

(2008) 10 GUJ CK 0009

In the Gujarat High Court

Case No : C.P. No. 116 of 2008 in C.A. No. 237 of 2008 with C.P. No. 117 of 2008 in C.A. No. 238 of 2008 and C.P. No. 118 of 2008 in C.A. No. 240 of 2008

In Re: Sumilon Plastic P. Ltd.

Date of Decision : 14-10-2008

Acts Referred:

Companies Act, 1956 — Section 391, 394

Citation : (2009) 147 CompCas 189 : (2010) 98 SCL 163

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Amit V. Thakkar, Iqbal Shaikh, Vaibhavi Parikh, for Swati Soparkar, for the Appellant;

Judgement

K.A. Puj, J.—These are the petitions filed by the petitioner-companies for sanction of a scheme of amalgamation of the three transferor companies, viz., Sumilon Plastic P. Ltd., Sumilon Tex P. Ltd. and Shree Kapil Yarn Ltd., with Sumilon Industries Ltd., the transferee company u/s 391 read with Section 394 of the Companies Act, 1956.

Vide the respective orders dated April 1, 2008, passed in Company Applications Nos. 237 and 238 of 2008, meetings of the equity shareholders, secured creditors and unsecured creditors were dispensed with in case of two transferor companies in view of the written consent letters placed on record. Similarly, vide said order passed in Company Application No. 239 of 2008, the meetings of the equity shareholders and unsecured creditors were dispensed with in view of the written consent letters placed on record.

2. There were no secured creditors of the said transferor company on the date of filing the application. Similarly, vide said order passed for the transferee company in Company Application No. 240 of 2008, meeting of the equity shareholders was dispensed with in view of the written consent letters placed on record.

The petitions were admitted vide order dated April 15, 2008. The public notices

for the same were duly advertised in the newspapers The Indian Express, a English daily, Ahmedabad edition, dated April 23, 2008 and Gujarat Mitra, a Gujarati daily, Surat edition, dated April 22, 2008 and the publication in the Government Gazette was dispensed with. The affidavits dated April 28, 2008, confirms the same.

3. Pursuant to the public advertisement, an affidavit dated July 28, 2008, has been filed in Company Petition No. 118 of 2008 by one Mr. Ajay Bhatia claiming himself to be the director of M/s. Vikram Silk Mills P. Ltd. He has stated in the said affidavit that he was removed as director vide resolution dated December 16, 2004. He, therefore, preferred Company Petition No. 14 of 2006 before the Company Law Board, Western Region Bench, Mumbai, challenging the said resolution dated December 16, 2004. He has further stated that since the directors of M/s. Vikram Silk Mills P. Ltd., intended to transfer and/or alienate or dispose of the properties of M/s. Vikram Silk Mills P. Ltd., situated at Plots Nos. 147 and 148 bearing Revenue Survey Nos. 73 and 75 at GIDC, Pandesara, Surat, he filed suit No. 428 of 2006 before the Civil Judge (S. D.) at Surat and prayed for an injunction restraining the respondent from alienating, transferring and/or disposing of the said properties.

4. In spite of the pendency of the said company petition and the suit, an agreement to sell dated June 18, 2007 and deed of assignment dated August 7, 2007, were executed in respect of the said property in favour of M/s. Shree Kapil Yarn Ltd., one of the transferor companies. He, therefore, moved necessary application for amendment in Company Petition No. 14 of 2006. He has also raised his objection in reply to the public notice by giving a public notice in the newspaper, putting to the notice of the public at large about his objection against the sale of the property in question. He has further stated in the said affidavit that Shree Kapil Yarn Ltd., is claiming to have purchased the said property by virtue of the deed of assignment dated August 7, 2007. By virtue of the present petition for sanctioning the scheme of amalgamation, his rights in the aforesaid pending proceedings would be frustrated and hence, he has raised his objection against the scheme of amalgamation.

