

In Re: Gallops Realty P. Ltd.

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Court : Gujarat

Decided On : May-08-2009

Reported in : [2009]150CompCas596(Guj); [2010]97SCL93(Guj)

Judge : K.A. Puj, J.

Acts : [Companies Act, 1956](#) - Sections 78, 100 to 104, 205, 205(3), 391 and 394; Companies (Court) Rules, 1959 - Rules 48 to 65

Appeal No. : Company Petition No. 59 of 2009 in Company Application No. 30 of 2009 and Company Petition No. 60 of

Appellant : In Re: Gallops Realty P. Ltd.

Advocate for Pet/Ap. : S.N. Soparkar and; Swati Soparkar, Advs.; Harin P. Raval

Judgement :

K.A. Puj, J.

1. These are the petitions filed by the petitioner-companies for sanction of a composite scheme of arrangement in the nature of purchase of shares and demerger of hotel business of Gallops Realty P. Ltd., the demerged company to Atithya Inn P. Ltd., the resulting company and the consequent reconstruction of the share capital of the demerged company under Section 391 read with Section 394 read with Sections 78 and 100 - 104 of the [Companies Act, 1956](#).

2. It has been submitted that with the object of realignment of the shareholding pattern of the demerged company as agreed between the shareholders, the proposed scheme envisages the purchase of equity shares from the shareholders and subsequent cancellation and reduction of equity share capital by the demerged company.

3. It has been further submitted that the demerged company is presently engaged in two different activities, viz., development of real estate projects as well as the development and operating of hotels. The resulting company is a newly incorporated company and will be engaged exclusively in the business of development and operating of hotels. It has been submitted that with the object of providing focused attention to the real estate development and hotel business separately, the board of directors thought it appropriate to spin off the hotel business of Gallops into a separate company and continue with the activity of real estate development. Post arrangement the entire hotel business will be concentrated in Atithya Inn. The petitions give details of synergies and the benefits that is envisaged due to the proposed arrangement.

4. Vide order dated February 26, 2009, passed in Company Application No. 30 of 2009, meetings of the equity shareholders and unsecured creditors of the demerged company were dispensed with in view of the consent letters from all of them on oath, being placed on record and there being no secured creditors of the demerged company.

5. Further submissions were made with regard to the reconstruction of the capital consisting of reduction of paid-up share capital as well as utilisation of the share premium account. The same is proposed as an integral part of the scheme of arrangement and the proposed reduction does not involve diminution of liability in respect of unpaid share capital but it does involve payment of a part of the paid-up share capital to the shareholders. Since there are no secured creditors of the demerged company and all the unsecured creditors had given their written approval to the proposed scheme, vide the said order, this Court has further granted the dispensation with the procedure prescribed under Section 101(2) of the [Companies Act, 1956](#) as well as Rules 48 to 65 of the Companies (Court)

Rules, 1959.

6. In case of resulting company vide the order dated February 26, 2009, passed in Company Application No. 31 of 2009, the meeting of equity shareholders was dispensed with in view of the consent letters from all of them on oath, being placed on record.

7. After the petitions were admitted, the same were duly advertised in the newspapers being The New Indian Express and Sandesh both Ahmedabad edition of April 1, 2009 and the publication in the Government Gazette was dispensed with as directed in the order dated March 13, 2009. No one has come forward with any objections to the said petition even after the publication. The said fact has been confirmed vide the additional affidavit dated April 27, 2009.

8. Attention of this Court is drawn to an additional affidavit dated April 1, 2009, filed by the petitioner-company. The demerged company has thereby quantified the amount of the equity share capital to be reduced on the basis of the exercise of the option given to the shareholders as envisaged in clause 4 of the said scheme. The minutes under Section 103(1) has been placed on record with final figures of such reduction.

9. Notice of the petitions have been served upon the Central Government and Shri Harin P. Raval, learned Assistant Solicitor General appears for the Central Government. An affidavit dated April 23, 2009, has been filed by Mr. R.K. Dalmia, Deputy Registrar of Companies along with the letter of the Regional Director dated April 21, 2009. The only observation made therein pertains to the accounting treatment proposed to be given in the books of the resulting company under clause 8.1.3 of the proposed scheme. It is observed in the affidavit that as per clause 8.1.3 of the scheme the capital profit on demerger shall be transferred to the general reserve in the books of the resulting company. According to the Regional Director, it is not in consonance with the generally accepted accounting principles as also Accounting Standard 14 which provide that any profits arising out of a capital transaction like merger or demerger ought to be treated as capital profits and hence shall be transferred to the capital reserve and not to the general reserve.

