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CHARGE : 52

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Decree Department

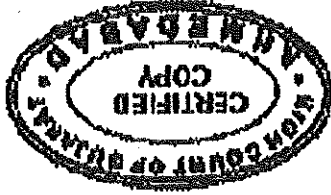
Section Officer

Decree Department

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION 169 of 2015

In COMPANY APPLICATION 61 of 2015



1 KEMISTAR CORPORATION LIMITED

604, MANAS COMPLEX, JODHPUR CROSS ROAD

SATELLITE, AHMEDABAD.

380015

Petitioner(s)

VERSUS

1

Comp
Being - No. 169 of 2015

Respondent(s)

Appearance on Record:

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

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

COURT'S ORDER :

CORAM :

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date of Decision: 19/06/2015
(COPY OF JUDGEMENT ATTACHED HEREWITH)



INFORMATION SYSTEMS

OCOMP/153/2013

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

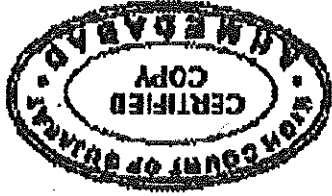
COMPANY PETITION NO. 169 of 2015

in

COMPANY APPLICATION NO. 61 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI *sdc*



1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

No.

KEMISTAR CORPORATION LIMITED...Petitioner(s)

Varsus

.....Respondent(s)

Appearance:

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

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

CORAM: HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 19/06/2015

ORAL JUDGMENT

O/COMP153/2015

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1. Heard learned advocate Mrs.Swati Soparkar for the petitioner and learned Assistant Solicitor General Mr.Devang Vyas for respondent No.1.



2. This is a petition filed by Kemistar Corporation Limited, for the purpose of obtaining the sanction of this Court to a Scheme of arrangement for Restructure of its Share Capital, proposed under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956.

3. It has been submitted that the petitioner is a listed public limited company and the shares are listed on Bombay Stock Exchange Limited and Vadodara Stock Exchange. It was originally engaged in the entertainment business. However, the aforesaid activities could not be continued for long time as the Company faced operative and financial problems. Thereafter the Company ventured into the present business of trading of chemicals and agro chemicals. The company has started to make small operative profit, however, the company has huge accumulated losses. It has been realized by the management of the Petitioner Company that as against its present Equity Share Capital, it has a huge debit balance of Profit

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and Loss Account leaving a very nominal net worth. In order to make the financial statements realistic and to present a true picture, the petitioner company intends to restructure its capital by cancellation of Equity Share Capital to the required extent to adjust the accumulated debit balance of profit and loss account. Although the shares are listed at BSE, there has been a very nominal trading in the shares of the company. In light of the current financial situation, the shareholders are not likely to receive justifiable return on their investments. With the restructure of share capital, there would be scope for developing the current commercial activities more profitably and the capital structure shall be serviceable. In view of this, the Petitioner Company has proposed the reduction of share capital to the extent of 92%. It is envisaged that upon the Scheme being effective and upon implementation of the scheme, the Petitioner Company shall be in a position to operate more efficiently and in a beneficial manner in the interest of its shareholders and unsecured creditors.

4. Since the Petitioner Company is a listed public limited company, under clause 24(f) of the listing



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agreement, the Petitioner Company had approached the concerned stock exchanges, and has obtained the requisite approvals/clearances from both the BSE Limited and Vadodara Stock Exchange, which are placed on record. However, the Company was not required to undertake the Postal Ballot and e-voting in light of the non applicability of clause 5.16(a) of the SEBI circulars (CIR/CFD/DIL/5/2013 dated February 4, 2013 and CIR/CFD/DIL/8/2013 dated May 21, 2013). The Petitioner Company has already placed on record the requisite Undertaking and the Auditor's certificate in this regard.

5. It has been further pointed out that vide order dated 23rd March 2015 passed in Company Application No. 61 of 2015, meeting of the Equity Shareholders of the Petitioner Company was directed to be convened for the purpose of obtaining their approval to the scheme. Since the proposed composite scheme envisages restructuring of share capital as an integral part of the proposed Scheme of Arrangement, it was pointed out that the proposed restructure does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up



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share capital and the order of the COURT sanctioning the Scheme shall be deemed to be an order under Section 102 of the Companies Act confirming the reduction. The special resolution passed at the meeting convened for the purpose of approving the proposed scheme by the shareholders of the Petitioner Company, has to be treated as the Special Resolution as required under Section 100 of the Companies Act, 1956. In view of this, vide the order dated 23rd March 2015, the procedure prescribed under Section 101(2) of the Companies Act, 1956 as well as under rules 48 to 65 of the Companies (Court) Rules 1959, were dispensed with.

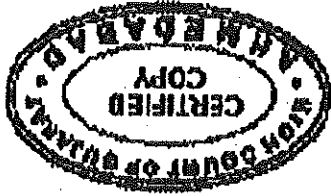
6. There being no Secured Creditors of the company, there was no question of taking their approval. However, the contention was taken by the petitioner company that the proposed Scheme of Arrangement does not envisage any compromise with the Unsecured Creditors of the Petitioner Company. It is further envisaged that once the proposed scheme is implemented, the Petitioner Company shall be a financially stable company so as to be in a position to meet with its obligations to all the unsecured



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creditors. Hence, the rights and interests of the unsecured creditors of the Petitioner Company are not likely to be prejudicially affected as a result of the proposed scheme. Accepting the said contention, the Hon'ble Court vide order dated 23rd March 2015 dispensed with holding of the meeting of the unsecured creditors of the Petitioner Company.



