

PAGES : 16.

CHARGE : #64

O/19539-19541/2015

Prepared By : S.D.DANTI

Applied on : 15/06/2015

Prepared on : 30/06/2015

Notified on : 30-6-15

Delivered on : 30-6-15



Dy.S.O.

Decree Department

Section Officer

Decree Department

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION 36 of 2015

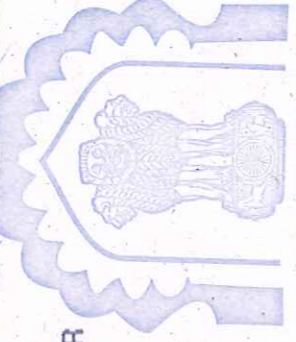
In COMPANY APPLICATION 289 of 2014

- 1 GOKUL REFOILS AND SOLVENT LIMITED  
REGISTERED OFFICE AT STATE HIGHWAY NO. 41, NR.  
SAJANPUR  
PATIA, SIDHPUR

384151

VERSUS

Petitioner(s)



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THE HIGH COURT  
OF GUJARAT

1

Comp  
Being - No. 36 of 2015

Respondent(s)

Appearance on Record:

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

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

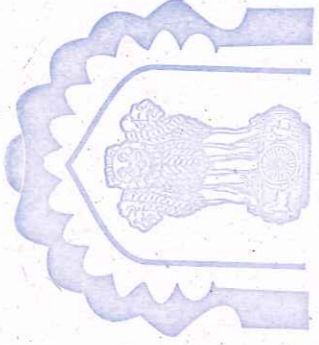
COURT'S ORDER :

CORAM :

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI  
Date of Decision: 12/06/2015  
(COPY OF JUDGEMENT ATTACHED HEREWITH)



NATIONAL INFORMATICS CENTRE



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THE HIGH COURT  
OF GUJARAT

PAGES : 2

CHARGE : 8

O/19539-19541/2015

Prepared By : S.D.DANTI

Applied on : 15/06/2015

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Decree Department

Section Officer

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION 37 of 2015

In COMPANY APPLICATION 290 of 2014

1 GOKUL AGRO RESOURCES LIMITED

B-402, SHAPATH HEXA, NEAR GANESH MERIDIYAN,

OPP: GUJARAT HIGH COURT, SOLA, AHMEDABAD 380 060



Petitioner(s)

VERSUS

1

Comp.  
Being - No. 37 of 2015

Respondent(s)

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 MR.JUSTICE VIPUL M. PANCHOLI

Date of Decision: 12/06/2015  
(COPY OF JUDGEMENT ATTACHED HEREWITH)



NATIONAL INFORMATICS CENTRE

GUJARAT HIGH COURT



PAGES : 2

CHARGE : 3

O/19539-19541/2015

Prepared By : S.D.DANTI

Applied on : 15/06/2015

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Dy.S.O.

Decree Department

Section Officer

Decree Department

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION 38 OF 2015

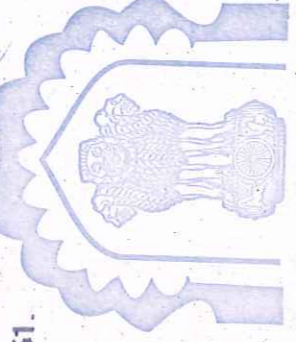
In COMPANY APPLICATION 291 of 2014

1

GOKUL AGRI INTERNATIONAL LIMITED

STATE HIGHWAY NO.41, NEAR SUJANPUR PATIA,

SIDHPUR 384151.