10. An additional affidavit dated April 27, 2009, has been filed by Mr. N. G. Patel, the director of the petitioner-companies, which deals with the above observation. It has been submitted that the allegation that the proposed accounting treatment is not in consonance with the accounting principles in general and Accounting Standard 14 in particular, is based on the misconception and misreading of the said Accounting Standard. The plain reading of the said standard makes it very clear that the same is applicable only in case of amalgamation and not in case of demerger as envisaged in the present scheme. In the light of this, the said principle is not applicable in the present scheme. It has been further submitted, without prejudice to the aforesaid contention, that the said difference which may arise as a result of the face value of the shares issued by the resulting company being less than the net value of the assets being transferred, can also be treated as the share premium account. It is therefore, alternatively prayed that the court may be pleased to modify the scheme to that extent and words 'general reserve' be replaced with 'share premium reserve' in the above referred clause 8.1.3 of the scheme.

11. Having heard Mr. S. N. Soparkar, learned senior advocate with Mrs. Swati Soparkar, learned advocate for the petitioner and Mr. Harin P. Raval, learned Assistant Solicitor General, appearing for the Regional Director and having considered the additional affidavit filed by the directors of the companies, the court is of the view that the observation made by the Regional Director with regard to the accounting treatment proposed to be given in the books of the resulting company under clause 8.1.3 of the proposed scheme has been taken care of and proper explanation has been rendered by the company. As rightly pointed out by Mr. Soparkar that the said observation is not in consonance with the accounting principles in general and Accounting Standard 14 in particular. The plain reading of the Accounting Standard 14 makes it very clear that the same is applicable only in case of amalgamation and not in the case of demerger as envisaged in the present scheme. This view is supported by the decision of the Allahbad High Court in the case of Jagran TV P. Ltd., In re [2009] 150 Comp Cas 532 : [2009] 90 SCL 138, wherein it is held that with regard to Accounting Standard-14 a statement was given in the Delhi High Court that since the transferor company will merge into the transferee company, the Accounting Standard-14 will be followed. In the case

before the Allahabad High Court there is no amalgamation but demerger of the business of the petitioner-company with the transferee company. Here in the present case, there is no amalgamation and it is merely a demerger of the business of the petitioner-company with the resulting company. Even otherwise, the petitioner has shown its willingness to treat the difference which may arise as a result of the value of the shares issued by the resulting company being less than the net value of the assets being transferred, can also be treated as share premium account and requested the court to modify the scheme to that extent and the words 'general reserve' be replaced with 'share premium reserve' in clause 8.1.3. However, this is not required and hence no direction for modification of the scheme is issued.

12. The court further derives support from the decision of the hon'ble Supreme Court in the case of Bhagwati Developers v. Peerless General Finance and Investment Co. [2005] 128 Comp Cas 968 : [2005] 5 Comp LJ 377, wherein the court was concerned with the question of bonus shares issued out of revaluation reserves. In this context, it was observed that Section 205 of the [Companies Act, 1956](#), provides that the dividend could only be paid out of profits. The proviso to Sub-section (3) of Section 205 permits capitalisation of profits on reserve of a company for the purpose of issuing fully paid-up shares or paying up any money for the time being unpaid on any shares held by the members of the company. Thus, the Companies Act clearly and specifically permits utilisation of the reserve arising out of revaluation of the assets for the purpose of issuing fully paid-up bonus shares.

13. Reference is also made to the decision of the Rajasthan High Court in the case of Sutlej Industries Ltd. In re reported in [2007] 135 Comp Cas 394, wherein similar objection was raised by the Regional Director. The objection was raised to the effect that since surplus arising out of the scheme of arrangement, i.e., arrangement/amalgamation reserve is of capital nature and cannot be considered as general reserve as the same (general reserve) is free for distribution to the shareholders of a company in the form of dividend/bonus shares, whereas 'arrangement/amalgamation reserve' cannot be utilised for distribution to the shareholders. While dealing with this contention the court held that such a clause

in the scheme was not objected to by the shareholders and the meeting of the shareholders unanimously approved the scheme of arrangement. The court did not see any good reason to exclude such a clause from the scheme and broadly found the scheme to be fair, reasonable, according to law and in the interest of the shareholders. There is no reason to make any departure from this view.

14. Considering the entire facts and circumstances of the case the court is of the view that the scheme of arrangement as proposed is in the interest of the companies and their members and hence prayers in terms of paragraph 22 in Company Petition No. 59 of 2009 and paragraph 17 of Company Petition No. 60 of 2009 are hereby granted.

15. The petitions are disposed of accordingly. So far as the costs to be paid to the Central Government counsel is concerned, I quantify the amount at Rs. 3,500 per petition. The same may be paid to Mr. Harin P. Raval, learned Assistant Solicitor General, appearing for the Central Government.

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