

In Re: Paramount Centrispun Castings P. Ltd.

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Court : Gujarat

Decided On : May-08-2009

Reported in : [2009]150CompCas790(Guj)

Judge : K.A. Puj, J.

Acts : [Companies Act, 1956](#) - Sections 205, 205(3), 297, 393, 43A(2A) and 621A; Companies (Court) Rules, 1959 - Rule 76

Appeal No. : Company Petition No. 23 of 2009 in Company Application No. 617 of 2008 in Company Application No. 58

Appellant : In Re: Paramount Centrispun Castings P. Ltd.

Advocate for Def. : Harin P. Raval, Assistant Solicitor General of India for the Central Government

Advocate for Pet/Ap. : Mihir Joshi and; Sandeep Singhi, Advs. for; Singhi a

Judgement :

K.A. Puj, J.

1. These are the petitions filed by the three petitioner-companies for sanction of the scheme of arrangement embodied in the scheme of amalgamation of Reclamation Welding Ltd., and Paramount Centrispun Castings P. Ltd., with AIA Engineering Ltd.

2. The petitioner of Company Petition No. 23 of 2009 is Paramount Centrispun Castings P. Ltd. It was incorporated on April 27, 1983, in the name of Paramount Centrispun Castings Ltd., in the State of Maharashtra and its name was changed to Paramount Centrispun Castings P. Ltd., with effect from April 26, 2001. The registered office of this company was shifted from the State of Maharashtra to the State of Gujarat with effect from September 15, 2008. This company is a wholly owned subsidiary of AIA Engineering Ltd. It is doing the job work of manufacturing of semi finished castings for AIA Engineering Ltd.

3. The petitioner in Company Petition No. 24 of 2009 is Reclamation Welding Ltd. It was incorporated on April 10, 1981, in the name of Grey Casting Ahmedabad P. Ltd., and its name was changed to Reclamation Welding P. Ltd., with effect from November 22, 1990 and was further changed to Reclamation Welding Ltd., with effect from May 11, 2005. This company is also a wholly owned subsidiary of AIA Engineering Ltd., and it is doing the job work of manufacturing of semi finished castings for AIA Engineering Ltd.

4. The petitioner of Company Petition No. 25 of 2009 is AIA Engineering Ltd. It was incorporated on March 11, 1991, in the name of Magotteaux (India) P. Ltd., and its name was changed to AIA Engineering P. Ltd., with effect from May 11, 1992 and became a deemed public company with effect from November 30, 1992. The name was changed to AIA Engineering Ltd., with effect from May 2, 2000 and therefore the word private was added under Section 43A(2A) of the Act with effect from March 1, 2001. The name was further changed to AIA Engineering Ltd., with effect from March 30, 2005. This company is presently engaged in the business of manufacturing of alloy, steel casting which are used by cement, thermal and mining industries.

5. Circumstances and/or reasons and/or grounds have necessitated and/or justified the scheme and the advantages thereof are, inter alia, as under:

(a) The transferee company is a manufacturer of alloy steel castings. The castings manufactured by the transferee company are used by cement, thermal and mining industries. The transferor companies are the subsidiaries of the transferee company. The transferor companies are doing job work for the transferee

company. The business of the transferor companies can be conveniently combined with the business of the transferee company.

(b) The amalgamation would result in optimum and effective utilisation of manufacturing and other facilities, financial, managerial, technological, manpower and other resources which will be conducive to enhance the capability to face competition in the market more effectively, thereby further strengthening the market position and growth prospects.

(c) The amalgamation will integrate all activities of management functions, thereby achieving reduction in the cost and improving control over costs.

(d) The amalgamation will provide better financial and growth prospects for the transferee company and will also achieve managerial synergy through better focus control and operating efficiency.

(e) Since, object of the transferor companies and the transferee company is the manufacturing of castings, the combined operations will offer benefits arising out of business synergy owing to economics of scale, integrated operations and reduction in cost. It would also enable optimum utilisation of various infrastructure and other service facilities.

(f) The amalgamation will enable the transferee company to carry out its objects and achieve the desired objectives expeditiously in accordance with the objectives of its management which could be for the benefit of all.

