

(2007) 06 GUJ CK 0004

In the Gujarat High Court

Case No : Company Petition No's. 41, 42 and 43 of 2007

In Re: Shubhlaxmi Dyetex P. Ltd.

Date of Decision : 27-06-2007

Acts Referred:

Companies Act, 1956 — Section 94, 97

Citation : (2008) 142 CompCas 738 : (2008) 87 SCL 9

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Sangeeta N. Pahwa, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—This group of petitions are for sanctioning the scheme of amalgamation of Shubhlaxmi Syntex Pvt. Ltd. and Shubhlaxmi Industries Ltd. (transferor companies) with Shubhlaxmi Polyesters Ltd. (transferee company). The scheme also propose to demerge industrial undertaking of Shubhlaxmi Dyetex Pvt. Ltd. into Shubhlaxmi Polyesters Ltd.

2. Shubhlaxmi Syntex Pvt. Ltd. has filed Company Petition No. 179 of 2007, in the High Court of Judicature at Bombay since the registered office of the said company is situated at Bombay seeking sanction of the present scheme of amalgamation and the Bombay High Court, vide order dated May 4, 2007, has sanctioned the scheme of amalgamation. Shubhlaxmi Polyesters Ltd. (transferee company) filed Company Application No. 44 of 2007, for dispensing with the meeting of equity shareholders, which came to be granted vide order dated February 2, 2007, passed by this Court in the said Company Application No. 44 of 2007. Shubhlaxmi Industries Ltd. (transferor company) also filed Company Application No. 43 of 2007, seeking dispensation with the meeting of equity shareholders, unsecured creditors and secured creditors and this Court vide order dated February 2, 2007, in the said company application passed the order dispensing with such meeting.

3. Shubhlaxmi Dyetex Pvt. Ltd. (demerged company) filed Company Application

No. 42 of 2007, seeking dispensation with the meeting of the equity shareholders, unsecured creditors and secured creditors, which also came to be granted by this Court in the order dated February 2, 2007, in the said application.

4. All the present company petitions came to be admitted vide order dated February 13, 2007 and it was directed to give the advertisements in the newspaper as stated in the order and also notice to the Central Government through the Regional Director and the publication in the Government Gazette was dispensed with.

5. As compliance with the aforesaid directions, affidavit has been filed, stating that the paper publication was made on February 13, 2007, and the said affidavit is dated June 11, 2007.

6. In response to the notice issued to the official liquidator, the report has been filed by the official liquidator, stating that the affairs of the companies are not being conducted in a manner prejudicial to the interest of the members or public.

In response to the notice issued to the Central Government through the Regional Director, an objection has been filed by submitting affidavit dated May 7, 2007, of the Assistant Registrar of Companies communicating the objection raised by the Regional Director vide letter dated May 3, 2007. The first objection pertains to the desire of the transferee/resulting company to utilise the authorised capital of the transferor company and the insistence is made to increase the authorised capital as per the provisions of Sections 94 and 97 read with Schedule X to the Companies Act, 1956.

7. I have heard Mrs. Pahwa, learned Counsel appearing for all the companies as well as Mr. Harin P. Raval, learned Assistant Solicitor General of India on the point raised by the Central Government as indicated hereinabove. As such, in view of the decision of this Court (coram : K.J. Puj J.) in Company Petition No. 41 of 2005 (Bazley Finvest Ltd., In re [2005] 64 SCc 480), similar objections by the Central Government in view of the reasons recorded by this Court at paragraph 16 in the said decision, came to be rejected mainly on the ground that it is a one-window system and once the scheme is sanctioned no such stamp duty or registration charges are required to be paid on increase of the share capital of the company on amalgamation or merger.

8. Mr. Raval, the learned Assistant Solicitor General, did point out that the appeal is preferred against the decision of this Court in Company Petition No. 41 of 2005, however, he fairly conceded that no orders are passed, staying the operation or implementation of the judgment of the single Bench of this Court. Therefore, as such, the objections raised on behalf of the Registrar of Companies cannot be maintained.

9. However, the only aspect, which did not come for consideration in the aforesaid decision and which may be required to be considered is the bona fides of the scheme. If, as a result of the amalgamation, the authorised capital is

increased, the Central Government might raise the contention of additional stamp duty, but there may not be a double recovery of the stamp duty already paid. At the same time, if upon the amalgamation of the companies and having been sanctioned by this Court, the consequent result is to increase the authorised share capital of the companies, the transferee company cannot take any undue benefit to the extent that the authorised capital sanctioned if increased, the stamp duty which was otherwise payable would not be paid, though required under the law. As such, in such matters, even if a reasonable view deserves to be taken to the extent of the stamp duty already paid by the transferee company as well as the transferor company, whose share capital is merged into the capital of the transferee company.

10. The attempt on the part of the learned Assistant Solicitor General, Mr. Raval to contend that if there is any statutory provision requiring the payment of stamp duty, may be for second time, cannot be allowed to go away, merely because by agreement, the two companies have resolved to amalgamate, cannot be accepted for the simple reason that as such, by statutory fiction once the sanction is granted by this Court, not only the inter se rights get affected, but the companies stand amalgamated, resulting in lawful consequence as it may accrue by statutory fiction. As observed earlier, neither the transferee company can be allowed to take any undue benefit under the guise of the scheme of amalgamation, nor the contention of the Central Government can be accepted for recovery of double stamp duty, which is otherwise not warranted, nor would it meet the test of reasonableness, even if the objections are tested on sound principles of equity and good conscience.

11. It may be mentioned that concerning the comments given by the Central Government through the Regional Director on the aspects of furnishing latest balance-sheet, the same has been produced at annexure B to the petition, but in any case, in view of the report of the official liquidator and the report of the chartered accountant through the official liquidator, the same would not be of much importance.

12. No other adverse circumstances are brought to the notice of this Court.

13. In the result, the scheme of amalgamation/demerger is sanctioned with the observations and clarifications that it would be required for the transferee company to follow the procedure as required under Sections 94 and 97 of the Companies Act for filing declaration as per the provisions of the Companies Act and the necessary stamp duty for increase of authorised capital may be required to be paid, but after deduction or set off of stamp duty already paid by the transferor company(ies) as well as the transferee company.

14. The petitions are allowed to the aforesaid extent.

15. The cost of the learned Assistant Solicitor General of the Central Government shall be paid by the concerned petitioners in each of the company petitions, which is quantified at Rs. 3,500. It would be open to the concerned petitioner(s)

or the transferee company to pay cost directly to the Assistant Solicitor General.