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O/41020-41021/2014

Read By :

Prepared By : MS BHUMIKA M VAGHELA

Applied on : 21/10/2014

Examined By :

Prepared on : 29/11/2014

Notified on : 29-11-14

Delivered on :

Dy.S.O. *[Signature]*

Section Officer *[Signature]*

Decree Department

Decree Department



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION 177 of 2014

In COMPANY APPLICATION 134 of 2014

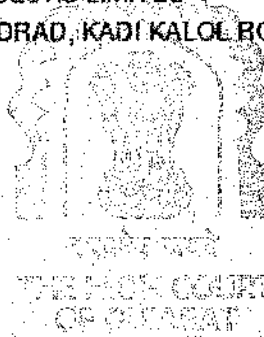
1. ASahi SONGWON COLORS LIMITED
167/168, VILLAGE: INDRAD, KADI KALOL ROAD,
MEHSANA.

382727

Petitioner(s)

VERSUS

1



Respondent(s)

Being - No. 177 of 2014

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 :

NATIONAL INFORMATION SYSTEM

GUJARAT HIGH COURT

HONOURABLE MR.JUSTICE N.V.ANJARIA

Date of Decision: 17/10/2014

(COPY OF JUDGEMENT ATTACHED HEREWITH)



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GUJARAT HIGH COURT

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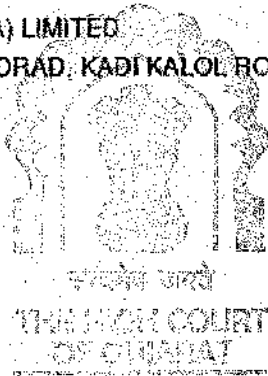


Dy.S.O. Section Officer
Decree Department Decree Department

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
COMPANY PETITION 178 of 2014
In COMPANY APPLICATION 135 of 2014

1 AKSHARCHEM (INDIA) LIMITED
186/169, VILLAGE: INDRAD, KADI KALOL ROAD,
MEHSANA.

382727



Petitioner(s)

VERSUS

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Respondent(s)

Being - No. 178 of 2014

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 :

REGIONAL REGISTRARS OFFICE

GUJARAT HIGH COURT

HONOURABLE MR. JUSTICE N.V. ANJARIA
Date of Decision: 17/10/2014
(COPY OF JUDGEMENT ATTACHED HEREWITH)



મહાનગર પાલિકાના સુવર્ણ મંદિર



GUJARAT HIGH COURT

C/COMP/177/2014

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION NO. 177 of 2014.

In COMPANY APPLICATION NO. 134 of 2014

With

COMPANY PETITION NO. 178 of 2014

In

COMPANY APPLICATION NO. 135 of 2014

ASAHI SONGWON COLORS LIMITED....Petitioner(s)

Versus

.....Respondent(s)

Appearance:

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

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

CORAM: HONOURABLE MR. JUSTICE N.V. ANJARIA

Date: 17/10/2014

ORAL ORDER

The captioned are the petitions filed by two companies. Asahi Songwon Colors Limited is the petitioner of Company Petition No. 177 of 2014, whereas AksharChem (India) Limited being the petitioner in second company petition. The petitioners have prayed for obtaining sanction of this court to a Scheme of arrangement in the nature of De-merger and Transfer of the demerged Undertaking CPC Green Division of Asahi Songwon Colors Limited-the Demerged Company, to AksharChem (India) Limited-the Resulting Company, and consequential restructure of the share capital of the demerged company, proposed under sections 391 and 394 read with Sections 78 and 100 to 103 of the Companies Act, 1956.

2. Heard learned advocate Ms. Swati Soparkar for the petitioner



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companies, and Learned Assistant Solicitor General Mr. Dewang Vyas who appears for the Central Government upon notice of the present petition being served on the Regional Director.

