(2008) 01 CAL CK 0080

In the Calcutta High Court

Case No : C.P. No. 288 of 2007 and C.A. No. 556 of 2007

In Re: SREI Infrastructure Finance Ltd. and Another

Date of Decision : 28-01-2008

Acts Referred:
Companies Act, 1956 — Section 391, 391(1), 391(2), 392, 393

Citation : (2008) 144 CompCas 109 : (2008) 4 CompLJ 196 : (2009) 89 SCL 255

Hon'ble Judges : Patherya, J

Bench : Single Bench

Judgement

Patherya, J.—This is an application for sanctioning the scheme of arrangement between the transferor and transferee companies. Advertisements were issued in the respective dailies fixing the date of the meeting and meetings of the shareholders of both the transferor and the transferee companies were held under the chairmanship of chairpersons appointed by this hon''ble court. The schemes of arrangement were put to vote and were passed unanimously without any modification. This will appear from the report of the chairpersons filed in respect of the transferor and transferee companies. Thereafter, once again advertisements were issued in the dailies with notice to the Central Government. It is after this second round of advertisements that an affidavit has been filed by the Central Government wherein certain objections have been raised regarding the clauses of the scheme.

2. The Central Government has raised two objections relating to paragraph 5 of Part III, which specifies passing of consideration by the transferor to the transferee companies. According to counsel for the Central Government no time limit has been fixed for the said payment. The said consideration is nothing but an outright sale and therefore will attract capital gain. To avoid payment of capital gain the instant application has been filed.

3. The next objection raised was with regard to paragraph 3.8 in Part II of the scheme of arrangement. It has been contended that the agreed terms of the rights, privileges and benefits to be licensed by the transferor company to the transferee company have not been spelt out and therefore it is unfair to the

shareholders. Therefore, the said scheme of arrangement ought not to be sanctioned.

4. Counsel for the petitioner submits that all requirements of Section 391(1) and (2) have been complied with. Advertisements have also been published regarding the holding of meetings and sanctioning of the scheme. Meetings have been held under the chairpersons appointed by the court and at the meetings held the scheme of arrangement has been approved by the majority shareholders as will appear from the chairperson''s report. No shareholder has challenged the said scheme of arrangement. There is no allegation of violation of any statutory provision. There has been compliance of Sections 391, 392 and 394. The objection raised regarding avoidance of capital gains is not material as these are commercial matters and are best left to the wisdom of the shareholders who are astute businessmen. For the said proposition reliance has been placed on A.W. Figgis and Co. P. Ltd., In Re: A.W. Figgis and Co. Pvt. Ltd.;, and Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., Reliance has also been placed on Highway Cycle Industries and Sunbeam Auto Ltd., Highway Cycle Industries and Sunbeam Auto Limited Vs. In Re, for the proposition that cash consideration per se would not frustrate or invalidate the proposed scheme. Therefore, avoidance of capital gains can be no reason for not sanctioning the scheme of arrangement as avoidance of capital gains is a matter of revenue and will attract the provisions of the Income Tax Act.

5. Paragraph 3.8 of Part II has also been accepted by the shareholders and is to happen at a future date. There is no reason to apprehend that the terms may not be favourable. No objection has also been raised to the said clause by any of the shareholders. There is no reason for the court not to sanction the scheme. For the said proposition reliance has been placed on Bengal Tea Industries Ltd. and Others Vs. Union of India and Another,

6. Having considered the submissions of the parties, there has been compliance with Section 391 and Section 393 of the Companies Act, 1956. Meetings of the shareholders have been held and in each meeting the scheme has been approved unanimously without any modification. Advertisements have also been published and thereby the public at large including the shareholders were informed of the scheme of arrangement between the transferor and transferee companies. In spite of wide publication, no shareholder has come forward to challenge the scheme of arrangement or to raise any objection in respect thereof.

7. The Central Government has nowhere in its objection alleged violation of any provisions of the Companies Act. Its main objection is in respect of consideration and terms on which the license will be given being not specified. Consideration per se cannot invalidate the scheme as avoidance by the company of its tax liabilities will attract the provisions of the Income Tax Act and the companies cannot escape from their respective liabilities. It must not be forgotten that a scheme of arrangement is between shareholders of the transferor and transferee companies. The scheme of arrangement is an arrangement to conduct the

business of a company by its shareholders. The shareholders having agreed to conduct the management and the affairs of the company in a particular way must be honoured. The reason for doing so is that the shareholders today are well equipped and have the prowess to evaluate the pros and cons of the functioning of the company. They are enlightened and astute businessmen who are prudent in business management. They have their own interest and the interest of the company in mind. It is only a scheme of arrangement, which is just, fair, reasonable and commercial, which will be approved by them and none else. In the instant case the scheme of arrangement has been approved and passed by the requisite majority. Therefore, it cannot be said that the scheme of arrangement is unfair, unreasonable or fraudulent to its shareholders.

8. For all the said reasons, I see no reason to interfere with the decision of the shareholders of the companies and objections raised by the Central Government are not sustainable.

9. For all the said reasons there will be an order in terms of prayers (a) to (f) of the petition.

10. Leave is granted to the petitioner to file computerized print out of the scheme and the schedule relating thereto in acceptable form. In the event the same is filed, the Department will append such print out to the certified copy of the order sanctioning the scheme without insisting on a handwritten copy. The petitioner is directed to pay costs assessed at 200 GMs to the Central Government.

11. In view of the aforesaid direction the application being C.P. No. 288 of 2007 is disposed of.

In view of the order passed this day counsel for the petitioner has submitted that the appointed date as per Clause 1.2 of Part 1 be taken as January 1, 2008.

All parties are to act on a xerox signed copy of this order on the usual undertakings.