6. The petitioner of Company Petition No. 23 of 2009, i.e., Paramount Cen-trispun Castings P. Ltd., had filed an application in this Court being Company Application No. 587 of 2008 for requisite directions for dispensing with the convening and holding of the meeting of the equity shareholders of this company in view of the fact that the consent letters had been received from all the equity shareholders and that there had been no objection. By order dated November 24, 2008, passed by this Court in the said company application, this Court dispensed with the requirement of holding of meetings of the equity shareholders of this company. This company has also prayed for dispensing with the meeting of the creditors

secured and unsecured of the company in the light of the fact that no compromise was offered to any of the creditors and neither any liability of the creditors under the scheme is being reduced or extinguished. This Court vide its order dated November 24, 2008, dispensed with the said meeting, however, this Court directed to inform all the secured and unsecured creditors having the amount due to them by the company exceeding Rs. 10,00,000. The company has thereafter filed another application being Company Application No. 617 of 2008 seeking modification of the order dated November 24, 2008. This Court vide its order dated December 5, 2008, passed in the said application modified the order dated November 24, 2008 and directed the company to intimate to the unsecured creditors having their outstanding dues from the company exceeding Rs. 1,00,000.

7. Similarly, the petitioner of Company Petition No. 24 of 2009, i.e., Reclamation Welding Ltd., has filed an application in this Court being Company Application No. 586 of 2008 for requisite directions for dispensing with the convening and holding of the meeting of the equity shareholders of the company in view of the fact that consent letters had been received from all the equity shareholders and that there has been no objection. By order dated November 24, 2008, passed by this Court in the said company application, this Court has dispensed with this requirement of holding of the meeting of the equity shareholders of the company. The company had also prayed for dispensing with the meeting of the creditors secured and unsecured of the company in the light of the fact that no compromise was offered to any of the creditors and neither any liability of the creditors under the scheme is being reduced or extinguished. This Court vide its order dated November 24, 2008, dispensed with the said meeting. However, this Court directed the company to intimate all secured and unsecured creditors having the amount due to them by the company exceeding Rs. 10,00,000. The company had thereafter filed another application being Company Application No. 618 of 2008 seeking modification of the order dated November 24, 2008. Accordingly, this Court vide its order dated December 5, 2008, modified the order dated November 24, 2008 and directed the company to intimate the unsecured creditors having their outstanding dues from the company exceeding Rs. 1,00,000.

8. Likewise, the petitioner of Company Petition No. 25 of 2009, i.e., AIA Engineering Ltd., had preferred Company Application No. 588 of 2008 before this Court, wherein it was prayed that the meeting of the equity shareholders of the company be held and convened for the purpose of considering and if thought fit, to approve with or without modifications, the arrangements embodied in the scheme. This Court allowed the said Company Application No. 588 of 2008 vide order dated November 24, 2008, directing to hold and convene the meeting of the equity shareholders of the company on January 16, 2009. Mr. Sanjay Mazumdar, the director of the company and in his absence, Mr. Bhadresh K. Shah, the director of the company and in his absence, Mr. R.S. Shah, the director of the company was ordered to be appointed as the chairman of the said meeting. In the said company application, the company had also prayed for dispensing with the meeting of the secured and unsecured creditors of the company in light of the fact that the rights and interests of the creditors of the company are not affected by the scheme. This Court vide its order dated November 24, 2008, dispensed with the holding of meetings of the secured and unsecured creditors of the company.

9. Notices of meetings were sent individually to the equity shareholders of the company, pursuant to the order dated November 24, 2008, together with a copy of the scheme and the explanatory statement required under Section 393 of the Act and the form of proxy. Notice of the meeting was also advertised as directed by this Court in The New Indian Express, Ahmedabad edition and Sandesh, Ahmedabad edition, on December 19, 2008. Mr. Sanjay Mazumdar, the chairman of the meeting has already filed the requisite affidavit under Rule 76 of the Companies (Court) Rules, 1959, dated January 6, 2009, in respect of service and appearance of advertisement of the said notice. The arrangement embodied in the scheme was approved by the requisite majority of the equity shareholders at the meeting held on January 16, 2009.

10. The petitioner thereafter filed the company petitions, namely, Company Petitions Nos. 23 of 2009, 24 of 2009 and 25 of 2009, seeking sanction of the scheme of arrangement. This Court vide its order dated February 5, 2009, admitted all the three petitions and directed issuance of notice to the Regional Director, in the case of all the three companies and notice to the official liquidator

in the case of the transferor companies. This Court also directed the publication of notice of petition in The New Indian Express, English daily and Sandesh, Gujarati daily.

