IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.A.No.708-709 of 2015 in/and
Company Petition No. 36 OF 2015 (O&M)
Connected with C.P. No. 33 of 2015
Date of decision: 02.09.2016

CLASSIC WEARS PRIVATE LIMITED

..........Transferrer Company /Petitioner Company-I

and

SOBHAGIA SALES PRIVATE LIMITED.

............Tranferee Company/Petitioner Company-II

CORAM: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr.Atul V. Sood, Advocate for the Petitioner-Companies
Mr.Deepak Aggarwal, Advocate with
Mr.D.K. Singh Offical Liquidator.

Rakesh Kumar Jain, J

C.A.No.708 of 2015

Allowed as prayed for.

C.A.No.709 of 2015

This application is filed under Rule 9 of the Company Court Rules, 1959 read with Section 394 of the Companies Act, 1956 for placing on record reply to the report of Official Liquidator by Naresh Jain, Director of the Transferor Company.

The application is allowed as prayed for, reply to the report of Official Liquidator is taken on record.

C.P. No.36 of 2015

The Company Petition has been filed under Sections 391 to 394 of the Companies Act, 1956 for sanctioning of the Scheme of Amalgamation (Annexure P-1).

The registered office of the Transferor Company is at Village Meharban, Rahon Road, Ludhiana, Punjab and registered office of the Transferee Company is at Village Sahnewal Khurd, G.T.Road, Sahnewal, Ludhiana, Punjab, which are within the jurisdiction of this Court.

The Memorandum and Articles of Association of the Transferor and Transferee Companies are annexed with the petition at Annexures P-2(Colly) and P-4 (Colly), respectively.

The Board of Directors of both the Transferor and Transferee Companies have approved the Scheme of Amalgamation in their respective meetings held on 27.11.2014 vide Resolutions annexed at Annexures P-6 and P-7.

Earlier, the Petitioner Companies has filed Company Petition No.33 of 2015 in which vide this Court's order dated 10.03.2015, convening of the meetings of the Equity Shareholders, Preference Shareholders, Secured and Unsecured Creditors of the Transferor and Transferee Companies were ordered to be dispensed with and the First Motion Petition was disposed of.

On presentation of this petition, this Court on 27.03.2015, issued notice to the Regional Director, Ministry of Corporate Affairs, Noida and the Official Liquidator. Notice was also directed to be published in the News Papers namely `Indian Express' (English) and `Punjabi Tribune' (Punjabi as well as in the Official Gazette of the State of Punjab. Affidavit of publication has been filed.

The Official Liquidator has filed representation/Affidavit of A.K.Chturvedi, Regional Director, Ministry of Corporate Affairs, Northern Region, Noida (U.P.) in which he has not raised any objection except the following observations:-

> "9. That the Registrar of Companies vide para 16 of its report has stated that there was a non-compliance of Section 383A of the Companies Act, 1956 for non-appointment of Company Secretary in respect of both the Transferor Company and Transferee Companies. The Deponent most respectfully submits that as per clause 11 of Part-III of the Scheme it has been stated that if any proceedings of whatsoever nature, by or against Transferor Company are pending on the effect date, the same shall not get abated or be discontinued nor be in any way prejudicially affected by reasons of the amalgamation of the Transferor Company with the Transferee Company or anything contained in this scheme, but shall be continued and enforced by or against the Transferee Company. However, it is submitted that the Registrar of Companies has not opposed the scheme."

The learned counsel for the Petitioner-Companies, upon the aforesaid observation has stated that any legal action for any non-compliances of the said Section of the Companies Act,1956 whether against the Transferor Company or the Transferee Company can be initiated or continued against the Transferee Company after the sanctioning of the Scheme.

The Official Liquidator has submitted his report dated nil stating therein that subject to the observations of the M/s J.S. Chopra & Associates, Chartered Accountant given in Section V of the his report the amalgamation appears to be not prejudicial to the interest of Shareholders, Public at large, Creditors & Income Tax. The Official Liquidator has observed that as per Section V of the report of Chartered Accountant, the Transferor Company has inadequate Internal Control System and Internal Audit System commensurate with the size of the Company and the nature of its business and also that there are improper records with regard to fixed assets and proceedings of physical verification and inventories are unreasonable and inadequate in relation to the size of the Company. Their observations pertains to the year 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014.

In response to the above observations, it has been submitted by learned counsel for the Petitioner Companies by referring to para 7-F of the reply dated 09.10.2015 of Naresh Jain, Director of the Transferor Company to the report of Official Liquidator that all these compliances have been duly made. The para 7-F of the said reply reads as under:-

> "f) That further, as per the Audit Report for the year ended 31.03.2015, it has been reported that the:-
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> i) physical verification of the assets have been carried out, proper records of fixed assets including quantitative details and situation of the fixed assets have been duly recorded;
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> ii) inventories have been physically verified by the management at reasonable intervals;
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> iii) there is an adequate internal control system commensurate with the size of the Company and nature of its business;
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> iv) the company has not defaulted in repayment of dues to the

financial institutions and banks;

v) all undisputed statutory dues including provident fund, investor education and protection fund, ESI, Income tax, sales tax, wealth tax, service tax, customs duty, excise duty, cess and other statutory dues have been generally deposited with the appropriate authorities;

vi) the company has not granted any loans to companies, firms and other parties covered under section 189 of Companies Act, 1956;

vii) the company has taken unsecured loans from related parties and is entered into the registered maintained under Section 189 of the Companies Act, 2013;

viii) The company has made provisions as required under the law or accounting standards for material foreseeable losses, if any, on long-term contracts;

ix) No fraud on or by the company has been noticed or reported during the year.”

