

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.07.2010

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W.P.(C) 4698/2010

M/S ESSAR STEEL LIMITED

..... Petitioner

versus

GAIL (I) LTD. & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Mukul Rohtagi, Sr Adv

For the Respondent : Mr Parag Tripathi, ASG with Mr Dinesh Agnani
and Ms Leena for R-1
Mr Dinesh Agnani and Ms Leena for R-2

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

CM No.9308-09/2010

Allowed, subject to all just exceptions.

Caveat No.138/2010

Caveat stands discharged.

W.P.(C) 4698/2010 and CM No.9307/2010

1. This writ petition is directed against the decision of the

respondents of not allowing the petitioner to participate in the electronic reverse auction process to be conducted on 17.07.2010 pursuant to the tender enquiry dated 26.03.2010 bearing RFT No. RKS/A027-010-QB-MR-9010/1001.

2. Mr Mukul Rohtagi, the learned senior counsel appearing for the petitioner submitted that although no reason for their not being permitted to participate in the electronic bidding process has been assigned or given to the petitioner, they have come to learn that the reason is that the petitioner had not filed the requisite form with the Registrar of Companies alongwith the certified copy pertaining to the amalgamation of Hazira Pipe Mills Limited with the petitioner-company though the Gujarat High Court as well as the Bombay High Court had sanctioned the amalgamation scheme on 30.06.2010 and 26.03.2010 respectively.

3. Mr Parag Tripathi, the learned Additional Solicitor General, appearing on behalf of the respondents states that on 02.06.2010, which was the last date for submitting the bids, there was no sanctioned scheme in place and, therefore, the amalgamation could not be treated as having taken place.

4. Mr Rohtagi submitted that Hazira Pipe Mills Limited was the transferor company and was amalgamated with and into the petitioner-company (Essar Steel Limited). As per the Scheme of Amalgamation, the 'appointed date' from which the amalgamation was to ultimately take effect was 01.04.2009. He submitted that as per the clauses of the scheme, it was apparent that whenever the amalgamation was sanctioned by the Court and further steps were taken to bring it into effect, the date of amalgamation

would relate back to 01.04.2009. In this context, he submitted that although on 02.06.2010, which was the last date for submitting the bids, the Gujarat High Court had not sanctioned the scheme, but subsequently on 30.06.2010, the Gujarat High Court did sanction the scheme and such sanctioning would relate back to 01.04.2009. He submitted that, in fact both the sanctioning orders of Bombay High Court as well as the Gujarat High Court would relate back to 01.04.2009 and, therefore, as on 02.06.2010, the transferor company, i.e., Hazira Pipe Mills Limited would have to be deemed as having been amalgamated with the petitioner.

5. The importance of amalgamation in the present case is that admittedly, Hazira Pipe Mills Limited may have qualified on technical reasons, but would certainly not qualify on the financial criteria and as regards the petitioner, it was admittedly not qualified on the technical conditions specified, but it was qualified with regard to the financial specifications. Thus, unless and until the amalgamation is accepted, the petitioner would not be both technically and financially qualified to participate in the bid.

6. The contention of the respondents is that since the amalgamation had not taken place in the eyes of law, they cannot be regarded as one company and, therefore, the petitioner would not be qualified inasmuch as it would fail the test of the technical specifications.

7. Mr Rohtagi has drawn our attention to the Scheme of Amalgamation and, in particular to the definition clause as well as clauses 4.1, 4.2, 11, 17 and 18. The aforesaid clauses, to the extent relevant, read as

under:

“1.1.2 **“Appointed Date”** means the 1st day of April, 2009 or such other date as the High Court of Judicature at Bombay and High Court of Gujarat at Ahmedabad may direct or fix.

1.1.4 **“Effective Date”** means the last of the dates on which the sanctions, approvals or orders as specified in Clause 17 of this Scheme have been obtained and the later of the dates on which the certified copies of the Order(s) of the High Court of Judicature at Bombay and High Court of Gujarat at Ahmedabad are filed with the Registrar of Companies, Bombay. All references in this Scheme to the date of “coming into effect of the/this Scheme” shall mean the Effective Date.

