

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**COMPANY PETITION NO. 272 of 2013****In****COMPANY APPLICATION NO. 253 of 2013****TO****COMPANY PETITION NO. 289 of 2013****In****COMPANY APPLICATION NO. 270 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE R.M.CHHAYA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge?	

JAMNAGAR KANDLA PIPELINE COMPANY PRIVATE LIMITED....Petitioner(s)

Versus

.....Respondent(s)

Appearance:

MR RS SANJANWALA, SENIOR ADVOCATE with MR DILIP L KANOJIYA,
ADVOCATE for the Petitioner(s) No. 1

MR IH SYED, ASSISTANT SOLICITOR GENERAL OF INDIA for the
Respondent(s) in Company Petition Nos. 272 of 2013 to 281 of 2013
MR M IQBAL A SHAIKH, SENIOR CENTRAL GOVERNMENT COUNSEL for
the Respondent(s) in Company Petition Nos. 282 of 2013 to 289 of 2013
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CORAM: HONOURABLE MR.JUSTICE R.M.CHHAYA

Date : 28/02/2014

COMMON ORAL JUDGMENT

1. The Petitioner Companies seeks sanction to the proposed Scheme of Amalgamation of Jamnagar Kandla Pipeline Company Private Limited, Jamnagar Ratlam Pipeline Company Private Limited, Leisure Commercials Private Limited, Reliance Agro Chemicals Private Limited, Reliance Alkalies Private Limited, Reliance Elastomers Private Limited, Reliance Films Private Limited, Reliance First Private Limited, Reliance Housing And Construction Private Limited, Reliance Industrial Enterprises Private Limited, Reliance Oil And Gas Private Limited, Reliance Oil And Petroleum Private Limited, Reliance Paging Private Limited, Reliance Petrosynth Private Limited, Reliance Photo Films Private Limited, Reliance Photographic Private Limited and Reliance Technologies Private Limited (the "Transferor Companies") with Reliance Tankages Private Limited (the "Transferee Company") under Sections 391 to 394 of the Companies Act, 1956

(the "Scheme").

2. It is stated that the Scheme provides for the amalgamation of the Transferor Companies with the Transferee Company and reduction in the issued, subscribed and paid up share capital of the Transferee Company and increase and re-classification of authorised share capital of the Transferee Company in accordance with, and in the manner provided for, in the Scheme.
3. The reasons and grounds that have necessitated the Scheme of Amalgamation have been set out in the petitions. The Petitioner Companies filed Company Application Nos. 253 to 270 of 2013 for directions. By Orders dated 14th October 2013 directions were issued dispensing with the meetings of equity shareholders and unsecured creditors in view of the affidavits of consents given by all the equity shareholders and all the unsecured creditors for the purpose of considering the Scheme and if thought fit, approving the same with or without modification(s). Some Transferor Companies had no unsecured creditors. None of the Petitioner Companies have preference shareholders and secured creditors, therefore the meetings of preference shareholders and secured creditors were also dispensed with for the purpose of considering the Scheme and if thought fit,

approving the same with or without modification(s).

4. On the facts and in the circumstances, as mentioned hereinabove, the Petitioner Companies have filed the present petitions for sanction of the Scheme of Amalgamation.

5. On 19-11-2013, this Court passed, the following separate orders for the Transferor Companies:-

"Upon the application of the above named Company and upon hearing Mr. R.S. Sanjanwala, learned Senior Counsel with Mr. Dilip L. Kanojiya for the Petitioner-Company and upon perusing and considering the contents of the Petition of Pradyuman Ambalal Soni, the authorised signatory of the Petitioner Company and upon perusing the relevant exhibits,

IT IS ORDERED:

1. Leave under Rule 21 of the Companies (Court) Rules, 1959 is granted.

2. ADMIT.

3. Petition is fixed for hearing and final disposal on 27.12.2013.

4. At least 28 clear days before the date fixed for hearing of the Petition, the Petitioner shall serve notice of hearing of Petition to the Central Government through the Regional Director, North-Western Region, Ministry of Corporate Affairs,

Registrar of Companies Bhavan, Opp. Rupal Park, Naranpura Ahmedabad and Official Liquidator pursuant to Section 394A of the Companies Act, 1956.

5. At least 28 clear days before the date fixed for hearing of the Petition, the Petitioner shall serve notice of hearing of Petition on the concerned Registrar of Companies.