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THE HIGH COURT  
OF GUJARAT

VERSUS

Petitioner(s)

1

Comp.  
Being - No. 38 of 2015

Respondent(s)

Appearance on Record:

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

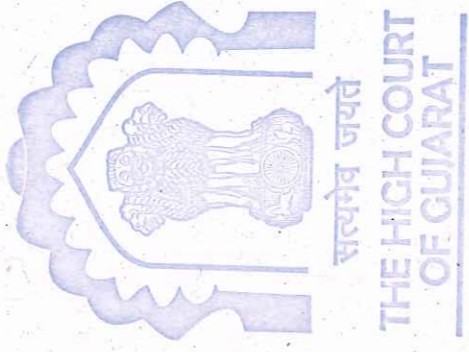
MR DEVANG VYAS as ADVOCATE for the Respondent(s) No. 1

COURT'S ORDER :

CORAM :

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date of Decision: 12/06/2015  
(COPY OF JUDGEMENT ATTACHED HEREWITH)



NATIONAL INFORMATICS CENTRE

GUJARAT HIGH COURT

O/COMP/36/2015

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION NO. 36 of 2015

In COMPANY APPLICATION NO. 289 of 2014

With

COMPANY PETITION NO. 37 of 2015

In

COMPANY APPLICATION NO. 290 of 2014

TO

COMPANY PETITION NO. 38 of 2015

In  
COMPANY APPLICATION NO. 291 of 2014

GOKUL REFOILS AND SOLVENT LIMITED ... Petitioner(s)

Versus  
Respondent(s)

Appearances:

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

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

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THE HIGH COURT

CORAM: **HONOURABLE MR JUSTICE VIPUL M. PANCHOLI**

Date : 12/06/2015

ORAL ORDER

Heard learned counsel Mrs. Swati Soparkar for the petitioner, Mr. Priyank Lodha, learned counsel for Central Government and learned Deputy Official Liquidator.

2. These are the petitions filed by three companies, viz. Gokul Refoils



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and Solvent Limited, Gokul Agro Resources Limited and Gokul Agri International Limited, for the purpose of obtaining sanction of this Court to a scheme of arrangement in the nature of de-merger and transfer of Gandhidham Undertakings of Gokul Refoils and Solvent Limited (for short 'GRSL') to Gokul Agro Resources Limited (for short 'GAIL') and consequential restructure of the share capital of Gokul Refoils and Solvent Limited proposed under Section 391 to 394 read with Sections 78 and 100 to 103 of the Companies Act, 1956.



3. It has been submitted that all the companies belong to the same group of management. The commercial operations of GRSL, the de-merged company are spread out as: (a) Haldia Undertaking; (b) Gandhidham Undertaking; and © Sidhpur Undertaking; and along with the above Undertakings, GRSL also has the Undertakings as: (a) Gandhidham Windmill Undertaking and (b) Sidhpur Windmill Undertaking. In order to achieve geographical operational efficiencies, the management of GRSL has proposed to separate each business undertaking based on the location of the Undertakings into separate Companies.

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THE HIGH COURT

4. Further, the management of GRSL also wishes to revalue the fixed assets of its remaining Undertaking in order to reflect true and fair value of the assets. Therefore, with a view to effect such reorganisation, the present scheme is proposed for segregating the three undertakings: (a) De-merger and Transfer of Gandhidham Undertakings (Gandhidham Undertaking and Gandhidham Windmill Undertaking) from GRSL to GAIL, (b) Transfer of Sidhpur Undertakings (Sidhpur Undertaking and Sidhpur Windmill Undertaking) of GRSL to GAIL, (c) remaining undertaking to be retained by GRSL.

5. It is envisaged that the restructuring exercise would inter alia



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achieve the following:

- a. Restructuring would result in two independent listed companies, which would provide opportunities to the respective businesses to attract different set of investors, strategic partners, lenders and other stakeholders, thereby unlocking the value of respective businesses and existing shareholders.
- b. Restructuring of businesses would enable respective management(s) to concentrate on core businesses and strengthen competencies, and provide independent opportunities to increase scale of operations, etc.;

- c. Restructuring would result in focused management attention to the respective businesses, and segregation of businesses with distinct risk-reward profiles.

This would be beneficial to its shareholders as well as creditors.

6. Further, vide clause 13 of the scheme, restructure of share capital of the de-merged company GRSCL is proposed in order to make its balance sheet realistic upon the de-merger and transfer of the Gandhidham Undertakings. The company has proposed the restructure in the form of utilization of its Securities Premium Account for adjusting the value of the net assets of the de-merged Undertakings as well as cancellation of the investment made in the shares of GARL in its books of accounts. It has been clarified that 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 Section 78 read with Section 100 to 103 of the Companies Act, 1956. However, this being consequential in nature it is proposed as an integral part of the proposed scheme of arrangement.



