

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION NO. 195 of 2014
In COMPANY APPLICATION NO. 201 of 2014
With
COMPANY PETITION NO. 196 of 2014
In
COMPANY APPLICATION NO. 202 of 2014
TO
COMPANY PETITION NO. 198 of 2014
In
COMPANY APPLICATION NO. 204 of 2014
With
COMPANY PETITION NO. 202 of 2014
In
COMPANY APPLICATION NO. 205 of 2014

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N K ROADWAYS PRIVATE LIMITED....Petitioner(s)

Versus

.....Respondent(s)

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Appearance:

MR SN SOPARKAR, SR. ADVOCATE WITH MRS SWATI SOPARKAR,
ADVOCATE for the Petitioner(s) No. 1

MR DEVANG VYAS, ADVOCATE for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 28/11/2014

ORAL ORDER

A Composite Scheme of Arrangement in the nature of Amalgamation of N. K. Roadways Private Limited, N. K. Infraventures Private Limited, N. K. Flour Mills Limited and Shanti Stock Holdings Private Limited with N. K. Oil Mills Private Limited, and Restructure of Share Capital of N. K. Oil Mills

Limited, under Sections 391 and 394 of the Companies Act, 1956, has been mooted. The captioned petitions by five companies are filed to obtain a sanction of this court to the said Scheme.

1.1 The petitioner of Company Petition No.195 of 2014-N.K. Roadways Private Limited; petitioner of Company Petition No.196 of 2014-N.K. Infraventures Private Limited; petitioner of Company Petition No.197 of 2014-N.K. Flour Mills Limited and petitioner of Company Petition No.198 of 2014-Shanti Stock Holding Private Limited are the transferor companies and petitioner of Company Petition No.202 of 2014-N.K. Oil Mills Private Limited is the transferee company. They are accordingly referred to hereinafter.

2. All the five petitions being necessarily interconnected, they were heard together and are considered simultaneously by this common order.

3. All the petitioner companies except Shanti Stock Holding Private Limited have their registered office at 7th Floor, Popular House, Ashram Road, Ahmedabad-380009 in the State of Gujarat. Shanti Stock Holding Private Limited has its registered office at 13/A, Dariyapur Patel Society, Usmanpura, Somnath Road, Ahmedabad-380013 in the State of Gujarat. All the five companies have thus their registered office situated within the State of Gujarat.

3.1 The respective petitions by five petitioner companies set out therein the details about their share capital, details about the date of

incorporation, the objects with which the companies came to be incorporated and other relevant facts about the said companies. All the petitioner companies belong to same group of management. The Amalgamation is proposed for consolidation of these companies so as to achieve efficiency of operation and management. The Amalgamation also seeks to make the administration smooth and control systems effective and efficient.

4. Heard learned senior advocate Mr.Saurabh Soparkar assisted by learned advocate Ms.Swati Soparkar for the petitioners in all the five petitions as well as learned Assistant Solicitor General Mr.Devang Vyas for the Central Government who appeared upon service of notice of admission of the petitions being served on the Regional Director.

5. It was pointed out that by the orders dated 01st August 2014 passed in the Company Applications no. 201 to 204 of 2014, the meetings of the Shareholders and unsecured creditors of all the Transferor Companies were dispensed with, in view of the written consent letters from all of them placed on record. It was pointed out that there are no Secured Creditors of any of the Transferor Companies. In case of the Transferee Company by order dated 01st August 2014 passed in Company Application No. 205 of 2014, the meetings of the Shareholders and unsecured creditors of the Transferee Company were dispensed with. The Transferee Company had no Secured creditors. Further, by the said order dated 01st August 2014, the procedure prescribed under Sec. 100 and 101(2) of the Act and

rule 48 to 65 of the Company Court Rules was dispensed with.

6. These substantive petitions were thereafter filed, placing the Scheme of Amalgamation for consideration and sanction of this court. The Schemes are produced at Annexure-C.

6.1 These petitions were admitted by orders dated 13th/14th August, 2014. The public notices for the same were duly advertised in the newspapers 'Indian Express' English daily, Ahmedabad edition, and 'Sandesh', Gujarati daily, Ahmedabad edition dated 23rd August 2014. The publication in the Government gazette was dispensed with. Affidavits date 01st September 2014 confirmed the same. No one has come forward with any objections to the said petitions even after the publication and the same was further confirmed by the additional affidavit dated 25th November 2014.