6. At least 28 clear days before the date fixed for hearing of the Petition, the Petitioner shall serve notice of hearing of Petition upon the Official Liquidator, Gujarat High Court.

7. At least 10 clear days before the date fixed for hearing of the Petition, Petitioner shall publish the notice of hearing of Petition in local newspapers, viz., "Indian Express", English Daily, Ahmedabad edition and in "Divya Bhaskar", Gujarati Daily, Ahmedabad edition.

8. Publication of the notice of the hearing of the Petition in the Gujarat Government Gazette is dispensed with.

9. Petitioner shall file in the Registry an Affidavit of service as per Rule 30 of Companies (Court) Rules, 1959."

6. On 19-11-2013, this Court passed, the following Order for the Transferee Company:

"Upon the application of the above named Company and upon hearing Mr. R.S. Sanjanwala, learned Senior Counsel with Mr. Dilip L. Kanojiya for the

Petitioner-Company and upon perusing and considering the contents of the Petition of Pradyuman Ambalal Soni, the authorised signatory of the Petitioner Company and upon perusing the relevant exhibits,

IT IS ORDERED:

1. Leave under Rule 21 of the Companies (Court) Rules, 1959 is granted.

2. ADMIT.

3. Petition is fixed for hearing and final disposal on 27.12.2013.

4. At least 28 clear days before the date fixed for hearing of the petition, the Petitioner shall serve notice of hearing of Petition to the Central Government through the Regional Director, North-Western Region, Ministry of Corporate Affairs, Registrar of Companies Bhavan, Opp. Rupal Park, Naranpura Ahmedabad and Official Liquidator pursuant to Section 394A of the Companies Act, 1956.

5. At least 28 clear days before the date fixed for hearing of the Petition, the Petitioner shall serve notice of hearing of Petition on the concerned Registrar of Companies.

6. At least 10 clear days before the date fixed for hearing of the Petition, Petitioner shall publish the notice of hearing of Petition in local newspapers, viz., "Indian Express", English Daily, Ahmedabad edition and in "Divya Bhaskar", Gujarati Daily, Ahmedabad edition.

7. The provisions of Section (101) 2 shall not apply in relation to the reduction in the issued, subscribed and paid up share capital of the petitioner company considering the averments made in paragraph 31 of the petition.

8. Publication of the notice of the hearing of the Petition in the Gujarat Government Gazette is dispensed with.

9. Petitioner shall file in the Registry an Affidavit of service as per Rule 30 of Companies (Court) Rules, 1959."

7. Accordingly, notices have been published. The petitions have not been opposed by any person.

8. The Official Liquidator has filed his separate reports for all the Transferor Companies in Company Scheme Petitions Nos. 272 of 2013 to 288 of 2013 all dated 5th February 2014 making certain observations in Paragraph 20 of the said reports contains a common observation as under:-

"On the perusal of the clause i.e. No. 8 of the Scheme of Amalgamation, it appears that scheme is prejudice to other employees of the Transferor Company. In this connection, the Official Liquidator has sought clarification from the Petitioner Company and in response to the same Petitioner Company vide their letter dated 29.01.2014 has furnished their clarification stating therein that all

the employees, if any, of the company will be transferred to the Transferee Company, i.e. M/s. Reliance Tankages Private Limited on the scheme taking effect."

The Official Liquidator has submitted that in view of the above facts, this Hon'ble Court maybe pleased to direct Petitioner Companies to amend clause No.8 to the effect that the reference should be to "all employees" instead of "all permanent employees."

9. The Official Liquidator has further submitted that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its members or to public interest in terms of second proviso of Section 394 (1) of the Companies Act, 1956 and that the Transferor Companies may be ordered to be dissolved without winding up and to direct the Transferor Companies to preserve its books of accounts, papers and records and not to dispose of the records without prior permissions of Central Government.
10. Learned Advocate on behalf of the Petitioner Companies agrees that the Clause No. 1.9 (vi) and Clause No. 8 of the Scheme be accordingly modified to substitute the words "all permanent employees" with the words "all employees". The

Transferor Companies also undertake not to dispose of their records without prior permission of the Government.