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7. It has been further pointed out that Gokul Refoils and Solvent Limited, the de-merged Company is a listed public limited company, and the shares are listed on BSE limited and National Stock Exchange of India Limited. In compliance with clause 24(f) of the listing agreement, the petitioner Company had already approached the concerned stock exchanges, and the approvals/clearances obtained from both the BSE Limited and National Stock Exchange of India Limited had been placed on record.

8. It has been further pointed out that vide order dated 21<sup>st</sup> November 2014 passed in Company Application No.289 of 2014, separate 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 their approval to the scheme. It was further submitted that no additional shares are being issued and allotted by the said company pursuant to the proposed scheme to any of the promoter/promoter group, related parties of promoter/promoter group, associates of promoter/promoter group, subsidiaries of promoter/promoter group of the listed company. In view of the same, the compliance of clause 5.16(a) of the SEBI circulars CIR/CFD/DIL/5/2013 dated 4.2.2013 and CIR/CFD/DIL/8/2013 dated 21.5.2013 is not necessary for the de-merged Company. The de-merged Company has placed on record the copies of requisite undertaking and the auditor's certificate to the SEBI. In view of the same, no directions were issued for the procedure for postal ballot and e-voting from the public shareholders of the de-merged Company.

9. Pursuant to the directions issued with regard to the conduct of the meetings after due notices to all equity shareholders, secured creditors and unsecured creditors as well as public notice, the meetings of equity



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shareholders and unsecured creditors were duly convened on 23.12.2014. The scheme was considered at the respective meetings, and it was approved unanimously by the equity shareholders and unsecured creditors of the company. The Chairman's report along with affidavit dated 5<sup>th</sup> January 2015 has been placed on record, which provides the details of the result of the meetings. The meeting of the secured creditors was convened on 22.12.2014, but was required to be adjourned at the request of one of the secured creditors present at the meeting. After due notice for the adjourned meeting, the same was convened on 29.1.2015. The scheme was considered at the said meeting, and it was approved unanimously by the secured creditors of the Company. The Chairman's report along with affidavit dated 30.1.2015 has been placed on record, which provides the details of the result of the said meeting.

10. It was further submitted that the reduction proposed vide clause 13 of the scheme, does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up 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, 1956 confirming the reduction. In view of the said submission, vide above referred order dated 21.11.2014, the procedure prescribed under Section 101(2) of the Companies Act, 1956 and under Rule 48 to 65 of the Companies (Court) Rules 1959 was dispensed with, and the de-merged company was not required to undertake the same.

11. It has been pointed out that in case of GARL, the resulting/transferee Company-1, vide the order dated 21.11.2014 passed in Company Application No.290 of 2014, the meeting of the equity shareholders and unsecured creditors of the company were dispensed in light of the written consent letters from all of them as confirmed by a certificate of the Chartered Accountant placed on record. There are no



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examined prelims

12. It has been further pointed out that in case of GAIL, the resulting/transferee Company-2, vide the order dated 21.11.2014 passed in Company Application No.291 of 2014, the meeting of the equity shareholders and unsecured creditors of the company were dispensed in light of the written consent letters from all of them as confirmed by a certificate of the Chartered Accountant, placed on record. There are no secured creditors.

13. The substantive petitions for sanction of the scheme were filed by the de-merged Company and resulting/transferee Companies, which were admitted on 9.2.2015. The notice for the hearing of the petitions for the de-merged Company and the transferee companies were duly advertised in English daily, Indian Express and Gujarati daily, Divya Bhaskar, both Ahmedabad editions dated 23.2.2015, and the publication in the Government gazette was dispensed with as directed in the said orders. 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 7.5.2015.

14. Notice of the petition has been served upon the Central Government, and Shri Priyank Lodha, learned Central Government Counsel appearing for the Regional Director. An affidavit dated 25.3.2015 has been filed by Mr. Shambhu Kumar Agarwal, the Regional Director, North-Western Region, Ministry of Corporate Affairs, whereby several observations are made.