3. Giving out the basic details of the petitioner companies, learned advocate for the Companies stated to submit that Aashi Songwon Colors Limited (ASCL)- the demerged company is a public limited company and the shares are listed at the Bombay Stock Exchange (BSE) Limited and National Stock Exchange of India Limited. It is engaged in the business of manufacturing pigments-colours used in printing inks, paints, plastics, textiles, rubber, etc. It is in the manufacturing of the Pigment Green-7, beta Blue as well as CPC Blue Crude. The demerged company is a profit making and dividend paying company.

3.1 On the other hand, stated learned advocate for the petitioner, AksharChem (India) Limited (ACIL)-the Resulting Company is also a public limited company and the shares are listed at BSE Limited and Ahmedabad Stock Exchange. It is primarily engaged in the business of manufacturing of dyes and intermediaries. It claims to be one of the leading manufacturer and exporter of Vinyl Sulphone. It further claims to be a profit making and dividend paying company. It was pointed out that both the companies belong to the same group of management. The Demerged Company-ASCL, has two manufacturing divisions. The CPC Green Division is located at Kadi, Mehsana; the other Pigment Blue division is located at Padra, Vadodara, both in the State of Gujarat.

3.2 It was submitted that it was realized by the management of the company that its two operating divisions are quite different involving distinct business dynamics. Both of them have distinct market segments and customers. The strategies for the development and growth of these business require different focus. With a view to achieving operational efficiencies, site synergies and streamlining its current structure, ASCL has decided to demerge its CPC Green Division into ACIL with primary intention to focus its business synergies on Pigment Blue division. The petitions narrate the commercial advantages expected to flow by virtue of the proposed de-merger.

3.3 It was submitted and explained that moreover, as a consequence of the above demerger, the demerged company vide Clause 1.7 of the scheme,



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proposes to restructure its Share Capital in order to make its Balance Sheet realistic upon the de-merger and transfer of the CPC Green Division. The company has proposed the restructure in form of utilization of its Securities Premium Account for adjusting the value of the net assets of the De-merged undertaking in its books of accounts. Though, there is no actual reduction in Issued and Paid up Equity Share Capital of the company, the said proposal shall be covered under the provisions of Sec. 78 read with Sec. 100 to 103 of the Companies Act, 1956. However, this is consequential in nature and is proposed as an integral part of the proposed Scheme.

3.4 Both the petitioner companies had passed the necessary Board Resolutions and had approached the concerned Stock Exchanges and Securities Exchange Board of India (SEBI) for the approval of the scheme before filing the same before this court. The copies of the Board resolutions as well as observations letters from the concerned stock exchanges have been placed on record.

4. It was pointed out from record by order dated 9th May, 2014, passed in Company Application No. 134 of 2014, the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the De-merged Company were directed to be convened for the purpose of obtaining the approval of all the concerned parties to the scheme. Pursuant to the direction issued with regard to the conduct of the meetings, upon the due notices to all the Equity Shareholders, Secured Creditors and Unsecured Creditors as well as the issuance of the public notice, the said meetings were duly convened on 1st July, 2014. The Scheme was considered at the said meetings and it was approved unanimously at all the three meetings by the concerned parties present and casting the valid votes being 100% in number and 100% in value.

4.1 Further, the petitioner being a listed public limited company independently conducted the Postal Ballot and e-voting for the approval of the scheme from its Public shareholders in compliance with the applicable SEBI circulars. The scheme was duly approved by the majority of 97.84% of the votes cast by the Public Shareholders in favour of the proposed scheme.

4.2 The Chairman's report alongwith affidavit dated 5th July, 2014 has



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been placed on record which provides the details of the result of the meetings. An additional affidavit dated 15th July, 2014 provides the result of Postal ballot and e-voting.

4.3 It was further pointed out that accepting the contention of the petitioner company, that Restructure of Capital in form of Utilisation of its Security Premium Account is consequential in nature and is proposed as an integral part of the Scheme of Arrangement and further that the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital in the aforesaid order dated 9th May, 2014, passed in company application No. 134 of 2014, separate procedure for Reduction of Capital and the procedure under Sec. 101(2) read with Rules 48 to 65 of the Company Court Rules were dispensed with.