11. The Regional Director, North Western Region, Ministry of Corporate Affairs, filed the Common Affidavit on behalf of the Central Government dated 24th January 2014. In Paragraph 2 of the said Common Affidavit, the Regional Director has made certain observations on behalf of the Central Government on the Scheme. Briefly the observations are as under:-

"(d) That, the Deponent respectfully submits that clause No. 13 of the Scheme, provides for Accounting Treatment. It is observed from the said clause that the aforesaid clause is not in accordance with the Accounting Standard-14 as required. The Hon'ble Court may therefore be pleased to direct the Petitioner companies to comply with requirements of Accounting Standard-14 and that the excess of assets over liabilities shall be credited to Amalgamation Reserve Account/ Capital Reserve Account and not to General Reserve Account and the petitioner company to give undertaking that reserves so created, if any, shall not be available for distribution of dividend.

(e) That, the deponent submits that clause 8 provides for employees. As per the said clause, all permanent employees of the transferor companies shall become the employees of the

transferee company w.e.f. proposed appointed date. The scheme is silent about the services of employees other than permanent employees as to whether their services will be continued or not. In this regard, the Hon'ble Court may be pleased to direct the petitioner companies to undertake for continuing their service to all the employees of transferor companies on the terms and such salary and perquisites, which are not less favourable than the present benefits etc. available to them.

(f) That the business of some petitioner companies are relating to Oil, Gas, Petroleum, technologies and films etc. The Deponent is however, not aware as to whether such companies have obtained any licenses, approvals and other permissions from the regulatory authority/ concerned Ministry to carry on the activities of Oil, Gas, Petroleum, technologies and films etc. It is therefore respectfully submitted that such licenses, approvals, NOCs and other permissions as may be required shall have to be obtained by the petitioner companies. The Hon'ble Court may therefore, be pleased to direct the Petitioner companies to obtain licenses, approvals and other permissions, if any, from the regulatory authority/concerned Ministry to carry on the activities of Oil, Gas, Petroleum, technologies and films etc. and to follow all the procedures as may be required by the appropriate authorities on payment of fees, if any, for effecting transfer of such licenses, approvals and permissions in the name of petitioner

transferee company.

(g) That, the deponent submits that the petitioner companies has also filed the petition under section 100 to 103 of the Companies Act, 1956 for reduction in share capital of petitioner transferee company. The petitioner transferee company has proposed at para 11.3 of the scheme that the transferee company shall not required to add the words "and reduced" as a suffix to its name. However, since there is a reduction in share capital, as per requirement of section 102 (3) of the Act, the company be directed to add to its name the words "and reduced" until the expiration of the period specified in the order.

(h) That the Deponent Submits that the petitioner transferor company nos. 1, 2, 3, 4, 5, 6, 8, 10, 13 & 15 are having trading activity as its main objects but it is observed that the aforesaid petitioner companies income is mainly generated from other sources such as dividend and interest which is an investment activity and the same is not covered in the main objects of the memorandum of association of the companies. Further, the companies have mainly invested in shares of other companies which is in the nature of investment activity. Further, it is stated that as per the guidelines issued by the RBI, if more than 50% of a company's assets are financial assets and if more than 50% of its income is generated from financial assets than it falls under the category of NBFC. In this regard, the Regional Director has submitted that

the Hon'ble Court direct the petitioner companies to clarify as to they have obtained NOC from RBI and how they have complied with the requirements of RBI Act, 1934 and are not NBFC companies."

12. In response to the observations in sub-paragraph (d), (e), (f) and (g) of Paragraph 2 of the said Common Affidavit of the Regional Director, the Transferee Company has submitted an Affidavit in Rejoinder dated 21st February 2014. A copy of the said Affidavit was also served on the Regional Director. In the Affidavit in Rejoinder the Transferee Company has submitted that:-

"(i) With respect to sub-paragraph (d) of Paragraph 2 of the Affidavit of the Regional Director, the Transferee Company has submitted that Accounting treatment is in accordance with Accounting Standard 14 and Clause 13.3 of the Scheme provides that the excess remaining after recording the aforesaid entries shall be adjusted in "capital reserve" and the deficit shall be adjusted in "goodwill". The Transferee Company also submits that the Scheme does not provide that the excess of assets over liabilities shall be credited to "general reserve account" and the observation of the Regional Director is not applicable.

