges were placed on record.

(d) It is further pointed out that the reduction of capital proposed under the present scheme does not involve diminution of any liability towards unpaid share capital or payment to the shareholder of any paid-up share capital. The reduction is proposed merely to write off past accumulated losses and make its financial statements realistic. In view of this, it has been reiterated that there is no justification or special reason for issuing such direction to add "and reduced" as a suffix to its name. It has been therefore prayed on behalf of the petitioner that no such direction be issued by this hon"ble court while sanctioning the scheme. Moreover, it has no secured creditors and has not proposed any compromise with

the unsecured creditors. In fact, it has been specifically asserted that the proposed scheme does not cause any prejudice to its creditors and their rights and interests are not in any way affected. It has been categorically stated that the petitioner shall fulfil all its liabilities in the normal course of business. Hence, interest of the shareholders, creditors or public at large is not likely to be affected due to the proposed scheme. It is also pointed out that while issuing the no objection certificate, the concerned stock exchanges, which otherwise protect the interest of the shareholders and investors have not found it necessary to add such a stipulation.

10. Considering the facts and circumstances of the present case and considering the submissions made, in my view it is not necessary to issue the directions to add the words "and reduced" as suffix to the name of the company for any period.

11. Considering all the facts and circumstances and taking into account all the contentions raised by the affidavits and reply affidavits and the submissions during the course of hearing, I am satisfied that the observations made by the Regional Director, Ministry of Corporate Affairs do not survive. I have come to the conclusion that the present scheme of arrangement is in the interest of its stakeholders, viz., shareholders, creditors as well as in the public interest and the same deserves to be sanctioned.

Prayers in terms of paragraph 21(a) of Company Petition No. 20 of 2012 for the transferor company and prayers made in paragraph No. 22(a) and (b) as well as the minutes as u/s 103 in terms of paragraph 17 of Company Petition No. 21 of 2012 for the transferee company are hereby granted. The petitions are disposed of accordingly. So far as the costs to be paid to the Central Government Standing Counsel is concerned, I quantify the same at Rs. 7,500 per petition. The same may be paid to learned counsel appearing for the Central Government. The cost of Rs. 7,500 be paid to the office of the official liquidator for the transferor company.