

[2012] 21 taxmann.com 241 (Gujarat)/[2012] 113 SCL 288 (Gujarat)[30-03-2012]

CL : Where in terms of proposed scheme of amalgamation, construction business of transferor-Companies was to merge with petitioner i.e. transferee company, in view of fact that all companies were family companies operating under same management and upon merger no interest of their members or public at large was going to be adversely affected, said scheme was to be accepted

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[2012] 21 taxmann.com 241 (Guj.)
HIGH COURT OF GUJARAT
Takshashila Gruh Nirman (P.) Ltd., *In re*

R.M. CHHAYA, J.
CO. PETITION NO. 71 OF 2011
MARCH 30, 2012

Section 394 of the Companies Act, 1956 - Amalgamation - Instant petition was for sanctioning of scheme in nature of amalgamation of transferor companies with petitioner i.e. transferee company - Petitioner's case was that all companies were engaged in business of construction activities and real estate business - According to petitioner, transferee company and transferor companies were under same management and to attain synergic benefit, scheme of amalgamation was proposed - As per directions of Court a meeting of secured creditors was convened who voted in favour of scheme - A notice of proposed scheme was sent to Regional Director who in turn submitted his report confirming that affairs of companies were not conducted in manner prejudicial to interest of public - Finally, it was noted that all companies were under same management and were family companies which were closely held companies and upon merger there was no interest of either of members or public at large was going to be adversely affected - Whether on facts, proposed scheme of amalgamation deserved to be accepted - Held, yes

Pavan S. Godiawala for Petitioner. P.S. Champaneri and Pratik P. Thakkar for the Respondent.

ORDER

1. Heard Mr. Pavan S. Godiawala, learned counsel appearing for the petitioner, Mr. Y.V. Vaghela, learned Central Government Counsel appearing for the Central Government and Mr. Pratik P. Thakkar, learned counsel appearing for the objector.
2. The present petition is for sanctioning of the Scheme in the nature of Amalgamation of Chanakya Buildcon Pvt. Ltd., Chanakya Infracon Pvt. Ltd., Takshashila Properties Pvt. Ltd., Takshashila Realities Ltd., Youngstar Infracon Pvt. Ltd. with Takshashila Gruh Nirman Pvt. Ltd. (Petitioner Company).
3. It is submitted by the petitioner that the transferee company and transferor companies are under the same management and to attain synergic benefit the scheme of arrangement in the nature of amalgamation is proposed. Further, upon amalgamation the transferor companies shall be dissolved without winding up. It is submitted that all the companies are engaged in the business of construction activities and real estate business.
4. Company Application No. 263 of 2011 for appropriate orders for convening the meeting of secured creditors and dispensing with the meetings of other class of members came to be preferred. Upon considering the application, this Court vide order dated 22.03.2011 has given direction for convening of the meeting of secured

creditors and has dispense with the meetings of other classes namely equity shareholders, unsecured lenders and unsecured creditors. The notice in newspapers and Government Gazette were dispensed with. The meeting of one class namely secured creditors was ordered to be convened and held at the registered office of the transferee company on 15.04.2011 at 11:00 a.m. and the quorum for the meeting was fixed as two and it was ordered that, the notice of the meeting shall be served through hand delivery. The Chairman of the meeting was appointed Mr. Kamlesh Gondaliya failing him Mr. N.R. Shah, Company Secretary. It was further ordered that Chairman shall report to this Court the outcome of the meeting within 15 days of the conclusion of the meeting.

5. The petitioner as per the direction convened and hold the meeting under the Chairmanship of Mr. Kamlesh Gondaliya on the appointed date, day and time. Two secured creditors remained present in the meeting and voted in favour of the scheme. The Chairman filed the report with this Hon'ble Court about the outcome of the meeting.

6. Thereafter, the petitioner filed the substantive petition for sanctioning of the Scheme of Arrangement in the nature of amalgamation on 22.04.2011.

7. On 26.04.2011, this Court passed the order of admission of the petition and issuance of the notice to the Regional Director and publication of the advertisement in two local newspapers namely Indian Express English Daily and Divya Bhaskar Gujarati Daily both Ahmedabad Edition and fixed the date of hearing on 11.05.2011.

