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Read By :

Prepared By : K.K. Joshi

Applied on : 11/11/2016

Examined By :

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D.Y.S.O.

Section Officer

Decree Department

Decree Department

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION 316 of 2016

In COMPANY APPLICATION 311 of 2016



1 BODAL AGROTECH LIMITED
PLOT NO 123 AND 124, PHASE-1, GIDC, VATVA,
AHMEDABAD - 382 445
IN THE STATE OF GUJARAT

Petitioner(s)

VERSUS



GUJARAT HIGH COURT

1

Respondent(s)

Comp
Being No. 316 of 2016

Appearance on Record:

MRS SWATI SOPARKAR as ADVOCATE for the Petitioner(s) No. 1

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

COURT'S ORDER :

CORAM :

HONOURABLE SMT. JUSTICE ABHILASHA KUMARI



GUJARAT 16/2015 Application No.: C/A/1485/2015 Order Date: 11/11/2015

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Date of Decision: 11/11/2015
(COPY OF JUDGEMENT ATTACHED HEREWITH)



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ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION NO. 316 of 2016
In
COMPANY APPLICATION NO. 311 of 2016

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BODAL AGROTECH LIMITED...Petitioner(s)
Versus
.....Respondent(s)

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Appearance:
MR BANDISH SOPARKAR, ADVOCATE for 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 SMT. JUSTICE ABHILASHA KUMARI

Date : 11/11/2016

ORAL ORDER



1. This is a petition filed by Bodal Agrotech Limited, for the purpose of obtaining the sanction of this Court to a Scheme of Amalgamation of Bodal Agrotech Limited, the Transferor Company with Bodal Chemicals Limited, the Transferee Company; proposed under Section 391 to 394 of the Companies Act, 1956.

2. It has been submitted that Bodal Agrotech Limited, the petitioner Transferor Company is a wholly

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owned subsidiary of Bodal Chemicals Limited, the Transferee Company. The Transferor Company was originally promoted with the objective of manufacturing as well as trading in all kinds of agricultural equipments, fertilizers, pesticides and plant protection chemicals etc. However, it is currently engaged in the business of manufacturing as well as trading of the Chemicals Products and other salt related product and other products. Bodal Chemicals Limited is a listed public limited company and the shares are listed on Bombay Stock Exchange Limited and National Stock Exchange (India) Limited. It is presently engaged in the manufacturing as well as trading in all kinds of dyestuff dyes intermediates and basic and other chemicals etc. It is a profit making and dividend paying company. The Board of Directors of these Companies thought it fit to amalgamate them for synergic benefits. It is envisaged that the amalgamation shall be beneficial for rapid growth and expansion and achieve greater administrative efficiency and reduction in administrative and operational cost. The petitions provide the details of the benefits envisaged from the

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proposed Scheme.



3. It has been further pointed out that the Transferee Company being a Listed Company, pursuant to Regulation 37 of the SEBI (LODR) Regulations, 2015, the Transferee Company had obtained the requisite approval from the concerned stock exchanges, viz. BSE Limited and National Stock Exchange of India Limited. A copy of each of them dated 20th May, and 16th May, 2016 respectively were obtained from the said exchanges and the same had been placed on record.

4. It has been submitted that vide order dated 14th July, 2016 passed in Company Application No. 311 of 2016, the meeting of the Equity Shareholders and Unsecured Creditors of the Transferor Company were dispensed with in view of the written consent letters from all of them, approving the proposed scheme, being placed on record. There are no Secured Creditors of the Transferor Company.

