

(1982) 07 BOM CK 0009

In the Bombay High Court

Case No : Company Application No. 235 of 1982 in Company Petition No. 84 of 1981 with Company Application No. 2665 of 1980

Centron Industrial Alliance Limited

APPELLANT

Vs

Pravin Kantilal Vakil and another
 Mrs. Rohini Ramesh
Save Vs Pravin Kantilal Vakil and another

RESPONDENT

Date of Decision : 09-07-1982

Acts Referred:

Companies Act, 1956 — Section 169(1), 391, 391(2)
Monopolies and Restrictive Trade Practices Act, 1969 — Section 54(2)

Citation : (1984) 55 CompCas 731

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Judgement

Mrs. Sujata V. Manohar, J.—Liberty to take out a judge's summons in terms of the draft handed in, returnable on 11th August, 1982. Affidavit in reply to be filed on or before July 22, 1982, and copy thereof to be given to the other side before that date. Affidavit in rejoinder to be filed and a copy thereof to be given to the other side on or before August 6, 1982.

2. The applicant prays for ad interim relief restraining the petitioner-company and the opponents from holding a requisitioned meeting of the company today. Pursuant to a requisition received from some of the shareholders for calling an extraordinary general meeting of the company, a notice dated June 11, 1982, has been sent by the company to its shareholders including the applicant for holding an extraordinary general meeting today. The meeting which is proposed to be called is for the purpose or passing the following resolution :

"RESOLVED that the company re-negotiate with Brooke Bond India Ltd. and/or examine alternate Schemes (s) in the interest of the company and for the purpose, FURTHER RESOLVED that the company should withdraw Petition No. 84 of 1981, filed in the High Court in Bombay from the date of this resolution."

3. From the resolution it is clear that the main resolution is to the effect that the

company should withdraw Petition No. 84 of 1981 filed in this court. The requisitionists want the company to re-negotiate with Brooke Bond India Ltd. and/or to examine alternate schemes in the interest of the company. This cannot be done unless the company withdraws. Petition No. 84 of 1981, for sanctioning a scheme of amalgamation between the petitioner-company and Brooke Bond India Ltd. under the provisions of s. 391 of the Companies Act. After the petition was filed, the following meeting were held under the directions of the court for considering the scheme of amalgamation :

- (1) meeting of shareholders,
- (2) meeting of secured creditors, and
- (3) meeting of unsecured creditors.

4. The scheme has been approved by an overwhelming majority of the shareholders as well as secured and unsecured creditors. Approval of the Central Govt. for the scheme has also been obtained under 23, sub-s (2), read with s. 54 of the MRTP Act, 1969, and the petition is now ripe for hearing. In fact, it has already come up for hearing on a number of occasions. Can the shareholders now call a requisitioned meeting to compel the company to withdraw from the scheme ?

5. Under s. 391 there are specific provisions for the manner of ascertaining the wishes of the creditors and the members of the company whenever a scheme of compromise or arrangement is proposed under the provisions of s. 391. If a majority in number representing three-fourths in value of the creditors or members whose meeting is called, vote for the scheme, it comes up for sanctions before the court. In the present case the scheme has been approved as prescribed under s. 391 by the members and creditors of the company and it has come up for sanction. Can the shareholders now compel the company to resile from the scheme ? The scheme proposed under s. 391 should be for the benefit of the shareholders as also for the benefit of the various creditors of the company. In my view, *prima facie*, after the scheme is passed with the requisite majority by the meetings of members and creditors held under s. 391(2), it is not open to the shareholders alone to ask the company to withdraw from the scheme, and ask that the petition for sanction of the scheme should be withdrawn. It is open to them to appear at the time when the scheme comes up for consideration before the court and to put forth their objections to the scheme for the consideration of the court. In a given case, it may be possible that there may be a change of circumstances which would justify such a scheme not being sanctioned although it may have been originally passed by the creditors and the shareholders. In such a case the scheme may not be sanctioned. It is also possible that in such a case an order may be passed for holding once again a meeting of the members and creditors of the company under the provisions of s. 391(2). This, of course, is a *prima facie* view which I have taken and the point required a detailed consideration.

6. Mr. Chinoy, who appears for the first opponent to oppose the application, has drawn my attention to various decisions to the effect that if under the provisions of s. 169(1) of the Companies Act a requisition is received by the board of directors of a company, the board is bound to call a meeting of shareholders. It is not open to the board to consider whether the purpose for which the meeting is requisitioned is legal or illegal. The ratio of these authorities will not apply to the present case because this is not a case where the board of directors have refused to call a requisitioned meeting. In fact the meeting has been called pursuant to the requisition which was received by the board of directors and it is scheduled for today. Mr. Chinoy also drew my attention to a decision of this court in Laljibhai C. Kapadia and Another Vs. Lalji B. Desai and Others, which, inter alia, dealt with the question of the validity of a requisition when the explanatory statement accompanying the requisition was lacking in material particulars. I am not concerned with this aspect of the matter at present. I am prima facie of the view that once the members of the company have approved of the scheme in the manner laid down under s. 391, it is not open to the shareholders to requisition a meeting for the purpose of passing a resolution asking the company to withdraw the petition filed by it for sanctioning the scheme. In any case this is a matter which requires further consideration in detail after the parties file their affidavits. In the premises, I direct that the meeting which is to be held today be adjourned sine die pending the final disposal of the judge's summons.