11. Pursuant to the order dated February 5, 2009, the petitioners have published a notice of admission in The New Indian Express, English daily, as well as Sandesh, Gujarati daily on February 16, 2009. Similarly, notice of hearing of petitions was served upon the official liquidator on February 9, 2009 and the Regional Director on February 10, 2009. Mr. Kunal D. Shah, the director of the company filed an affidavit of service indicating the service of notice published in the newspapers and also the notice of hearing of the petition served upon the Regional Director as well as the official liquidator.

12. Pursuant to the notice to the official liquidator, in respect of the transferor companies, a report dated April 9, 2009, is filed by the official liquidator in Company Petitions Nos. 23 of 2009 and 24 of 2009. The report of the official liquidator confirms that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or public interest.

13. In response to the notice to the Regional Director, Western Region, Department of Company Affairs, Mr. Harin P. Raval, the learned Assistant Solicitor General of India has appeared and has filed an affidavit dated April 15, 2009, of Mr. R. K. Dalmia, the Deputy Registrar, enclosing therewith the report/letter dated April 13, 2009, sent by the Regional Director to the Registrar of Companies. A perusal of this affidavit discloses that there are two observations made by the office of the Regional Director. The first observation was to the effect that the transferee company, i.e., ALA Engineering Ltd., has violated the provisions of Section 297 of the [Companies Act, 1956](#), in respect of transactions with hotel Gulmarg and the transferee company assured to file a compounding application for compounding such offences. Since the transferee company is a public and listed company, in context of corporate governance, the applications stating the facts are to be brought to the notice of this Court.

14. Mr. Mihir Joshi, learned senior counsel appearing for the petitioner-companies' has submitted that simply because the court has granted its sanction to the

scheme, it would not absolve the transferee company from any liability that may arise in future on violation of any statutory provisions or the scheme would not affect the pending proceedings either before the civil or criminal court and the liability that may be inflicted upon the petitioner or petitioners or the directors would not be affected simply by virtue of the scheme of amalgamation. As a matter of fact, the transferee company made compounding application under Section 621A of the [Companies Act, 1956](#), on April 14, 2009. The court finds substance in the submission made by Mr. Joshi. Even otherwise, this issue has been examined at length by this Court vide its order dated April 27, 2009, passed in Company Petitions Nos. 181 of 2008 and 186 of 2008 (Nirmay Properties P. Ltd., In re [2009] 150 Comp Cas 538), wherein after considering the earlier decisions on the subject, the court took the view that grant of sanction to the scheme would not absolve the company or its directors and hence the transferee company is liable to face all necessary proceedings which are pending and/or to modify the application for compounding of the offences.

15. The second observation made by the Regional Director is that as per Clause 13.3 of the scheme, the excess, if any, of the value of the assets over the value of the liabilities of Paramount Centrispun Castings P. Ltd., and Reclamation Welding Ltd., pursuant to the scheme shall be recorded and credited to the joint reserve in the books of the transferee company. This prayer is not in consonance with the jointly accepted accounting practices as also Accounting Standard 14 which provides that any profits arising out of 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 joint reserve.

16. While dealing with this observation, Mr. Joshi invited the court's attention to study the material published by the Institute of Company Secretaries of India in respect of methods of accounting for amalgamations. According to Accounting Standard 14 there are two methods of accounting for amalgamations, namely, (i) the pooling of interest method ; and (ii) the purchase method:

(i) Pooling of interest method : This method of accounting is followed in case of an amalgamation in the nature of merger. In this case, the amalgamation is

accounted for as if the separate business of the amalgamating companies were intended to be continued by the transferee (amalgamated) company. Accordingly, only minimal changes; are made in aggregating the individual financial statements of the amalgamating companies. The application of this method involves the following.

(a) While recording the transactions in the books of the transferee company, the assets, liabilities and reserves (whether capital or revenue or arising on revaluation) of the transferor company should be recorded at their existing carrying amounts and in the same form as at the date of amalgamation. For example, the machinery of the transferor company should be clubbed with the machinery of the transferee company and shown at a combined figure. Similarly, general reserve of the transferor company should be clubbed with the general reserve of the transferee company. The balance of the profit and loss account of the transferor company should be aggregated with the corresponding balance of the transferee company or transferred to the general reserve, if any. This reflects the facts that the entries are simply merged together. No goodwill account should be accounted for.