4.4 It was next pointed out that in case of the Resulting Company, as per the order dated 9th May, 2014, passed in Company application No. 135 of 2014, the meetings of the Equity Shareholders and Secured Creditors of the company were directed to be convened for the purpose of obtaining their approval to the Scheme; whereas accepting the contention of the petitioner company that rights and interests of the unsecured creditors of the Resulting Company are not going to be affected in any manner because of the proposed Scheme, their meeting was dispensed with. Pursuant to the said direction issued with regard to the conduct of the meetings, after the due notices to all the Equity Shareholders and Secured Creditors as well as the public notice, the said meetings were duly convened on 2nd July, 2014. The scheme was considered at the said meetings and it was approved unanimously at both the meetings by the concerned parties present and casting the valid votes being 100% in number and 100% in value.

4.5 Further, the petitioner being a listed public limited company, had independently conducted the Postal Ballot and e-voting for the approval of the scheme from its Public shareholders in compliance with the applicable SEBI circulars. The scheme was duly approved by the majority of 76.23% of the votes cast by the Public Shareholders in favour of the proposed scheme.

4.6 The chairman's report alongwith affidavit dated 8th July, 2014 has been placed on record which provides the details of the result of the meetings. An



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additional affidavit dated 15th July, 2014, provides the result of Postal Ballot and e-voting

5. Thereafter, the present substantive petitions for the sanction of the Scheme came to be filed by the De-merged Company and Resulting Company placing the Scheme in question before this court for consideration and obtaining a sanction. The said scheme is produced on record at Annexure-C.

5.1 The petitions were admitted on 24th July, 2014. The notice for the hearing of the petitions for resulting company and demerged company were duly advertised in the English Daily-Indian Express and Gujarati Daily Divya Bhaskar dated 8th August, 2014 and 9th August, 2014, respectively both Ahmedabad Editions. The publication in the Government gazette was dispensed with. Pursuant to the said publication in the newspaper any objections were not received by the petitioner or its advocate.

5.2 Notice of the petition was served upon the Central Government. An affidavit dated 1st October, 2014 was filed by one Mr. Shambhu Kumar Agarwal, the Regional Director, North-Western Region, Ministry of Corporate Affairs. The said authority made observation in his affidavit. They pertain to (a) the accounting treatment in the books of the Resulting Company; (b) the proposed Restructure of Capital in form of the Utilisation of the Securities Premium Account of the de-merged company; and (c) transfer of part of the Authorized Capital of the De-merged Company to the Resulting Company.

5.3 In response, additional affidavit dated 9th October, 2014, was filed by Mrs. Paruben M. Jaykrishna, the director and authorised signatory for both the petitioner companies, dealing with the observations and comments of the Regional Director whereby all the above issues have been dealt with.

6. Proceeding to consider the observation of the Regional Director and the response by the petitioner company-

6.1 Regarding first observation about proposed accounting treatment under the Scheme, it was submitted that the prevalent Accounting Standards are not applicable to the Scheme of De-merger. Even under the Accounting standard AS-14 applicable to schemes of amalgamation, a



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company is entitled to prescribe under the Scheme itself, a specific treatment to be given to its reserves. Even otherwise, Section 211 (3B) of the Companies Act, 1956, provides that if the practice adopted for such accounting entry varies from the said standard, necessary disclosures has to be made in the financial statements. The petitioner is therefore directed that in case of deviation from the applicable accounting standard, the Resulting Company shall make necessary disclosures in its first financial statements after the Scheme is made effective.

6.2 The second observation pertains to Utilisation of Securities Premium Account in books of the De-merged Company. The contention of the Regional Director is that section 78(2) of the Companies Act, 1956 has specifically provided the purposes for which the said account can be utilised and since it does not cover the proposed utilisation of the Securities Premium Account, the proposal is against the provisions of Section 78 of the Act. In this regard, the petitioner company has explained that the contention of the Regional Director stems from misinterpretation of law. It is erroneously assumed that the purposes spelled in section 78(2) are the only ones permissible in law. Section 78(1) makes it very clear that apart from the said specified purposes, the Securities Premium Account can be applied for any other purpose by treating it as Reduction of Capital and by following the requisite procedure under the provisions under Sec. 100 to 103 of the Act.