5. In case of the Transferee Company, dispensation of the separate proceedings was sought based on the

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contention that the Transferee Company being the sole holding company of the Transferor Company, no shares were proposed to be issued towards consideration for the transfer and vesting of the undertaking of the Transferor Company. As a result, the rights and interests of the existing shareholders of the Transferee Company were not likely to be prejudicially affected. Considering the settled legal issue supported by decisions of several high courts, including this Court, the said prayer was granted vide the order dated 14th July, 2016 passed in Company Application No. 312 of 2016. It was contended that in light of the substantially positive net worth of the Transferee Company, in both the pre-scheme and post-scheme scenarios, as substantiated by a certificate from the Chartered Accountant that is placed on record, the rights and interests of the creditors of the Transferee Company shall not be prejudicially affected. The Transferee Company had also undertaken that in compliance with the contractual terms of the loan agreements with its secured lenders, their approval to the scheme in the form of written consent letters shall be obtained and placed on record, before



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the final sanction of the scheme. The same are now placed on record along with the Additional Affidavit dated 20th October, 2016.



6. The substantive petition for the sanction of the scheme was filed by the Transferor Company which was admitted on 26th July, 2016. The notice for the hearing of the petition was duly advertised in the newspaper being 'Indian Express', English daily newspaper and 'Sandesh', the Gujarati daily newspaper, both Ahmedabad editions. Of 8th August, 2016 and the publication in the Government gazette was dispensed with as directed in the said order. Affidavit dated 19th August, 2016 confirm the same. No one has come forward with any objections to the said petitions even after the publication and the same has been further confirmed by the additional affidavit dated 20th August, 2016.

7. Notice of the petition has been served upon the Office of the Official Liquidator for the Transferor Company. The report dated 6th September, 2016 has been filed by the Official Liquidator after taking into

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account the report of the Chartered Accountant appointed by him out of the panel. It has been observed by the Official Liquidator that the affairs of the Transferor Company have been conducted within its object clauses and they have not been conducted in any manner prejudicial to the interest of the members or public interest, hence the petitioner Transferor company may be dissolved without following the process of winding up. However, the Official Liquidator has sought directions to be issued to preserve the books of accounts, papers and records and not to dispose of the same without prior permission of the Central Government as per the provisions of section 396(A) of the Companies Act, 1956. Accordingly, the Transferee Company is hereby directed to preserve the books of accounts, papers and records of the Transferor Company and not to dispose of the same without prior permission of the Central Government. It is hereby further directed that even after the scheme is sanctioned, the Transferor Company shall comply with all the applicable provisions of law and shall not be absolved from any of its statutory liabilities.

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8. Notice of the petitions have been served upon the Central Government and Mr. KshitiJ Amin, Learned Central Government Standing Counsel has appeared for Mr. Devang Vyas, Learned Additional solicitor General for the Central Government. An affidavit dated 5th September, 2016 has been filed by Mr. Jatinder Kumar Jolly, the Regional Director, North-Western Region, Ministry of Corporate Affairs, whereby some observations are made.



9. The attention of this Court is drawn to the Additional Affidavit dated 20th October, 2016 filed by Mr. Ankit S. Patel, the Director and authorized signatory of the petitioner Company, whereby all the above issues have been dealt with. This Court further heard submissions made by the learned counsel appearing for the Central Government and Mr. Bandish Soparkar, learned advocate appearing for the petitioners as follows:

(1) The observations made vide para 2 (a), 2(b) and 2(c) refer to the nature of the proposed scheme, rationale for the scheme as well as interrelationship

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between two companies. All these references being factual position, do not need any response.



(11) Vide Para 2(d) of the affidavit, it has been observed by the Regional Director that the Transferee Company, viz. Bodal Chemicals Limited being the listed company had approached the concerned Stock Exchanges, viz BSE and NSE, and obtained the requisite observation letters from the said exchanges However, under the SEBI circulars dated 4th February, 2013 and 21st May, 2013, the approval from SEBI has to be obtained. In this regard, it has been submitted that the said Transferee Company was required to obtain SEBI approval through the Stock Exchanges only and the said exchanges have actually Standard-14. In this regard, it has been submitted that perusal of Clause 9(i), makes it clear that the Transferee Company shall on account of amalgamation under the 'Pooling of Interest Method' as prescribed under Accounting Standard-14. Further, so far as the treatment proposed for the resultant Reserves/ Goodwill are concerned, it has been submitted that a company is entitled to prescribe under the scheme itself, a specific

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treatment to be given to its reserves. Further, Section 211 (3B) of the Companies Act, 1956 and corresponding Section 129 (5) of the Companies Act, 2013, also provides that if the practice adopted for such accounting entry, varies from the said standard, necessary disclosure should be made in the first financial statements of the Transferee Company. The said issue is already settled by several decisions of various High Courts, including the Gujarat High Court.