(b) If at the time of amalgamation, the transferor and transferee companies have conflicting accounting policies, a uniform set of accounting policies should be adopted following the amalgamation. The effects on the financial statement of any changes in the accounting policies should be appropriately disclosed.

(c) The difference between the amount recorded as the share capital issued (plus any additional consideration in the form of cash or other assets) and the amount of share capital of the transferor company should be adjusted in the reserves of the transferee company.

(ii) Purchase method : This method of amalgamation is applicable for amalgamation in the nature of purchase. The application of this method involves the following:

(a) In the books of the transferee company, the assets and liabilities of the transferor company should be incorporated either at their existing carrying

amounts or the consideration should be allocated to individual identifiable assets and liabilities on the basis of their fair values at the date of amalgamation. The identifiable assets and liabilities may include the assets and liabilities not recorded in the financial statement of the transferor company.

(b) Any excess of purchase consideration over the value of net assets of the transferor company should be treated as goodwill arising on amalgamation and should be debited to the goodwill account. On the other hand, if the purchase consideration is lower than the value of the net assets acquired, the difference should be credited to the capital reserve account.

(c) The goodwill arising on amalgamation should be amortised to income on a systematic basis over its useful life. The amortisation period should not exceed five years unless a somewhat longer period can be justified.

(d) The reserves (whether capital or revenue or arising on revaluation) 'of transferor company, other than the statutory reserve should not be included in the financial statements of the transferee company. The statutory reserves refer to that reserves which are required to be maintained for legal compliance, e.g., investment allowance reserve, export profit reserve, development allowance reserve, etc. The statute under which a statutory reserve is created may require the identity of such reserve to be maintained for a specified period/Where the requirement of the relevant statute for recording the statutory reserves of the transferor company in the books of the transferee company are complied with, such statutory reserve should be recorded in the financial statements of the transferee company by crediting the relevant statutory reserve account and corresponding debit should be given to amalgamation adjustment account. The amalgamation adjustment account should be disclosed as part of miscellaneous expenditure in the balance-sheet. Where the identity of the statutory reserve is no longer required to be maintained, both statutory reserve account and amalgamation adjustment account should be reversed.

17. From the above, it appears that no goodwill or capital reserve account is to come about as a result of difference between the purchase consideration paid and the net assets takeover by the transferee company. The difference is to be

adjusted in general reserve or other reserves.

18. Having heard Mr. Mihir Joshi, learned senior counsel appearing with Mr. Sandeep Singhi, the learned advocate for the petitioner-companies and Mr. Harin P. Raval, the learned Assistant Solicitor General of India appearing for the Central Government and having considered the observations made by the Regional Director as well as the reply affidavit filed on behalf of the petitioner-companies, the court is of the view that none of these two observations have any bearing in the eye of law. As far as the first observation is concerned, the court has made it very clear while disposing of the earlier petitions involving the same issue and the court took the view that grant of sanction to the scheme would not absolve the company or its directors and hence the transferee company is liable to face all the necessary proceedings which are pending and/or prefer an application for compounding of the offences.

19. With regard to the Accounting Standard 14 as discussed above, the legal position is also very clear. The Allahabad High Court in the case of Jagran TV P. Ltd., In re reported in [2009] 150 Comp Cas 532 : [2009] 90 SCL 138, has taken the view 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. The court further derived support from the decision of the hon'ble Supreme Court in the case of Bhagwati Developers v. Peerless General Finance and Investment Co. reported in [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 dividend can be only paid out of the profits. The proviso to Sub-section (3) of Section 205 permits capitalisation of the profit of 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 reserve arising out of revaluation of assets for the purpose of issuing fully paid-up bonus shares.

20. Similar issue arose before 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 the 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 reason to exclude the said clause from the scheme and found the scheme to be fair, reasonable, according to law and in the interest of the shareholders. There is no reason to take any departure from this view.

21. 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 interests of the companies and they are duly approved by the shareholders and all concerned. No one has raised any objection. It is also not contrary to the public interest. Hence prayers made in the respective company petitions are hereby granted.

22. The petitions are disposed of accordingly. So far as cost to be paid to the Central Government counsel is concerned, the same is quantified at an amount of Rs. 3,500 (rupees three thousand five hundred only) per petition. The same may be paid to Mr. Harin P. Raval, the learned Assistant Solicitor General of India appearing for the Central Government.