6.2.1 It was demonstrated by the petitioner company that it has complied with requisite procedure. It is enabled by its Articles of Association A special resolution is passed at the court convened meeting A specific dispensation was sought and granted for procedure under Section 101(2). Specific prayers are made in the petition for the same. Considering Section 78 read with sections 100 to 103 of the Companies Act, it is clear that the Regional Director is not justified in his say on this score and the petitioner company is entitled to utilize the Securities Premium account for adjusting the net value of the assets of the de-merged undertaking, as envisaged under clause 8.2 and 17.1 of the Scheme. The petitioner has placed on all the relevant facts on record.

6.3 With regard to the issue of transfer of part of the Authorised Capital,



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It was submitted that said issued is settled by decision of various High Courts and there is no legal prohibition for the transfer of the Authorised Capital of the De-merged Company to the Resulting Company. The said observed is devoid of merits.

6.4 The next observation in para-2(e) is that no response has been received from the Income Tax department to letter dated 8th August, 2014, addressed by the Regional Director. It was contented that no reply was received because the Income Tax Department has not found anything objectionable in the proposed scheme. However, the company has agreed to comply with the applicable provisions of the Income Tax Act and rules. The company is directed accordingly.

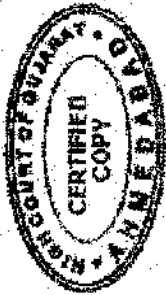
7. In light of all the above facts and circumstances and taking into account that all the observations and comments by the Regional Director are answered, explained and met with and further that all the legal requisites are complied with, this court is satisfied that the Scheme proposed deserves to be accorded sanction. The same is on perusal and in the above view found reasonable and is expected to work in ultimate analysis in interest of shareholders and creditors, and that it is not against the public interest. The scheme at Annexure-C is hereby sanctioned.

8. The Reduction of capital of the De-merged Company in form of utilization of Securities Premium Account as envisaged under clause 17 of the scheme is hereby granted. Prayers in terms of paragraph 24(a), (b) and (c) as well as the minutes as under Sec. 103 in terms of Paragraph 20 of the Company Petition No. 117 of 2014 for the De-merged Company and prayers made in paragraph 21(a) of the Company Petition No. 178 of 2014 for the Resulting Company are hereby granted.

9. The petitions are allowed and disposed of accordingly.

10. The costs to be paid to the Central Govt. Standing Counsel is quantified at Rs. 7500/- per petition. The same may be paid to the Central Govt. Assistant Solicitor who appeared for the central government.

11. The petitioner companies are further directed to lodge a copy of this order, the Schedule of immovable assets of the de-merged undertaking as



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on the date of this 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.



12. The Petitioner companies are directed to file a copy of this order alongwith a copy of the scheme with the concerned Registrar of Companies, electronically, along with E-Form 21 in addition to physical copy as per relevant provisions of the Act.

13. Filing and issuance of drawn up order is hereby dispensed with.

14. All concerned authorities to act on a copy of this order alongwith 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 alongwith Scheme as expeditiously as possible.

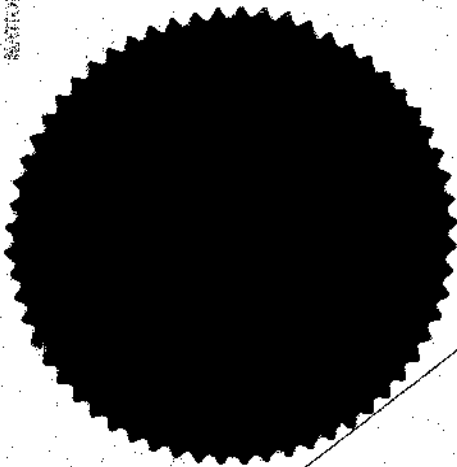
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sd/-
(N.V. ANJARIA, J.)

REGIONAL REGISTRATIONS OFFICES

GUJARAT HIGH COURT



TRUE COPY

DEPUTY / ASSISTANT REGISTRAR
THIS 29/11/14 DAY OF

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