6.2 Notice of the petitions was served upon the Central Government through Regional Director. Learned Assistant Solicitor General appeared for the Central Government. Common affidavit dated 17th November, 2014 came to be filed by one Mr. Shambhu Kumar Agarwal, the Regional Director. In that common affidavit, the said authority made certain comments and observations.

6.3 In response to the aforesaid common affidavit, one Mr. Dinesh Patel, authorized signatory of all the companies has filed additional affidavit dated 25th November, 2014 and has dealt with the observations and comments of the Regional Director.

7. Proceeding to consider observations and comments of the Regional Director and the response of the petitioner companies in its additional affidavit mentioned above.

7.1 The observations of the Regional Director in paragraphs-2(a) to 2(b) are factual narration and do not require any response. In paragraph-2(c) of the report, The Regional Director stated that the petitioner companies belong to M/s.N.K. Group, Ahmedabad which group of companies were involved in payment crisis approximately of Rs.5,600 crores witnessed by the National Spot Exchange Limited. It was stated that Ministry of Corporate Affairs had carried out investigation with regard to the role of the said group of companies. The Regional Director has stated that the petitioner companies herein are required to be directed to place on record the complete details in that regard. It was submitted on behalf of the petitioner by learned senior advocate that that either of these two companies are not part of the present scheme. Further, it was submitted that reference to the investigation carried out by the Regional Director and report submitted to the Ministry of Corporate Affairs, has nothing to do with the proposed scheme of amalgamation of the petitioner companies. They are separate legal entities and carry on their activities independently. Any of the petitioner companies are not implicated in any of the legal proceedings mentioned in the aforesaid observation. The sanction of the proposed scheme of

amalgamation shall not in any way come in the way or shall have any other legal repercussions on the said investigations or proceedings against the aforesaid two companies. In view of these clarifications, it appears that the said observation is not relevant for consideration of the proposed scheme of amalgamation.

7.2 The second observation of the Regional Director is about non-provision of some of the liabilities in the books of accounts of N. K. Oil Mills Private Limited-the Transferee Company. The petitioner pointed out that the same refers to payment of interest on the loans borrowed and disputed liability of sales tax. It was submitted that not providing for any liability is not an offence under any applicable provisions of law. The petitioner being a private limited company, the same does not affect the interest of any public investors. Further, the scheme does not envisage any absolution from any adjudicated liability; hence as and when the sales tax liability is crystallized, the Transferee Company shall comply with the statutory liabilities. The relevant facts in form of the financial details of all the petitioner companies are already on record and hence, no further directions are required to be issued to the petitioners in this regard.

7.3 The next observation of the Regional Director made vide para 2(e) pertains to the Accounting Treatment as envisaged by clause 13.6 of the scheme, and non compliance of the AS-14. In this regard, the petitioner submitted that by clause 13.1

of the scheme, compliance of AS-14 has been confirmed by the petitioner. However, if the treatment as envisaged deviates from the said standard, the Transferee Company shall make requisite disclosures in its first financial statements after the scheme is made effective. In view of the said statement, it is hereby directed that if the Accounting treatment given for the said scheme of amalgamation results in deviation from AS-14, the Transferee Company shall make requisite disclosures in its first financial statement after the Effective Date.

7.4 The next observation is about the effective date chosen in the Scheme. It is observed by the Regional Director that vide clause 1.2 of the scheme the Appointed date is specified as 1st April 2012 which should be 1st April 2013. In this regard, it is submitted by the petitioner that there is no legal bar on the choice of the Appointed Date. It is the prerogative of the Board of Directors of the petitioner companies to select the Appointed Date for the Scheme keeping in mind their commercial needs. The same is required to be approved by the shareholders of the respective petitioner companies. Both these requisites have been complied with in the present proceedings. It is further clarified that since all the petitioner companies belong to the same group of management, the Appointed Date as envisaged in the scheme is not detrimental to the interest of any of the shareholders or public interest. This observation thus stands explained and does not survive.