The Official Liquidator has further observed that a term loan of Rs.1.47 Crores was not applied for the purpose for which they were raised.

In response to the above observations, the ld. Counsel for the Petitioner-Company has stated that the Secured Creditors has already given their consents to the Scheme and as per the Auditor's report for 2014-2015 the Company has not defaulted in repayments of dues to the financial institutions and banks.

The Official Liquidator has also pointed out that the observation of the Tax Auditors and also a reference has been made to Income Tax search on the Transferor-Company and has also been stated that the Income Tax Department treated a sum of Rs.1.00 Crore as Income through unexplained source on which the Company has paid tax as per applicable Tax rate.

The counsel for the petitioner has submitted that the present proceedings before this Court are under Sections 391-394 of the Companies Act, 1956 and this Court is not adjudicating any issue under the Income Tax Act. He has referred to judgment passed by High Court of Gujarat in regarding *Aangi Shares & Services (P) Ltd. Manu/GJ/0318/2012.* The relevant portion of para 22 of the aforesaid judgment is reproduced as under:-

> *"22. ....Pendency of any proceedings if any by the Income Tax Department cannot be a ground not to sanction the scheme. Even if there are any proceedings, the said proceedings cannot come in the way of sanction of the scheme. No conclusion is deserved to be recorded on the said aspect and the order of this Court in these petitions shall not be read as concluding the questions which may be raised by the Income Tax Department. The Court also finds that the issue and allotment of shares whether on premium or otherwise is in the sole domain of the Board of Directors of the Company. Furthermore, even the action of the Company in forfeiting the shares cannot be said to be against the provisions of Companies Act, 1956.........."*

He has further drawn attention to the undertaking by the petitioner-companies in Para 7(d) & (e) which is reproduced as under:-

d) That without prejudice to the above, the Transferee Company undertakes to meet any of the liabilities/penalties of Transferor Company including but not limited to all taxes, EPF, ESI, Sales

Tax, VAT, income tax etc. whether existing or contingent, upon sanction of the Scheme.

e) That it is hereby undertaken that all the proceedings which may be initiated as per the observations in the Report of the Official Liquidator in paragraph 4 of the report, if any, against the Transferor Company, upon sanction of the Scheme may be initiated against the Transferee Company".

The counsel for the Official Liquidator has submitted that the unsecured loans from related parties carry an interest rate of 15% per annum whereas the Company is paying interest 14.70% (on working capital), 14.90% on terms loans raised from State Bank of India which is payable on monthly basis. Therefore, the interest paid on short term borrowings from the Directors is at the higher than all the borrowings taken by the Company.

In response to the aforesaid observations taken by the Official Liquidator, the learned counsel for the Petitioner-Companies has submitted that the loans from the Director are unsecured and also the interest is payable on annual basis @ 15% per annum, whereas the loans from Banks are secured and interest is payable on monthly basis hence the effective analyzed rate of interest comes to about 15% against secured limits and the rate of interest at 15% is not unreasonable. The counsel for the petitioner-company has further stated that the observations made in Section-V of report of Chartered Accountant as averred by the Official Liquidator in his report, does not reflect any kind of misapplication/misappropriation of funds or any kind of breach of interest on the part of the management either with the shareholders or the creditors or the public at large and thus the aforesaid Section-V does not, in any way, negate that the Scheme is not prejudicial to the interest of the public at large, the creditors, the shareholders or the Income Tax and has stated that no objection has been received from pursuant to publication of the notice of the petition.

In view of the above submissions made by the learned counsel for petitioner-companies with regard to observations made by the Official Liquidator, none of the said observation survive. Moreover, the Scheme has been approved by Shareholders and Creditors and no objection has been received pursuant to publication of the notice of the petition.

It is averred in the petition that there are no proceedings under Sections 235 to 251, 397 and 398 of the Companies Act, 1956 pending against the Petitioner-Companies.

For the reasons mentioned hereinabove and on the consideration of all the relevant facts and the procedural requirements, contemplated under Sections 391 & 394 of the Act, the relevant Rules and on due consideration of the report of the Regional Director Northern, Ministry of Corporate Affairs, Noida and Official Liquidator, the Scheme of Amalgamation is hereby sanctioned and as a result thereof, the assets and liabilities of the Transferor Company shall stand vested in the Transferee Company. The Transferor Company shall be dissolved without being wound up. The Transferee Company shall be liable for any legal action for any non-compliances of the Section 383A of the Companies Act,1956, whether it is against the Transferor Company or the Transferee Company.

The Scheme shall be binding on the Transferor and Transferee Companies, their respective shareholders, creditors and all concerned.

Let a formal order of sanction of the Scheme be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

A notice of the order be published in the newspapers, namely, Indian Express (English), Punjabi Tribune (Vernacular) both Chandigarh Edition and in the official gazette of Government of Punjab and Chandigarh Administration, UT, Chandigarh.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the Petitioner-Transferor and Transferee Companies states that the Transferor Companies would voluntarily deposit a sum of Rs.1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

[RAKESH KUMAR JAIN]
JUDGE

02.09.2016
Vivek