8. According to the directions of this Court, the petitioner got published the advertisement in the respective newspapers and got served the notice of petition to the Regional Director on 09.05.2011. Affidavit of service dated 09.05.2011 came to be filed. The advertisement in the respective newspapers came to be published on 28.04.2011.

9. Pursuant to the notice, the Regional Director filed the common report and opined, upon considering the explanation and documents that the affairs of the companies are not conducted in the manner prejudicial to the interest of the public.

10. Meanwhile, at the time of final hearing of the petitions, one objector through learned advocate Mr. Pratik Thakkar filed the objection to the scheme, allegedly having dispute with the petitioner (transferee company). The objection pertains to one civil suit already filed against the transferee company in the Civil Court for injunction against one plot and if the scheme is sanctioned ultimately, the transferee company will go for liquidation.

11. Against the objection raised, the petitioner has filed the affidavit opposing the allegations and it is submitted in the affidavit, there is no substance in the allegations, further, the transferee company is not going to be dissolved and is retaining its identity and upon merger of other group concerns, the corpus of the transferee company shall be enlarged. Further, it is submitted that the allegation about transferee company shall go into liquidation and fraud, the same are denied and without substance. There is no infirmity in the proposing the scheme and such civil suit is yet to be adjudicated and sanctioning of the scheme would not come in the way of adjudication of the said civil suit.

12. The petitioner has also further filed the affidavit dated 11.10.2011, explaining the reasons for losses suffered by some of the transferor companies. As far as loss suffered by Chankya Buildcon Pvt. Ltd., it is explained that the company is carrying out one project consisting of construction of Hotel and Commercial Property and during the year 2009-2010, the construction was just started and such construction do not exceed more than 5% and hence, according to Accounting Standard adopted by the Institute of Chartered Accountants of India, the direct expenses were transferred to work in progress while the administrative expenses are to be written off over a period of 5 years and amount of Rs. 1.34 lac which is carried over, further as far as the loss sustained of Rs. 158.23 lac by Takshashila Realty Ltd., it is explained that said transferor company has taken loans for various projects which were under construction by other transferor companies as well as transferee company and such company has paid interest on loan taken but did not charged interest from these companies and further administrative expenses were also incurred to obtain the loans were not recovered and hence, the loss is incurred due to indirect benefit in form of not charging the interest and recovering the expenditures from transferor companies and transferee company and hence, the loss is not due to other loss incurring business. The loss as sustained of Rs. 140.74 lac is concerned by Chankya Infracor Pvt. Ltd., it is explained that the said company is developing commercial and residential projects called as Takshashila Habitate, Takshashila Gallariya mall and at time of converting partnership firm into company the than market value of the land has been taken as cost and however, at this time, booking from members was already accepted and booking amount was received and hence, loss as shown by the said company is difference of market value of land and price at which booking from members is received and there is no business or other losses incurred by the said transferor company, further to off set these losses the shareholders and directors have waived unsecured loans of Rs. 160

lac which is credited as capital reserve. It is further explained in the affidavit that since construction of property booked at old rate is already completed and revenue is booked in the year 31.03.2010, there would not be any further losses and in fact huge revenue is under process and hence, the picture as depicted as loss in few of the transferor companies are due to the reasons stated above and in fact are not the actual business losses. Further, it is averred that, all the companies are under the same management and are family companies which are closely held companies and upon merger there is no interest of either of the members or public at large is going to be adversely affected and all the companies are going concerns and doing the business uninterruptedly.

13. Considering the opposition affidavit and rejoinder affidavit by the petitioner, it is ordered that the objection has no basis and sanctioning of the scheme in no way affecting the rights if any of the objector and the apprehension about the transferee company shall go into liquidation upon sanctioning of the scheme is completely ill founded. The objection is rejected and the scheme at Exh. C to the present petition is sanctioned with the direction that the petitioner shall make the payment of fees of Rs. 7500/- to the learned counsel of the Regional Director Mr. Y.V. Vaghela within two weeks from today.

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