7.5 The observation made by the Regional Director vide Para 2(g) pertains to the non-banking financial activities carried on by Shanti Stock Holding Private Limited, one of the Transferor Companies. It is observed by the Regional Director that the Objects Clause of the said petitioner company permits the said activity, the application made by the company for registration as NBFC was been rejected by the Reserve Bank of India as the company could not achieve the required Net Owned Funds. However, the said non-banking financial activities are being carried on. In this regard, it has been clarified that post rejection of the registration as NBFC, company has not carried out any transaction in violation of prescribed norms by RBI and the company has not accepted any deposit from the public in contravention of the provisions of the Act. Further, on amalgamation, since the said petitioner company shall be dissolved and cease to exist, the said issue shall be redundant. Accordingly this observation also stands answered and no further directions are needed by this Court in that regard.

7.6 In para 2(h) the Regional Director observed that the scheme does not provide for answering obligations or all the liabilities, suits and legal proceedings etc. which may be initiated against the petitioner companies after the Effective Date. The petitioner submitted that the said contention is the result of misconception of law. It has been submitted that under the applicable provisions of

law, once the scheme is sanctioned by the Hon'ble court and made effective, all the Transferor Companies get dissolved without winding up and cease to exist. Once a company ceases to exist, no new litigation can be initiated against such dissolved company. It has been clarified that the scheme does not envisage extinction of the liability of the Transferor company as the Transferee Company undertakes all the liabilities of the Transferor company as part of the Undertaking. The existing litigations against any of the Transferor companies are very clearly envisaged to be continued against the Transferee Company. However, no litigation can be initiated against the dissolved Transferor Company after the Effective Date. In the above view, no directions are required to be issued by this Court with reference to the observation in question by the Regional Director.

7.7 The next observation of the Regional Director vide Para 2 (i) pertains to the response received from the Income Tax dept. vide their letter dated 22nd September 2014. The Regional Director has observed that the Income Tax Department has undertaken the scrutiny of the accounts of four Petitioner Companies for Assessment year 2012-13 and are pending for disposal. The petitioner companies agree to comply with the applicable provisions of the Income Tax Act and rules as and when the demands are finally adjudicated. The petitioner companies are directed to be abide by the Income-Tax Act and Rules and the tax liabilities, as may be arise, in

accordance with law.

8. Notices of the petitions of transferor companies was served upon the official liquidator. The official liquidator filed his report. He has similarly observed referring to M/s.N.K. Oil Mills Private Limited, about non-provision of some of the liabilities in the books of accounts of the transferee company. These observations are same as that of Regional Director. They are already dealt with hereinabove. The Official Liquidator in his report dated 12th November, 2014 has further mentioned that otherwise affairs of the transferor companies have not been conducted in a manner prejudicial to the interest of its members or the public at large. The Official Liquidator has requested the Court to direct that the transferor companies to preserve their books of accounts and record for a period of eight years.

8.1 The petitioner companies are accordingly directed to preserve and keep the books of accounts and records available for a period of eight years from the date of sanctioning of the Scheme and that they shall not dispose of the books of accounts and records without the prior permission of the Central Government.

9. In view of above, all the observations and comments by the Regional Director made in respect of the Scheme in question have been explained and/or met with and/or do not sustain. The necessary report is produced by the official liquidator. Furthermore, from the material on record and perusal of the Scheme, the

Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme except as mentioned above. All requisite statutory compliances are fulfilled.

10. This court is accordingly satisfied that the Scheme of Arrangement in the nature of Amalgamation amongst the petitioner companies deserve to be granted. Accordingly, prayers in respective petitions are hereby granted.

11. It is ordered that as required under Section 396-A of the Companies Act, 1956, the transferor companies shall not dispose of or destroy its books of accounts and other connected papers without the prior consent of the Central Government and shall preserve the same.

12. The petitioner companies shall pay towards professional charges to learned Assistant Solicitor General Rs.7,500/- each in respect of all five petitions. The official liquidator shall be paid cost of Rs.7,500/- in respect of four petitions by the transferor companies being Company Petition Nos.195 of 2014 to 198 of 2014.

13. The petitioner companies are further directed to lodge a copy of this order, the schedules of immovable assets of the transferor companies as on the date of this order and the Scheme duly authenticated by the Registrar, High Court of Gujarat,

with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.

13.1 The petitioner companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC 28 as per relevant provisions of the Act.

13.2 Filing and issuance of drawn up order is hereby dispensed with. All the authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar, High Court of Gujarat. The Registrar, High Court of Gujarat shall issue the authenticated copy of this order along-with Scheme as expeditiously as possible.

14. The petitions are allowed and disposed of accordingly.

(N.V.ANJARIA, J.)

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