(2008) 10 GUJ CK 0018

In the Gujarat High Court

Case No : C.P. No. 131 of 2008 in C.A. No. 61 of 2008 and C.P. No. 132 of 2008 in C.A. No. 60 of 2008

In Re: Surabhi Chemicals and Investments Ltd.

Date of Decision : 14-10-2008

Acts Referred:
Companies Act, 1956 — Section 295, 391, 394

Citation : (2009) 149 CompCas 278

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

Bench : Single Bench

Advocate : P.J. Davawala, for the Appellant; Iqbal Shaikh, for the Respondent

Judgement

K.A. Puj, J.—These are the petitions filed by the petitioner-companies for sanction of amalgamation of M/s. Paami Textiles and Investments Ltd., transferor company and M/s. Surabhi Chemicals and Investments Ltd., transferee company u/s 391 read with Section 394 of the Companies Act, 1956.

2. The transferor company is a subsidiary company of the transferee company and belongs to same group of management. Both the companies are investment companies and at present engaged in investment activities. The amalgamation is proposed for synergic advantages. The petitions give details of the advantages that would flow by virtue of the amalgamation of these companies.

3. The proposed scheme was approved by the equity shareholders of the transferor company through the consent letters placed on record along with application. The creditors of the transferor company have also given their consent and their consent letters were placed on record along with the application and, therefore, the meeting of the shareholders as well as the creditors were not required to be held and accordingly dispensed with vide order dated February 19, 2008, annexed to the petition as annexure G.

4. The proposed scheme was approved by the requisite majority of equity shareholders who were present in the meeting held as per the order passed by this Court on February 19, 2008. The chairman''s report has already been placed

on record of the present petition at annexure H. There are no secured or unsecured creditors of the transferee company and, therefore, the meeting of the creditors was not required to be held.

5. After the petitions were admitted, the same were duly advertised in Indian Express dated April 30, 2008 and Navnirman dated April 29, 2008, as per the direction given in Company Petitions Nos. 131 and 132 of 2008 dated April 23, 2008. The publication of notice in the Official Gazette was dispensed with as per the direction of this Court. No one has come forward with any objection to the said petition even after the publication.

6. Notice of the petition of transferor company has been served upon the official liquidator to this Court. Vide report dated August 29, 2008, filed by the official liquidator, it is observed that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to the public interest.

7. Notices of the petitions have been served upon the Regional Director, Shri Iqbal Shaikh, learned standing counsel appears for the Central Government. An affidavit dated August 21, 2008, has been filed by Mr. R. K. Dalmia, Assistant Registrar of Companies along with a letter of the Regional Director dated August 12, 2008, whereby the aforesaid scheme has been objected to only on one ground. It has been observed in the Regional Director''s letter that there appears to be a prima facie violation of Section 295 of the Companies Act, 1956. It is stated in the affidavit that as per the balance-sheet as at March 31, 2007, the transferor company has invested Rs. 2,50,43,320 in the capital of M/s. Miraj Investments, a registered partnership firm, where directors of the transferor company are partners in the said affidavit, Mr. Kamalesh Vyas, an authorised person of the petitioner-company his filed his affidavit stating therein that there was no violation of Section 295 of the Act. It is further stated that M/s. Surabhi Chemicals and Investments Ltd., is a holding company and M/s. Paami Textiles and Investments Ltd., is a subsidiary company. Section 295 of the Act deals with the provision with respect to loans to directors, etc. In the present case, question of loan does not arise and, therefore, at first place, there is no applicability of Section 295. It is true that transferor company has invested in the partnership firm wherein directors of transferor company are partners. This is a case of investment of subsidiary company in partnership firm and the question of loan does not arise and, therefore, there is no applicability of Section 295 of the Act. It is further stated that section does not restrict any investment made by M/s. Paami Textiles and Investments Ltd., is not restricted by this section and, therefore, submitted that there is violation of Section 295 of the Act.

8. Having heard Ms. P. J. Davawala, learned advocate appearing for the petitioner-companies and Mr. Iqbal M. Shaikh, learned counsel for the Central Government and having gone through the petitions and the submissions made, the court is satisfied that the objection raised by the Regional Director is not sustainable. Even if it is assumed that such objection has any substance and on

that basis any criminal complaint is initiated against the transferor company or its directors for violation of the provisions of Section 295, such proceedings would not be affected by the present order of sanctioning the scheme of amalgamation of the transferor company with the transferee company and it shall not come with the way of such proceedings. The fact of amalgamation will not give any immunity for such past deeds. The court is satisfied that the amalgamation would be in the interest of the companies and their members and creditors and hence, there is no reason for withholding the sanction for proposed scheme of amalgamation. The same is hereby sanctioned. The prayers in terms of paragraph 19(a) in case of Company Petition No. 132 of 2008 and paragraph 22(a) in Company Petition No. 131 of 2008 are hereby granted.

9. The petitions are disposed of accordingly.

10. 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 learned counsel Shri Iqbal M. Shaikh appearing for the Central Government.