5. These objections were dealt with by the petitioner vide affidavit dated September 22, 2008, filed by the director and authorised signatory of the petitioner transferor company stating therein that the said objector is neither a shareholder nor the creditor of Shree Kapil Yarn Ltd., and has no right or interest in the petitioner-company. Hence, there is no question of his right being affected in any manner as a result of the amalgamation of the said company. It is further submitted that the petitioner-company is not concerned with M/s. Vikram Silk Mills P. Ltd., and is also not concerned with the internal affairs of the company. The petitioner-company is a bona fide purchaser of a property from the said M/s. Vikram Silk Mills P. Ltd., for a valuable consideration and has nothing to do with the issues raised by the said objector. It is further submitted that the application for joining the present petitioner in the pending proceedings before the Company

Law Board was made by the objector on March 16, 2008, which is still pending and no orders have been passed in the said application, whereas the said transfer of property was duly registered with the authorities as far back as on August 7, 2007.

6. It is further submitted that the petitioner has taken due care and caution and followed necessary procedure required for purchase of the said property. A public notice was given in the local newspaper on May 17, 2007, inviting objections to the purchase of the said property, but no one including the objector had produced any document to indicate any orders of injunction against such transfer of property. The petitioner was provided the copy of the minutes of meeting of the board of directors dated July 16, 2007, signed by all the eight directors of the company giving consent to sell the property. The petitioner also obtained necessary permission from GIDC for transfer of such property, which is presumed to have been issued after proper verification.

7. The said transfer of property, by deed of assignment is duly registered with the office of the Sub-Registrar. It is, therefore, submitted that since the objections raised by the objector being absolutely irrelevant to the present proceedings and made with mala fide intention of delaying the scheme proceedings, should be rejected at the threshold and since all other requisite compliances are made by the present petitioner, relevant to the said scheme of amalgamation, the court should sanction the scheme.

8. Apart from the above objection, no one else has come forward with any objections to the said petitions even after publication of advertisement in the newspapers. The same has been further confirmed by the additional affidavit dated September 25, 2008, annexed collectively to the petition for the transferee company.

Notice of the petition of the transferor companies was served upon the official liquidator attached to this Court. Vide the report dated August 28, 2008, filed by the official liquidator for Company Petition No. 118 of 2008 and separate reports dated August 29, 2008, filed in Company Petitions Nos. 116 and 117 of 2008, it is observed that the affairs of the respective transferor companies have not been conducted in a manner prejudicial to the interest of their members or to the public interest.

9. Notice of the petitions have been served upon the Central Government and Shri Iqbal Shaikh, learned standing counsel appears for the Central Government. An affidavit dated September 18, 2008, is filed by Mr. R.K. Dalmia, Deputy Registrar of Companies along with the letter of the Regional Director dated September 16, 2008, whereby the only observation pertains to the latest financial reports of the petitioner-companies. The said issue is dealt with by the additional affidavits dated September 25, 2008, filed by the director and authorised signatory of the transferee company. The provisional balance-sheets of all the companies as on March 31, 2008, have been placed on record.

10. Having heard Ms. Vaibhavi Parikh for Smt. Swati Soparkar, learned advocate appearing for the petitioner-companies and Shri Iqbal Shaikh, learned standing counsel appearing for the Central Government and having gone through the petitions and being satisfied that the amalgamation would be in the interest of the companies and their members and creditors, prayers in terms of paragraph 15(a) of the respective petitions are hereby granted. It is, however, made clear that right, if any, available to the objector Mr. Ajay Bhatia in the pending proceedings either before the Company Law Board or before the civil court challenging his removal as director from M/s. Vikram Silk Mills or challenging the transfer and/or alienation of the property by M/s. Vikram Silk Mills in favour of Shree Kapil Yarn Ltd., shall not be frustrated by virtue of the present scheme of amalgamation. Subject to the aforesaid clarification, all these petitions are accordingly disposed of.

11. So far as the costs to be paid to the Central Government counsel is concerned, the same is quantified at Rs. 3,500 per petition. The same may be directly paid to the learned standing counsel Shri Iqbal M. Shaikh appearing for the Central Government.