The petitioner has undertaken that in case of deviation from the aforesaid Accounting Standard or practice, the Transferee Company shall make necessary disclosures in its first financial statements after the Scheme is made effective. Further, the Regional Director has sought an undertaking that reserves so created, if any, shall not be available for distribution of dividend. In this regard, it has been pointed out that the decision of the Division Bench of this Court has concluded the said issue vide order passed in O.J. Appeal No. 33 of 2012 in the matter of Adishree Tradelinks Private Limited (176 Company Cases 67 Guj.). Reliance has been placed on the said decision. Having considered the submissions and the

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ratio of the said decision, this Court is of the opinion that it is not necessary to issue any such direction or impose such a condition on the petitioner Company to restrict the distribution of dividend out of such Reserves.

(vi) The next observation made vide para 2(g) pertains to the letter dated 11th August, 2016 sent to the Income Tax Department to invite their objections, if any. Since no reply is received from the said department within the statutory period of 15 days as envisaged by the relevant circular of the Ministry of Corporate Affairs, it can be presumed that the Income Tax Department has no objection to the proposed scheme of Arrangement. The petitioner Company has agreed to comply with the applicable provisions of Income Tax Act and Rules. In light of the same, it is not necessary to issue any further directions.

(vii) It has been further submitted that no complaints have been received by the Registrar of Companies, as stated vide para 2(h); The Regional Director has vide the observation 2(i) confirmed that the scheme is not



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prejudicial to the interest of the shareholders of the petitioner company at large.

10. The attention of the Court is drawn to the compliance of the undertaking given by the Transferee Company for submission of the written consent from its Secured Lenders before the final sanction of the Scheme. The same has been placed on record along with the certificate from the Chartered Accountant with the Additional Affidavit dated 20th October, 2016.

11. Considering the above facts and circumstances and taking into account the contentions raised in the affidavits and counter affidavits and the undertakings given vide the ~~THE HON'BLE COURT OF GUJARAT~~ additional affidavit dated 20th October, 2016, and the submissions advanced, the observations made by the Regional Director, Ministry of Corporate Affairs, no longer survive. It appears from the material on record that the Scheme of amalgamation would be in the interest of its shareholders and creditors as well as in the public interest, therefore the same deserves to be sanctioned and is hereby, sanctioned.



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12. The prayers in terms of para 19(a) of the company petition No. 316 of 2016 are granted.

13. The petition is disposed of, accordingly. In so far as the costs to be paid to the Central Government Standing Counsel are concerned, they are quantified at Rs.10,000/-. The costs may be paid to the learned Standing Counsel appearing for the Central Government. Costs to be paid to the Office of the Official Liquidator are quantified at Rs.10,000/-. The same may be paid to the Office of the Official Liquidator.

14. The petitioner Company is further directed to lodge a copy of this order, the detailed schedule of immovable assets of the Transferor Company as on the date of the 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.

15. The petitioner Company is directed to file a copy



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of this order along with a copy of the scheme with the concerned Registrar of Companies electronically, along with INC-28 in addition to physical copy as per relevant provisions of the Act.

16. Filing and issuance of drawn up order is dispensed with.

17. All concerned 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 the scheme as expeditiously as possible.

THE HIGH COURT
OF GUJARAT

(SMT. ABHILASHA KUMARI, J.)

/phalguni/



TRUE COPY

DEPUTY ASSISTANT REGISTRAR
THIS 14-11-18 DAY OF