(ii) With respect to sub-paragraph (e) of Paragraph 2 of the Affidavit of the Regional Director, the Transferee Company submitted that the Clause 8 of the Scheme be modified to delete the

word "permanent" in the first line of Clause 8 (a) of the Scheme.

(iii) With respect to sub-paragraph (f) of Paragraph 2 of the Affidavit of the Regional Director, the Transferee Company submitted that the Transferee Company undertakes to obtain, if required, necessary licenses, approvals and permissions from the concerned regulatory authority and concerned Ministry to carry on the activities of Oil, Gas, Petroleum, Technologies, Films, etc. and to follow all procedures, as may be, required by the appropriate authorities and to pay all fees, if any, effecting transfer of licenses, approvals and permissions, if any, obtained by the Transferor Companies to the name of the Transferee Company.

(iv) With respect to sub-paragraph (g) of Paragraph 2 of the Affidavit of the Regional Director, the Transferee Company submitted that there is no diminution of liability in respect of unpaid share capital or payment to any shareholder of paid-up share capital in terms of Section 101(2) of the Companies Act, 1956 and by Order dated 19th November, 2013 of the Hon'ble Gujarat High Court, the provisions and procedure of Section 101 (2) of the Companies Act, 1956 has been dispensed with and Sections 101(3) and 102 (2) and (3) of the Companies Act, 1956 have no applicability. The Transferee Company submits that it is not required to add the words "and reduced" in terms of Section 102(2)(a) of the Companies Act, 1956."

13. The Learned Advocate for the Petitioner

Companies has stated that with respect to the observation in sub-paragraph (h) of Paragraph 2 of the Regional Director, Ministry of Corporate Affairs, North-Western Region in his Common Affidavit dated 24th January, 2014, the Transferor Companies Nos. 1, 2, 3, 4, 5, 6, 8, 10, 13 and 15 have filed their respective separate Affidavits in Rejoinder all dated 21st February, 2014 in reply to that observation stating that the investments held by said Transferor Companies are long term and are strategic investments and the said Transferor Companies have not earned any income from investment activity. The said Transferor Companies are therefore not carrying on the business of a "Non-Banking Financial Company" ("NBFC") and have not accepted and does not 'public deposits'. The said Transferor Companies also submit that they are not registered with RBI as NBFC's under the Reserve Bank of India Act, 1934 and they are not NBFC Companies and not required to obtain NOC from RBI.

14. The Learned Advocate further states that there are no observations of the Regional Director against the Transferor Companies Nos. 7, 9, 11, 12, 14, 16 and 17.

15. The Regional Director has further observed in

sub-paragraph (j) of Paragraph 2, that he has no other objection except as stated hereinabove and that the Scheme of Arrangement in the nature of Amalgamation is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

16. In view of the above, there does not appear to be any legal or other impediment in sanctioning the proposed Scheme of Amalgamation, annexed to the petitions with the modifications that Clause No. 1.9 (vi) and Clause No. 8 of the Scheme shall be modified by substitution of the words "all permanent employees" with the word "all employees", and especially in view of the observations made by the Regional Director in his affidavit dated 24th January, 2014 and the reports of the Official Liquidator all dated 5th February 2014 that the Scheme of Arrangement in the nature of Amalgamation does not, prima facie, appear to be prejudicial to the interest of the Shareholders and the public at large.

17. Accordingly, following order is passed:

The Scheme of Amalgamation annexed to the petitions shall be modified to delete the word "permanent" in Clause 1.9(vi) and Clause 8 of the Scheme and the Scheme as modified is sanctioned. The prayers from Clauses (a) to

(j) in the Company Scheme Petitions Nos. 272 to 288 of 2013 and prayers from Clauses (a) to (e) and (g) to (o) and prayer (f) with deletion of the word 'permanent' in Company Scheme Petition No. 289 of 2013 be granted to the Petitioner Companies.

18. The petitions are disposed of, in the above terms. The Petitioner Companies are directed to pay costs of Rs.7,500/- per petition to Mr. I.H. Syed, learned Assistant Solicitor General of India appearing on behalf of the Regional Director in respective matters, and Rs.7,500/- per petition to Mr. M. Iqbal A. Shaikh, learned Senior Central Government Counsel appearing on behalf of the Regional Director in respective matters and are directed to pay costs of Rs.7,500/- per each Transferor Company to the Official Liquidator.

(R.M.CHHAYA, J.)

mrp