4. **TRANSFER AND VESTING OF TRANSFEROR UNDERTAKINGS**

4.1 With effect from the Appointed Date and subject to the provisions of this Scheme in relation to the mode of transfer and vesting, the entire business and undertakings of the Transferor Companies shall, without any further act or deed, be and the same shall stand transferred to and vested in or deemed to have been transferred to or vested in the Transferee Company, pursuant to the provisions of Sections 391 to 394 and other applicable provisions of the Act and the provisions of this Scheme in relation to the mode of transfer and vesting of assets.

4.2 The assets of the Transferor Companies shall upon the Scheme coming into effect, without any further act, instrument or deed, be transferred to and vested in and/or be deemed to be transferred and vested in the Transferee Company pursuant to the provisions of the Act on the Appointed Date and the vesting of all such assets shall take place on the date of the Order sanctioning the Scheme.

11. **CONDUCT OF BUSINESS TILL THE EFFECTIVE DATE**

11.1 With effect from the Appointed Date and up to the Effective Date:

11.1.1 The Transferor Companies shall carry on and be deemed to have carried on all their respective business and activities in the normal course of business till the vesting of the Transferor Undertakings on the sanction of the Scheme by the High Court and shall be deemed to have held and stood possessed of and shall hold and stand possessed of all the assets of the Transferor Undertakings for and on account of and in trust for the Transferee Company:

17. EFFECTIVE DATE OF THE SCHEME

17.1 This Scheme although to come into operation from Appointed Date shall not come into effect until the date on which the last of the necessary certified copies of the order under Sections 391 and 394 of the Act are duly filed with the Registrar of Companies of Maharashtra at Mumbai and Registrar of Companies of Gujarat at Ahmedabad and such date shall be referred to as Effective Date for the purpose of the Scheme or such other dates as the court may direct.

18. DATE OF TAKING EFFECT AND OPERATIVE DATE

18.1 The Scheme shall be effective from the Appointed Date and shall become operative from the Effective Date.”

8. In addition, the Additional Solicitor General has drawn our attention to clause 16 which reads as under:-

“16. CONDITIONALITY OF THE SCHEME

16.1 This Scheme is specifically conditional upon and subject to the sanction of the High Court of Judicature at Bombay and high Court of Gujarat at Ahmedabad being obtained under Sections 391 to 394 and other applicable provisions of the Act, if so required on behalf of the Transferor

Companies and the Transferee Company.”

9. Upon a reading of the aforesaid provisions, we are of the view that though the appointed date under the Scheme was 01.04.2009 and that once the Scheme was sanctioned and all formalities under these clauses of the Scheme as well as under Section 391 and 394 of the Act were completed, the amalgamation would definitely relate to 01.04.2009. However, we cannot be oblivious of the fact that the clauses of the Scheme itself specified at different date on which the Scheme would take effect and which would be regarded as the operative date. It is clear from the reading of the aforesaid provisions that unless and until certified copies of the orders under Section 391/394 of the Companies Act, 1956 are filed with the Registrar of Companies of Maharashtra as well as the Registrar of Companies of Gujarat, the amalgamation would not come into operation, but once such event takes place then the amalgamation would take effect from and relate back to 01.04.2009. In other words, the filing of the certified copies with the Registrar of Companies of the two States would be the trigger condition for the amalgamation to be operational and on the happening of that event, it would take effect from 01.04.2009.

10. In the present case, we find that that trigger event had not taken place, as a result of which, the stand taken by the respondents cannot be said to be unjustified. We want to add one more point here, and that is that even if we were to accept the arguments of Mr Rohtagi that because the High Court had sanctioned the Scheme, the amalgamation had become effective w.e.f. 01.04.2009, we find that as on 02.06.2010, the Gujarat High Court had

not yet sanctioned the Scheme and, therefore, as on the cut-off date, even the order of the Court was not available with the petitioner.

11. In these circumstances, we see no reason to interfere with the bidding process at the instance of the petitioner. Consequently, the writ petition and the accompanying application are dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

JULY 16, 2010
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