

(2010) 05 GUJ CK 0022

In the Gujarat High Court

Case No : Company Petition No"s. 186, 187, 188 and 189 of 2009 in Application No"s. 250, 251, 252 and 253 of 2009

In Re: M.T. Shroff Finance (P.) Ltd.

Date of Decision : 06-05-2010

Acts Referred:

Companies Act, 1956 — Section 17, 21, 23, 396A

Citation : (2010) 102 SCL 46

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Harmish K. Shah, for the Appellant; P.S. Champaneri, for the Respondent

Judgement

M.R. Shah, J.—Company Petition No. 186 of 2009 has been preferred by the petitioner - M.T. Shroff Finance Pvt. Ltd. (Transferee-Company) to sanction the proposed scheme of amalgamation of Aakaar Leasing and Construction Pvt. Ltd. (Transferor-Company), Giriraj Enterprise Pvt. Ltd. (Transferor-Company) and Landmark Structures Pvt. Ltd. (Transferor-Company) with the petitioner M.T. Shroff Finance Pvt. Ltd. (Transferee-Company).

2. Company Petition Nos. 187 to 189 of 2009 have been preferred by the respective Transferor-Companies to sanction the proposed scheme of amalgamation of respective Transferor-Companies i.e.:

(i) Aakaar Leasing and Construction Pvt. Ltd.

(ii) Giriraj Enterprise Pvt. Ltd. and

(iii) Landmark Structures Pvt. Ltd.

with M.T. Shroff Finance Pvt. Ltd. Transferee-Company.

3. It is submitted that vide order dated 20-8-2009, this Court in Company Application No. 252 of 2009 passed an order to dispense with the meetings of the Equity Shareholders of the Transferee-Company, having obtained and produced on record consent letters of Equity Shareholders of the Transferee-

Company on record. At that time, the statement was made that there are no Secured Creditors and Unsecured Creditors of Transferee-Company.

4. It is further reported that earlier vide order dated 20-8-2009 this Court in Company Application No. 250 of 2009 passed an order to dispense with the meeting of Equity Shareholders of the petitioner of Company Petition No. 187 of 2009 i.e., Giriraj Enterprise Pvt. Ltd., having obtained and produced on record his consent letters of all the Equity Shareholders of the said Company. At that time, statement was also recorded that there are no Secured Creditors and Unsecured Creditors of the said Transferor-Company.

5. It is submitted that earlier vide order dated 20-8-2009, this Court in Company Application No. 251 of 2009 passed an order to dispense with the meeting of Equity Shareholders of the petitioner of Company Petition No. 188 of 2009 i.e., Aakaar Leasing and Construction Pvt. Ltd. having obtained and produced on record his consent letters of all the Equity Shareholders of the said Company. At that time, statement was also recorded that there are no Secured Creditors and Unsecured Creditors of the said Transferor-Company.

6. It is further submitted that earlier vide order dated 20-8-2009, this Court in Company Application No. 253 of 2009 passed an order to dispense with the meeting of Equity Shareholders of the petitioner of Company Petition No. 189 of 2009 i.e., Landmark Structures Pvt. Ltd. having obtained and produced on record his consent letters of all the Equity Shareholders of the said Company. At that time, statement was also recorded that there are no Secured Creditors and Unsecured Creditors of the said Transferor-Company.

7. As per the order of admission made on 20-8-2009, in all these petitions, the notices were issued to the Regional Director and to the Official Liquidator in case of Transferor Companies. Notices of petitions had also been published as directed by this Court in "Indian Express "(English Daily) and "Loksatta Jansatta" (Gujarati Daily) both Vadodara edition. Publication in the Government Gazette had also been dispensed with as directed in the order dated 20-8-2009. No one has come forward with any objection/s to the petitions.

8. Having served with the notices of respective Company Petitions upon the Regional Director, a common Affidavit is filed by the Regional Director affirmed by Rakesh Chandra, Director of Western Region, Ministry of Corporate Affairs, Mumbai and following objections are raised in paragraph No. 6, as under:

6. That the Deponent further submits that:

(a) the Transferee-Company is a Non-Banking Finance Company, hence the Transferee-Company may be directed to file a copy of the scheme along with the copy of this Hon'ble Court's order on this petition within 30 day's from the date of order, with the RBI.

(b) As per Clause 11 of the scheme the name of the Transferee-Company is proposed to be changed to "Landmark Structures Pvt. Ltd.". In this connection

Transferee-Company may be directed to comply with the provisions of Sections 21 and 23 of the Companies Act, 1956 in respect of filing of necessary forms with the Registrar of Companies and the proposed new name will be allowed subject to availability of the same, by the Registrar of Companies since under the computerized MCA 21 System of allotting the names, it is systematically not possible to reserve the names. Therefore, the name if available at the time of filing of such application, shall be made available by the Registrar of Companies, Gujarat.

