(2010) 05 GUJ CK 0020

In the Gujarat High Court

Case No : Company Petition No. 201 of 2009

In Re: RIDS Securities Ltd.

Date of Decision : 06-05-2010

Acts Referred:

Citation : (2010) 103 SCL 53

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

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

Judgement

M.R. Shah, J.—The present Company Petition has been filed by the petitioner Rids Securities Limited (the transferee Company) seeking sanction of a Scheme of Arrangement in the nature of Amalgamation of Tricom Agrochem Limited (the transferor Company) with the petitioner transferee Company. It is submitted that the transferor Company having its registered office in Mumbai has taken out the proceedings in the Bombay High Court by way of Company Petition No. 799/2009 connected with Company Application No. 907/2009 and the Scheme has been sanctioned by the Bombay High Court vide its order dated 29-1-2010.

2. It has been submitted that vide order dated 31-7-2009 in Company Application No. 286/2009 (Annexure F to the petition at pages 62 to 69), meeting of the equity shareholders of the petitioner Company was directed to be convened and accordingly, the meeting of the equity shareholders of the petitioner transferee Company was convened on 10-9-2009 as directed by this Court and it is reported that the Scheme has been unanimously approved at the said meeting. The Chairman''s report along with the affidavit dated 14-9-2009, reporting that in the meeting convened on 10-9-2009, the equity shareholders of the transferee Company have unanimously approved the proposed Scheme of Amalgamation, is placed on record at Annexure G to the petition. It is further submitted that there are no secured or unsecured loan creditors of the petitioner transferee Company.

3. The petition was admitted on vide order dated 25-9-2009. The public notice

for the same were duly advertised in the newspapers, ''The Indian Express ''English daily, and ''Divya Bhaskar ''Gujarat daily both Ahmedabad Editions dated 7-10-2009 and the publication in the Government gazette was dispensed with. Affidavit dated 3-11-2009 confirms the same (annexed at page 79). No one has come forward with any objections to the said petitions even after the publication. The same has been further confirmed by the additional affidavit dated 5-3-2010.

4. Notice of the petition has been served upon the Central Government, Regional Director, Western Region, Ministry of Company Affairs, Mumbai and Shri R.M. Chhaya, learned Central Government Standing Counsel has appeared for the Central Government. An affidavit dated 29-1-2010 affirmed by Shri Rakeshchandra, Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai is filed on behalf of the Central Government. The Central Government through Regional Director has made the following observations/objections which are as under:

(i) The Transferee Company is listed company with Bombay Stock Exchange Limited and Ahmedabad Stock Exchange and has furnished No Objection Letter from BSE only and the No Objection Letter from ASE is awaited. It is submitted that the Transferee Company being listed company, and as per SEBI guidelines the Fairness Opinion of the Merchant Bankers on Share Exchange Ratio is required to be obtained and same shall be made available to the members at the time of meeting, which the petitioner company has not compared with.

(ii) The Transferee Company shall ensure that the new shares allotted to the shareholders of the Transferor Company are listed and permitted to trade by the concerned Stock Exchanges in which its share are listed.

(iii) The business of the Transferor Company, as also Transferee Company is related to agri based one. The Transferee Company''s name is not in consonance with that of the business carried on by the Transferee Company. Hence, the Transferee Company may be directed change its name suitably.

It has been submitted that save and except as stated in para 6(iii) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders and public.

5. The observations/objections made by the Regional Director in his affidavit dated 29-1-2010 recorded hereinabove has been duly answered by the petitioner Company by way of additional Affidavit dated 5-3-2010 affirmed by one Shri Jitendra Wala, the Director and the Authorized Signatory of the petitioner Company. All observations/objections made by the Regional Director have been answered in Paras 3 to 6 of the aforesaid additional Affidavit which reads as under:

