

(2014) 02 GUJ CK 0106

In the Gujarat High Court

Case No : Company Petition No. 260 of 2013 in Company Application No. 251 of 2013 and Company Petition No. 261 of 2013 in Company Application No. 250 of 2013

In Re: Safex Industries Limited

Date of Decision : 14-02-2014

Acts Referred:

Companies Act, 1956 — Section 391, 392, 393, 394, 396A

Citation : (2014) 02 GUJ CK 0106

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

Bench : Single Bench

Advocate : Sangeeta N. Pahwa, Advocate for the Appellant; M. Iqbal A. Shaikh, Senior Central Government Counsel, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

R.M. Chhaya, J.—The present petitions are filed under the provisions of Sections 391 to 394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of Specter Equiptech Private Limited with Safex Industries Limited.

2. Safex Industries Limited, the Transferee Company, filed Company Application No. 251 of 2013 seeking dispensation of the meeting of the Equity Shareholders. The Petitioner further submitted that this being the Transferee Company, the meeting of the Creditors is not required to be held. By an order dated 9.10.2013 passed in Company Application No. 251 of 2013, this Court ordered dispensation of the meeting of the equity shareholders and further ordered that this being the Transferee Company, the meeting of the Creditors is not required to be held.

3. Specter Equiptech Private Limited, the Transferor Company, filed Company Application No. 250 of 2013 seeking dispensation of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors. By an order dated 9.10.2013 passed in Company Application No. 250 of 2013, this Court ordered dispensation of the meetings of the Equity Shareholders, Secured creditors and Unsecured Creditors.

4. The petitioners thereafter filed Company Petition Nos. 260 and 261 of 2013 respectively, seeking sanction of the Scheme of Amalgamation.

5. By separate orders dated 21.10.2013, this Court admitted the petitions and directed issuance of notice to the Regional Director in case of both the companies and notice to the Official Liquidator in case of the Transferor Company. This Court also directed publication of notice of petition in local dailies in both English and Vernacular editions.

6. The Petitioners thereafter, filed Company Application Nos. 716 and 717 of 2013 respectively, for seeking amendment in the Scheme of Amalgamation by adding clause 6.8 in the Scheme. By separate orders dated 12.12.2013, this Court allowed the Company Application Nos. 716 and 717 of 2013 and granted the amendment considering clause 17 of the Scheme read with the Board Resolution passed by both the companies.

7. Pursuant to the order dated 21.10.2013, the petitioners have published the notice of petition in Gujarati Daily "Loksatta Jansatta" and English Daily "Indian Express" both having circulation in Ahmedabad on 28.10.2013. The authorized officers of the petitioner companies have filed the affidavits in support of publication of advertisements dated 31.10.2013.

8. In response to the notice issued, the Regional Director has filed a common affidavit dated 24.01.2014 making two observations. The first observation made by the Regional Director is with regard to Clause No. 6 of the Scheme which provides for Accounting Treatment. According to the Regional Director, this clause is not in consonance with the Accounting Standard-14. The second observation made by the Regional Director is with regard to the Appointed Date.

9. In response to the affidavit of the Regional Director dated 24.01.2014, the petitioner Transferee Company in Company Petition No. 260 of 2013 has filed its response by an affidavit dated 12.02.2014. With regard to the first observation, it is submitted that clause 6 is in accordance with Accounting Standard-14. It is further submitted that the issue is no longer res integra since it is already considered and dealt with by the Division Bench of this Court in the case reported in (2013) 176 CC 67. The judgment of the Division Bench is also later followed in various judgments including the judgment rendered in the case of In Re: Milestone Tradelinks P. Ltd., . With regard to the second observation, the petitioner has submitted that it is a settled legal position that the Company can fix its own Appointed Date and that the Appointed Date has also been approved by the Shareholders and Unsecured Creditors. This issue is also no longer res integra. Similar issue has been dealt with by this Court in its various judgments. Lastly, this Court has permitted fixation of the Appointed Date by the company in the case of Kamal Tea Process and Packaging Pvt. Ltd., Company Petition No. 132/2013 with Company Petition No. 134/2013 vide common oral order dated 10.01.2014. The petitioners however have placed on record the Balance Sheets of both the Companies as at 30.06.2013 as a part of the Annexure to the

affidavit.

10. In response to the notice of petition of the Transferor Company in Company Petition No. 261 of 2013, the Official Liquidator has filed a report dated 12.02.2014. The report of the Official Liquidator confirms that the affairs of the transferor company has not been conducted in a manner prejudicial to the interest of its members or to the public interest. The Official Liquidator, however, has requested this Court to direct the transferor company to preserve its books of accounts, papers and records and not to dispose of the records without the prior permission of Central Government u/s. 396A of the Companies Act, 1956.

11. There is no other observation made by the office of the Regional Director or by the Official Liquidator.

12. Having heard Mr. Navin K. Pahwa, learned Counsel for the petitioner companies, Mr. Iqbal Shaikh, Learned Central Government Counsel for the Regional Director and upon perusal of the reports of the Official Liquidator and the Regional Director, affidavit in reply filed on behalf of the petitioner Transferee Company and having considered the Scheme of Amalgamation together with relevant documents on record, the Court finds it appropriate to grant sanction to the present Scheme of Amalgamation.

13. In view of the above, the Scheme of Amalgamation is, thus, sanctioned. It is, however, directed that the petitioner Transferor Company shall preserve its books of accounts, papers and record and not to dispose of the records without the prior permission of the Central Government u/s 396A of the Companies Act, 1956.

14. The cost of the petition is determined at Rs. 7,500/- per petition, which shall be paid by both the petitioners respectively, by drawing a Pay Order in favour of Mr. Iqbal Shaikh, learned Central Government Counsel. The cost of the office of Official Liquidator is quantified at Rs. 7,500/- in respect of the Transferor Company.

15. Accordingly, both the petitions are disposed.