
(2014) 10 MP CK 0044

In the Madhya Pradesh High Court

Case No : Company Petition No. 19/2014

Wadala Commodities Limited ("WCL")

APPELLANT

Vs

Godrej Industries Limited ("GIL")

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Companies Act, 1956 — Section 394

Citation : (2014) 10 MP CK 0044

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : H.Y. Mehta, Learned Counsel and Party-in-Person, Pankaj Bagadia, Learned Counsel, Vivek Sharan, Learned Counsel, Advocate for the Appellant

Judgement

Prakash Shrivastava, J.—This petition under Section 394 of the Companies Act, 1956 has been filed by Wadala Commodities Limited (Transferor Company/ Petitioner Company) and Godrej Industries Limited (GIL) (Transferee Company) for sanction of 2 the Scheme of Amalgamation, whereby entire undertaking of the transferor company as going concern together with all assets and liabilities is proposed to be transferred and vested in the transferee company.

2. The petitioner-transferor company has its registered office at Indore within the jurisdiction of this Court, whereas the transferee company has its registered office at Mumbai.

3. The petitioner-Company was originally incorporated as Noble Soya House Private Limited on 9.3.1984 and subsequently the name of the company was changed to Noble Soya House Limited on 3.2.1986 and thereafter, it was changed to Godrej Foods Limited on 30.7.1991 and Godrej Commodities Limited on 24.7.2006 and as Wadala Commodities Limited on 8.4.2008. The petitioner-Company is in the business of bulk trading of vegetable oil. The annual report of the petitioner Company as on 31.3.2013 and a copy of the audited statement of accounts as on 31.3.2014 have been filed. The transferee company having its registered office at Mumbai is operating in the business of Oleo chemicals and

surfactants. The annual report of the transferee company as on 31.3.2013 and copy of audited statement of accounts of the transferee company as on 31.3.2014 have been filed. The transferee company has already approached Bombay High Court in Company Petition No. 356/2014 which has been admitted on 4.7.2014 and fixed for final hearing. Therefore, this order will be subject to the final order passed by the Bombay High Court.

4. The Scheme of Amalgamation has been filed as 3 Exhibit "H" to the petition. In the first stage proceedings, this Court vide order dated 30.4.2014 passed in Company Application (Petition) No. 12/2014 had dispensed with the meeting of preferential shareholders, secured and unsecured creditors of the petitioner company and had directed for holding of the meeting of the equity shareholders. The affidavit of the Chairman of the meeting has been filed regarding the meeting which was convened and approval of the Scheme by majority.

5. In the present petition, this Court on 18.7.2014 had issued notice to the Registrar of Companies, Madhya Pradesh and Chhattisgarh, Gwalior, Regional Director, Western Region, Ahmedabad and to the Official Liquidator. This Court had also directed the advertisement of the petition in accordance with the rules in the Official Gazette of State and two daily newspapers namely "Dainik Bhaskar" (Hindi) and "Free Press" (English). The affidavit dated 21.8.2014 has been filed by the petitioner reporting compliance of the order dated 18.7.2014 passed by this Court.

6. The Regional Director has filed the affidavits dated 17.9.2014 and 24.9.2014 and official liquidator has filed the affidavit dated 25.9.2014 in response to the notice issued by this Court. The objections which have been raised by the Regional Director and the Official Liquidator are dealt with hereunder :-

A) The first objection which has been raised by the R.D. in the affidavit dated 17.9.2014 is that the Clause 6.4 of the Scheme is not in accordance with Accounting Standard 14 and that the petitioner-Company should strictly 4 comply with the requirement of Accounting Standard 14 and the excess of assets over liabilities should be credited to Amalgamation Reserve Account and not to the Capital Reserve Account, as proposed by the petitioner-Company in the Scheme.

An affidavit of the transferee company dated 6.10.2014 has been filed stating that the accounting treatment prescribed in the Scheme is in accordance with Accounting Standard 14 and that the petitioner-Company undertakes to comply with Accounting Standard 14 and also that the reserves arising in the books of transferee company pursuant to the Scheme, will not be utilized for the purpose of declaring dividend by the transferee company.

In view of this, objection of the R.D. in this regard does not survive.

B) The second objection has been raised by the O.L. and R.D. to the effect that the certain demands of income tax against the transferor company is outstanding

for the assessment year 1996-97 and 2000-2001, therefore, the petitioner-Company should undertake to comply with the provisions of the Income Tax Act about the outstanding demand.

In the affidavits dated 6.10.2014 filed by the transferee and the transferor company, it has been categorically stated that any income tax liability arising out of the cases pending 5 against the transferor company for the assessment year 1996-97 and 2000-01 will be duly honoured by the transferee company.

In view of the said statement on affidavit, objection of the O.L. and R.D. in this regard does not survive.

7. Both R.D. and O.L. in their reports have stated that they have no other objection except the one stated above and that no complaints have been received by them against the Scheme of Amalgamation of the petitioners-Company from any person / party interested in the Scheme, in any manner and that the scheme does not appear to be prejudicial to the interest of the shareholders of the petitioner companies and public at large. The O.L. has stated that the affairs of the transferor company have not conducted in a manner prejudicial to the interest of its members, creditors or in public interest.

8. Having considered the scheme and on perusal of the record and reports, the scheme appears to be fair and reasonable and not opposed to public interest.

9. Accordingly, the Scheme of Amalgamation filed as Annexure "H" to the petition is hereby approved. The said scheme may be read as part of this order. The petitioner company shall, within 30 days of this order, file with the Registrar of Companies, Madhya Pradesh a certified copy of this order.

10. The Petitioner Company to pay the cost of Rs. 20,000/- to the Official Liquidator for deposit in Common Pool Fund maintained by the Official Liquidator within four 6 weeks from today and also to pay Rs. 10,000/- to the counsel for Regional Director and Rs. 7,500/- to the counsel for O.L. within same period.

11. In view of the foregoing discussion, it is hereby directed that no formal order is required to be drawn up in terms of Rule 37 in Form No. 41 and 42. This petition thus stands disposed of as aforesaid. There will be no order as to costs.

C.C. as per rules.