(c) It appears that the main object of the Transferee-Company is Financial Activity but at present no activities are carried out by the Transferee-Company. Hence, the Transferee-company may be directed to change its object clause suitably as per provisions of Section 17 of the Companies Act.

The above facts being "material facts" in respect of the Transferee-Company are brought to the notice of this Hon"ble High Court for information.

(d) The Hon"ble High Court vide its order dated 20-8-2009 in Company Application Nos. 260 to 263 of 2009 (Four applications) has made observation in Para 2 of the said order that the "appointed date" shall be concluded by this Court at the time of sanctioning of the scheme. Hence, it is requested this Hon"ble Court may issue necessary direction in this regard.

9. It is submitted that save and except as stated in paragraph Nos. 6(a), (b), (c) and (d), the scheme is not prejudicial to the interest of the shareholders and public and therefore, it is requested to pass an appropriate order.

10. Notices of admission of the petitions of the Transferor-Companies have been served on the Official Liquidator attached to the High Court of Gujarat. The Official Liquidator has placed on record the reports dated 24-2-2010 in respective petitions filed by the Transferor-Companies i.e.:

(i) Aakaar Leasing and Construction Pvt. Ltd.

(ii) Giriraj Enterprise Pvt. Ltd. and

(iii) Landmark Structures Pvt. Ltd.

11. One M/s. P.N. Goradia and Co., Chartered Accountant, was appointed by the Official Liquidator and as per the Investigation Report by the Chartered Accountant, it is stated that the Chartered Accountant has arrived at the conclusion that the affairs of the Company have been conducted in a manner which are not prejudicial to the interests of the Members of the Company, its Creditors or the Public at large. On the basis of the said report, Official Liquidator has also opined that the affairs of the petitioner-company have not been conducted in a manner prejudicial to the interest of its Members or the public interest and as requested to direct the respondent-company to preserve its books, papers and records for a period of 8 (eight) years from the date of sanctioning of the scheme of amalgamation and not to dispose of the records

without prior permission of the Central Government u/s 396A of the Companies Act, 1956 before the aforesaid period.

12. Shri Harmish K. Shah, learned advocate appearing on behalf of the respective petitioners has submitted that the name of the Transferee-Company proposed to be changed as "Landmark Structures Pvt. Ltd." subject to availability of the said name and the Transferee-Company shall comply with the provisions of Sections 21 and 23 of the Companies Act, 1956 in respect of filing of the necessary forms with the Registrar of Companies and the proposed new name be allowed subject to availability of the same by the Registrar of Companies. It is also further stated by Shri Harmish K. Shah, learned advocate appearing for the petitioners that the Transferee-Company shall also change its bodies, clause suitably as per the provisions of Section 17 of the Companies Act, 1956.

13. Shri P.S. Champaneri, learned Asstt. Solicitor General of India appearing on behalf of the Central Government has submitted that even the "appointed date" on sanctioning of the scheme shall be fixed by this Court considering the specific order passed by this Court in its order dated 20-8-2009 in Company Application Nos. 262 to 263 of 2009.

14. Heard Shri Harmish K. Shah, learned advocate appearing for the respective petitioners, Official Liquidator and Shri P.S. Champaneri, learned Asstt. Solicitor General of India appearing for the Central Government. Having gone through the objections, affidavits filed and the documents produced on record and having considered the submissions made in this regard and upon/been satisfaction/satisfied that the amalgamation shall be in the interest of the respective Companies and their Members and the Creditors, the same deserve to be sanctioned/approved subject to following directions.

15. In view of the above and for the reasons stated above, proposed scheme of arrangement/amalgamation of respective Transferor-Companies i.e., (i) Aakaar Leasing and Construction Pvt. Ltd. (ii) Giriraj Enterprise Pvt. Ltd. and (iii) Landmark Structures Pvt. Ltd. with the petitioner of Company Petition No. 186 of 2009 i.e., M.T. Shroff Finance Pvt. Ltd. (Transferee-Company) is hereby sanctioned and approved and prayer in terms of paragraph No. 16(a) in respective petitions are hereby granted on conditions that proposed new name of the Transferee-Company shall be allowed subject to availability of the same.

15.1 The Transferee-Company to comply with the provisions of Sections 21 and 23 of the Companies Act, 1956 in respect of the changing of the necessary forms with the Registrar of Companies.

15.2 Transferee-Company to change its object clause suitably as per provisions of Companies Act, 1956 and on sanctioning of the scheme. The change be notified to the RBI also. It is ordered that appointed date for sanctioning of the scheme shall be 16-5-2010.

16. All these petitions stand disposed of accordingly. The cost to be paid by the petitioner-Company to the Asstt. Solicitor General of India, Shri P.S. Champaneri, which are quantified at Rs. 5,000 per petition and the cost to be paid to the Official Liquidator which is quantified at Rs. 4,000 in case of respective transferor companies.