

(2016) 02 GUJ CK 0128
In the Gujarat High Court
Case No : Company Application No. 66 of 2016
In Re: UPL Limited

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) 02 GUJ CK 0128

Hon'ble Judges : Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Swati Soparkar, Advocate, for the Appellant;

Final Decision : Disposed off

Judgement

Abhilasha Kumari, J.—1. This application is filed by the above-named applicant Transferee Company by Judges' Summons dated 15th February 2016, under Sections 391 to 394 of the Companies Act, 1956, in a proposed Scheme of Amalgamation of Advanta Limited and UPL Limited, as proposed between the Company and its Equity Shareholders and creditors.

2. Smt. Swati Soparkar, learned advocate appears for the applicant Company and has made submissions (i) for seeking directions for convening a meeting of the Equity Shareholders of the applicant Company and (ii) seeking dispensation of the meetings of the Secured and Unsecured Creditors of the applicant Company.

3. The attention of the Court is drawn to the submissions made in Paragraph-13 of the affidavit in support of the Judges' Summons. It has been submitted that since both the Transferor and the Transferee Company are profit-making companies with substantially positive net worth, the rights and interests of the Creditors of the applicant Transferee Company shall not be prejudicially affected as a result of the proposed Scheme. The proposed Scheme does not envisage any arrangement or compromise with the creditors of the applicant Transferee Company. The Transferee Company has undertaken to fulfil all liabilities towards Secured and Unsecured Creditors of the applicant Company in its normal course of business. The said contention is substantiated by the certificate issued by a Chartered Accountants, which is placed on record. Perusal of the said certificate

indicates that the Net Worth of the applicant Company as on 31st March 2015 in Pre-scheme scenario is 3523.26 crores and shall be Rs. 5453.8 crores in Post-scheme scenario. Reliance has been placed on the orders passed by this Court dated 27th November 2015 in Company Application No. 365 of 2015 and dated 19th January 2016 in Company Application No. 26 of 2016, under similar circumstances.

4. Considering the above facts and circumstances, and the submissions made, it is hereby held that the meetings of the Secured and Unsecured Creditors for considering and approving the proposed Scheme are not necessary and the same are, hereby, dispensed with.

5. The attention of the Court has also been drawn to Paragraph-10 of the affidavit in support of the Judges' Summons. It has been pointed out that being a listed public limited Company, the applicant has obtained the requisite prior approval of SEBI through the concerned stock exchanges viz. National Stock Exchange of India Limited dated 3rd February 2016 and BSE Limited dated 4th February 2016 and the said observation letters are already placed on record. It has been further pointed out that as compliance of Clause 5.16(a) of SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 read with SEBI Circular No. CIR/CFD/DIL/8/2013 dated May 21, 2013 now replaced with SEBI Circular bearing No. CIR/CFD/CMD/16/2015 dated 30th November, 2015, the requisite procedure shall be undertaken, in order to obtain the approval of the public shareholders through Postal Ballot and e-voting.

6. Upon reading of the affidavit dated 15th February 2016, filed in support of the Judges' Summons for directions and other relevant annexures attached thereto in support of the contents of the affidavit filed by the deponent, (Exhibit "C" being a copy of the proposed Scheme of Amalgamation), the following order is passed:

"(i) That a meeting of the Equity Shareholders of the applicant Company shall be convened and held at the registered office of the applicant Company at 3-11, G.I.D.C., Vapi, District Valsad, 396195, in the State of Gujarat, on Wednesday, the 30th March 2016, at 10:00 AM, for the purpose of considering and if thought fit, approving with, or without modifications, the proposed Scheme of Amalgamation of Advanta Limited, the applicant Transferor Company with UPL Limited, the applicant Transferee Company, as proposed between the applicant Company and its Equity Shareholders.

(ii) That at least 21 clear days before the meetings to be held as aforesaid, Notice convening the said meetings, indicating the day, the date, the place and the time as aforesaid, together with a copy of the Scheme of Amalgamation, copy of the Explanatory Statement required to be sent under Section 393 of the Companies Act, 1956 and the prescribed Form of Proxy shall be sent by a Courier/Registered Post/Speed Post or through E-mail (to those shareholders whose email addresses are duly registered with the applicant Company for the

purpose of receiving such notices by e-mail) Courier addressed to each of the Equity Shareholders of the applicant Company, at their last known addresses or e-mail addresses as per records of the applicant Company. The lists of shareholders with their names and addresses shall be placed on record by the applicant Company.

(iii) That at least 21 clear days before the meetings to be held as aforesaid, Notice convening the said meetings indicating the day, the date, the place and time as aforesaid be published, stating that copies of the Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 393 of the Companies Act, 1956 and Form of Proxy can be obtained free of charge at the Registered Office of the applicant Company and/or at its Advocate's office i.e. 301, Shivalik-10, Opp. SBI Zonal Office, S.M. Road, Ambavadi, Ahmedabad-380015 once each in all Gujarati editions of "Indian Express", the English daily newspaper and "Sandesh" the Gujarati daily newspaper.

(iv) Shri Rajju D. Shroff, Director of the applicant Company and failing him, Shri Arun C. Ashar, the Director of the applicant Company, shall be the Chairman of the aforesaid meetings to be held on 30th March 2016 and in respect of any adjournment or adjournments thereof.

(v) That the Chairman appointed for the aforesaid meetings shall issue advertisements and send out notices of the said meetings referred to above. It is further directed, that the Chairman of the meeting shall have all powers under the Articles of Association of the applicant Company and under the Companies (Court) Rules, 1959 in relation to conduct of meetings, including an adjournment of the meeting, and/or an amendment to the Scheme or Resolution, if any, proposed at the meetings by any person(s) and to ascertain the decision of the meeting on a poll.

(vi) That the quorum for the said meeting of the Equity Shareholders shall be 5 (five) Equity Shareholders, present either in person or through authorized representative or through proxy.

(vii) That voting by proxy is permitted provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the aforesaid meeting, or by his authorized representative, is filed with the applicant Company at its registered office at Vapi, not later than 48 hours before the said meetings.

(viii) That the value of the vote of each Equity Shareholder of the Company shall be as per the entries in the Registers of the applicant Company, and where the entries in the register are disputed, the Chairman of the meeting shall determine the value or number for the purposes of the meeting and his decision in that behalf would be final.

(ix) That the Chairman shall report to this Court, the result of the said meetings within 14 days of the conclusion of the meetings and the said Report shall be

verified by his affidavit. The applicant Company shall also place on record the result of the Postal Ballot and E-voting by the public shareholders.

(x) The publication of the notice in the Official Gazette is ordered to be dispensed with."

7. The application is hereby disposed of.