15. The attention of this Court is drawn to the additional affidavit dated 7.5.2015 filed by Mr. Mahesh Kumar Agarwal, the Group CEO and authorised signatory of the petitioner de-merged company, whereby, all



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the above issues have been dealt with. I have further heard the submissions made by the learned counsel appearing for the Central Government and Mrs. Swati Soparkar, learned advocate appearing for the petitioners on the said observations.



- (i) The observations made vide paragraph 2(a) and 2(b) of the affidavit of the Regional director refer to the factual position, and require no response.
- (ii) Vide paragraph 2(c), it has been observed by the Regional Director that the Memorandum and Articles of Association of the resulting/transferee companies do not have specific enabling clause to undertake power generation activities, which is one of the activities of the de-merged undertakings. In this regard, it has been submitted that Clause 1 and 2 of part B of the objects clause of the respective resulting companies enable them to undertake any business and undertaking and carry on the same. Though the clause is general in nature, it is sufficient to enable the resulting companies to undertake the power generation activities. It has been further clarified that upon scheme being effective, the respective resulting companies shall do the needful to amend their objects clause with the insertion of specific clause before actually commencing the said business. Considering the said submission, it is not necessary to issue any further directions in this regard.
- (iii) Vide paragraph 2(d), it has been observed by the Regional Director that M/s. Gokul Regoils and Solvent Limited, the de-merged 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 4.2.2013 and 21.2.2013, the approval from SEBI has to be obtained. It has been submitted by the petitioner that the 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

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SEBI.

(iv) It has been further pointed out that the said de-merged 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. This clarifies the complete factual position with regard to the compliances made by the de-merged 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 made vide paragraph 2(e) of the affidavit pertains to obtaining approval from regulatory body for business of power generation. In this regard, it has been submitted that the de-merged company had obtained the requisite permissions and licences to carry on the said activity. However, they being general licenses, upon scheme being effective, the respective resulting company shall do needful to either obtain such licenses and other regulatory approvals or amend the respective licences, as applicable under the applicable laws from the respective regulatory authority, and the power generation activity by the resulting company shall be undertaken in compliance with the respective regulatory laws.

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(vi) The next observation made vide paragraph 2(f) pertains to the compliance with provisions of FEMA and RBI in relation to shares held by foreign body corporate. In this regard, it has been clarified that the petitioner companies have so far complied with and shall comply with the applicable provisions, if any, of FEMA and RBI guidelines while issuing and allotting the shares of the resulting companies pursuant to the scheme.

(vii) The next observation of the Regional Director vide paragraph 2(g) pertains to the letter dated 17.2.2015 sent to the Income Tax Department to invite their objections, if any. In this regard it has been submitted that



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vide letter dated 11.3.2015 the Income Tax Department has clarified that it has no objection to the proposed scheme. However, the petitioner companies shall comply with applicable provisions of Income Tax Act and Rules.

16. Considering all the facts and circumstances and taking into account all the contentions raised by the affidavits and reply affidavits, the reliance placed on the judgments of this High Court and the submissions 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.

17. Prayers in terms of paragraph 25(a), 25(b) and 25(c) of the Company Petition No.36 of 2015 for the de-merged company and prayers made in paragraph 6(a) of the Company Petition No.37 of 2015 and prayers made in paragraph 15(a) of the Company Petition No.38 of 2015 for the respective resulting/transferee companies are hereby granted.

#### THE HIGH COURT

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

19. The petitioner companies are directed to file a copy 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.



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20. Filing and issuance of drawn up order is hereby dispensed with.
21. 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.
22. The petitions are disposed of accordingly.



So far as the costs to be paid to the Central Government Standing Counsel is concerned, I quantify the same at Rs.10,000/- for the de-merged Company being a listed public limited company, and Rs.7,500/- for the resulting/transferee companies. The same may be paid to the learned Standing Counsel appearing for the Central Government.

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THE HIGH COURT  
OF GUJARAT

*Sd/-*  
(VIPUL M. PANCHOLI, J.)



TRUE COPY  
*20/6/15*  
DEPUTY / ASSISTANT REGISTRAR  
THIS 30-6-15 DAY OF

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