7. Pursuant to the directions, issued for convening the meeting, after the due notices to all the Equity Shareholders as well as the public notice, the said meeting was duly convened on 27th April 2015. The scheme was considered at the said meeting and it was approved unanimously by the Equity Shareholders, present and voting at the said meeting. The chairman's report alongwith affidavit dated 28th April 2015 has been placed on record which provides the details of the result of the meeting.

8. The substantive petition for the sanction of the scheme was filed by the Petitioner Company which was admitted on 5th May 2015. The notice for the hearing of the petition was duly published in the Ahmedabad editions of the English daily, 'Indian Express', and

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Gujarati dailiy, 'Sandesh' Ahmedabad Editions dated 18th May 2015, and the publication in the Government gazette was dispensed with as directed in the said order. Pursuant to the said publication in the newspapers, no objections were received by the petitioner or its advocate. The said fact has been confirmed vide the common additional affidavit dated 18th June 2015.



9. Notice of the petition has been served upon the Central Government and Shri Devang Vyas, learned Assistant Solicitor General appear for the Central Government. An affidavit dated 16th June 2015 has been filed by Mr. Shambhu Kumar Agarwal, the Regional Director, North-Western Region, Ministry of Corporate Affairs, whereby, several observations are made.

10. The attention of this COURT is drawn to the Additional Affidavit dated 15th April 2015 filed by Mr. Ketankumar P. Patel, the Director and authorized signatory of the petitioner company whereby all the above issues have been dealt with. I have further heard submissions made by the learned counsel appearing for the Central Govt. and Mrs. Swati

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Soparkar, learned advocate appearing for the petitioners on the said observations;

(i) The observations made vide 2(a) and 2(b) of the affidavit of the Regional Director refer to the factual position and require no response.

(ii) The observation made vide para 2(c), pertains to absence of specific clause dealing with the Accounting Treatment in the scheme. In this regard, it has been submitted that the Preamble of the proposed Scheme itself provides for the Object and Rationale of the Scheme which clearly reflects the proposed Accounting Treatment viz. to write off or adjust the accumulated debit balance of Profit and loss account. However, further to the said inclusion, the petitioner had submitted a letter dated 25th May 2015 to the Regional Director for the said clarification about accounting treatment. A copy of the said letter has been placed on record for the satisfaction of the said observation.

(iii) Vide the observation made in para 2 (d), it has been observed by the Regional Director that Kemistar Corporation Limited, the Petitioner Company, 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.



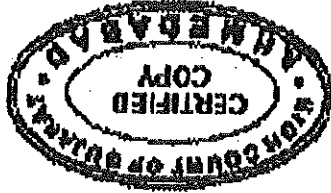
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In this regard, it has been pointed out that the said petitioner company was required to obtain SEBI approval through the stock exchanges only and the said exchanges have actually granted the observation letter only after obtaining clearance from SEBI.

(iv) It is hereby further pointed out that the Petitioner Company, though being a listed company was not required to obtain the approval of the public shareholders as envisaged under Clause 5.16(a) of the above referred SEBI circulars as the same was not applicable as certified by a Chartered Accountant and undertaking submitted by the petitioner to SEBI. Copies of the said certificate as well as undertaking has already been placed on record. This clarifies the complete factual position with regard to the compliances made by the Petitioner Company with regard to SEBI circulars and in view of this no further directions are required to be issued in this regard.

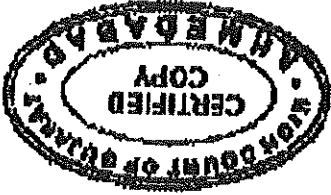
(v) The next observation of the Regional Director made vide para 2(e) pertains to the letter dated 21st May 2015 sent to the Income Tax Department to invite their objections, if any. Since no response is received from the said department despite the lapse of statutory period, it can be assumed that the Income Tax Department has no objection to the proposed scheme. However,



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the petitioner companies have agreed to comply with applicable provisions of Income Tax Act and Rules.



11. Considering all the facts and circumstances and taking into account all the contentions raised by the affidavits and reply affidavits and the submissions made during the course of hearing, I am satisfied that the observations made by the Regional Director, Ministry of Corporate Affairs, do not survive. I have come to the conclusion that the present scheme of arrangement is in the interest of its shareholders and creditors as well as in the public interest and the same deserves to be sanctioned.

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12. Prayers in terms of paragraph 24(a), (b) and (c) of the Company Petition No.169 of 2015 are hereby granted. The Reduction of capital as envisaged under clause 4 of the Scheme is granted and minutes drawn under Section 103(1) as referred in Para 19 is hereby approved.

13. The petition is disposed of accordingly. So far as the costs to be paid to the Learned Assistant Solicitor General Mr.Devang Vyas is concerned, I

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quantify the same at Rs.7,500/-. The same may be paid to the learned ASG Mr.Devang Vyas.

14. The Petitioner company is directed to file a copy of this order alongwith 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.

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

16. 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 alongwith Scheme as expeditiously as possible.

ANBT

SC

(VIFUL M. PANCHOLI, J.)

By Order of the Court
sd/- of S. Mestekpalli
25-6-15
Deputy Registrar



TRUE COPY

DEPUTY ASSISTANT REGISTRAR
THIS 21-7-15 DAY OF

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