3. As regards the first observation therein, it is respectfully submitted that in compliance with clause 24(f) of Listing Agreement and SEBI guidelines, the petitioner Company had intimated the concerned Stock Exchanges vide letters

dated 15th January, 2009. After due deliberations and submissions of necessary information from time to time, the Bombay Stock Exchange had issued No Objection Certificate vide their letter dated 20th May, 2009. Whereas the Ahmedabad Stock Exchange did not respond to the said letter written by the company. The petitioner also sent a reminder in this regard to the Ahmedabad Stock Exchange, vide its letter dated 25th May, 2009. The petitioner received a letter from the said Stock Exchange on 15th June, 2009 demanding the payment of the listing fees for the year 2009-10. The petitioner responded to the same immediately and vide letter dated 27th June, 2009, made the payment of the requisite listing fees by Demand Draft dated 27th June, 2009. The receipt of the same was acknowledged by the concerned Stock Exchange on 29th June, 2009. However, on response was received with regard to the No Objection Certificate from the Ahmedabad Stock Exchange. It is respectfully submitted that the Bombay Stock Exchange Limited, being the premier stock exchange of the country, the petitioner company proceeded with the necessary applications being filed for obtaining the directions from the Hon''ble Court vide application filed on 21st July, 2009. Vide an additional Affidavit dated 25th July, 2009, filed in the Co. Application 286 of 2009, a part of the correspondence has already been placed on record. A complete set of copies of all the correspondence is annexed herewith as Annex A. It is further respectfully submitted that the aforesaid clause of the Listing Agreement requires only the intimation to the concerned stock exchange and since the said Ahmedabad Stock Exchange has not raised any objection till date, it is assumed that the said stock exchange is not opposed to the proposed scheme.

4. Further, it is respectfully submitted that in compliance with the SEBI guidelines, the petitioner company had obtained the Fairness Opinion from the Merchant Bankers viz., Vivro Financial Services Private Limited dated 31st January, 2009. A copy of which is annexed herewith as Annex B. The same was also made available to the shareholders of the company at the meeting convened on 10th September, 2009, in compliance with the directions issued vide order dated 31st July, 2009. By an inadvertent error the petitioner company had missed out to mention the same in the Explanatory Statement annexed to the printed Notice of Court convened meeting of the shareholders of the company. However, the petitioner company having noticed the above error and had inserted an addendum regarding inclusion of above mentioned Fairness Opinion as one of the document available for inspection in the printed Notice of Court convened meeting sent to all the shareholders of the company. A copy of the same is attached herewith as Annex C. The said submission is supported by the affidavit of the shareholders confirming both the receipt of the addendum and the availability of the Fairness Opinion for inspection. The said affidavits are annexed herewith as Annex D.

5. With reference to the second observation pertaining to listing of the new shares, it is respectfully submitted that vide clause 11(h) of the said scheme, it is already envisaged that the new shares, to be allotted to the shareholders of the

Transferor Company shall the listed on the relevant stock exchanges and the same shall be permitted to be admitted for trading. In light of the said provision in the scheme itself the observation made by the Regional Director does not survive.

6. With regard to the third observation made by the Regional Director, it is respectfully submitted that the scheme in itself does not envisage the change of name of the Transferee Company. However upon the scheme being effective and the transfer of the undertaking of the Transferor Company to the Transferee Company, on the going concern basis, it shall undertake the necessary procedure envisaged under the Companies Act, 1956 for the change of name of the Transferee Company so as to be in consonance with the business of the company.

Considering the aforesaid explanation and/or answer to the queries raised by the Central Government, it appears that the petitioner Company has been able to successfully answer the queries raised by the Central Government and there is no reason to refuse to sanction the proposed Scheme of Amalgamation.

6. Having heard Mns. Swati Soparkar, learned advocate appearing on behalf of the petitioner Company and Shri R.M. Chhaya, learned Central Government Standing Counsel appearing for the Central Government and having gone through the petition, affidavits filed and the documents produced on record and having considered the submissions made in this regard, more particularly, the report submitted by the Regional Director and reply thereto by the petitioner Company by way of additional Affidavit dated 5-3-2010 and being satisfied with the Scheme of Amalgamation, I hold that it would be in the interest of the Companies, its members, creditors and more particularly considering the fact that the Scheme of Amalgamation has been sanctioned by the Bombay High Court in favour of the transferor Company, prayer in terms of para 27(a) of the petition is hereby granted.

7. The petition stands disposed of accordingly. The cost to be paid by the petitioner Company to the learned Central Government Standing Counsel, Shri R.M. Chhaya is quantified at Rs. 5,000 which may be paid directly to Shri R.M. Chhaya, learned Central Government Standing Counsel.