

(1991) 11 MAD CK 0024
In the Madras High Court
Case No : Company Petition No. 62 of 1991
In Re: Cetex Petrochemicals Ltd.

Date of Decision : 25-11-1991

Acts Referred:

Companies Act, 1956 — Section 391, 391(2), 393, 394, 73(2A)

Citation : (1992) 73 CompCas 298

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Judgement

Lakshmanan, J.—This company petition has been filed by Cetex Petrochemicals Limited, having its registered office at No. 12, Bishop

Waller Avenue (East), Mylapore, Madras-4, under sections 391 and 394 of the Companies Act, 1956, for sanction of the scheme of

amalgamation approved by the shareholders of the said company at the meeting held on March 18, 1991, and for other reliefs.

2. The object of this petition is to obtain the sanction of the court to a compromise or arrangement between Cetex Petrochemicals Limited

(transferor), petitioner in Company Petition No. 62 of 1991 and KEC International Limited (transferee) whereby, on and from June 1, 1990, the

entire business and undertaking of CETEX as also its debts, liabilities, contracts, duties, engagements and obligations will vest in, be transferred to

and taken over by KEC without any further act or deed.

3. The transferor-company was incorporated on February 15, 1988, under the provisions of the Companies Act, 1956, as a public limited

company. The memorandum and articles of association have also been filed as annexure I to this petition. The authorised capital of the transferor-

company is Rs. 11,00,00,000 divided into 1,00,00,000 equity share of Rs. 10 each, 50,000 preference shares of Rs. 100 each and 50,000

cumulative convertible preference shares of Rs. 100 each. The issued, subscribed and paid up capital of the transferor-company is Rs.

8,88,20,000 divided into 88,82,000 equity shares of Rs. 10 each fully paid-up. The main objects of the transferor-company are fully set out in its

memorandum and articles of association. It is seen that the transferor-company is engaged in the business of manufacture and sale methyl ethyl

ketone, a versatile petrochemical solvent.

4. The petitioner-company is engaged in the manufacture of methyl ethyl ketone which is used in the manufacture of lube oil, dewaxing magnetic

tapes, adhesives, printing inks, etc.

5. The company has put up a plant at Manali, Madras, for manufacture of methyl ethyl ketone, with an annual capacity of 4,000 mt. It is also

stated that the company has plans to set up facilities for manufacture of new product lines such as leather chemicals, etc., for which the company

needs finance.

6. The material terms of the proposed scheme of amalgamation have also been set out in detail in paragraphs 11(a) to 11(s). The scheme is

operative from the approved date, viz., June 1, 1990, and shall be implemented after the approval of the scheme by this court which date shall be

the effective date for implementation for the purpose of this scheme. The petitioner-company pursuant to the decision of its board at the meeting

held on December 22, 1990, filed Company Application No. 161 of 1991 on the file of this court for necessary directions regarding the

publication, convening and the conduct for necessary directions regarding the publication, convening and the conduct of the meeting of its

shareholders to consider the scheme of amalgamation referred to above which has been approved by its board. By an order dated April 8, 1991,

the petitioner was directed to convene a meeting of the members holding equity shares in the petitioner-company for the purpose of considering the

scheme of amalgamation.

7. Mr. P. C. D. Nambiar failing him Mr. R. V. Subrahmanian failing him Mr. S. M. Kulkarni was appointed as chairman of the said meeting.

Pursuant to the directions of this court, notice of the above meeting was sent individually to all the shareholders of the transferor-company together

with a copy of the scheme of amalgamation, a statement u/s 393 of the

Companies Act, 1956, and the form of proxy. The notice for the meeting was also published in one issue of The Hindu, dated February 22, 1991, and in one issue of Dinamani of the same date. On March 18, 1991, at

10:30 a.m., a meeting of the equity shareholders of the transferor-company was held at Rani Seethai Hall, No. 603, Anna Salai, Madras-6. Mr. P.

C. D. Nambiar who was appointed as chairman of the meeting presided over the meeting and submitted the result of the meeting in his report

dated March 29, 1991, with annexure, marked as annexure V. It is seen from the report of the chairman of the meeting that the meeting of the

shareholders was attended by 531 members, personally by 108 members and 423 members by proxy. The scheme of amalgamation was read and

explained to the shareholders and was resolved by majority of 46,41,660 votes in favour and 7,700 votes against. The following resolution was

passed :

Resolved that the scheme of amalgamation between Cetex Petrochemicals Limited and KEC International Limited placed before the meeting and

for the purpose of identification initialled by the chairman appointed for the meeting be and is hereby approved and that the directors of the

company be and are hereby authorised to assent to any modification of this scheme or to any condition which the court may deem fit to impose

and to take all such steps as may be necessary and desirable to implement the scheme and to give effect to this resolution.

As stated above, this petition had been filed by the transferor-company for sanction of the scheme by this court as approved by the shareholders

of the said company at the meeting held on March 18, 1991.

8. The Regional Director, Department of Company Affairs, Madras, filed his report dated November 6, 1991, and made two submissions and

said that subject to the submissions made, the central Government has no objection to the scheme of amalgamation being sanctioned by this court

on its merits. The submissions made by the Central Government are as under :

(a) There have been several complaints of non-refund of excess share application money by the petitioner-company. The complaints had been

taken up by the registrar of Companies and it is observed that there has been a delay ranging from 6 days to 16 days beyond the statutory grace

period of 8 days from the date of allotment as provided u/s 73(2A) of the Act

and, consequently, under the said provisions, the company has become liable to pay interest to the share applicants.

(b) The Company has not complied with the said provisions of section 73(2A) of the Act and, for the violation of the provisions of the said section,

the company and every officer of the company who is in default are punishable u/s 73(2B) of the Act. In the circumstances, the dissolution of the

petitioner-company for winding up as prayed for in the scheme will nullify the penal proceedings which may be taken up by the central Government

against the company and other officers of the company in default. Therefore, it was submitted that the prayer for dissolution of the petitioner-

company without winding up cannot be passed unless and until the issue as to the violation of section 73(2A) of the Act is finally settled and the

company complies with the provisions of the Act in so far as refund of the share application money along with interest is concerned.

(c) The transferor-company should not be dissolved without winding up unless and until the company complies with the provisions of section

73(2A) of the Act and also till a report is received from the Officer Liquidator, High Court, Madras, pursuant to the second proviso to sub-section

(1) of Section 394 of the Act.

9. One Mr. R. Lakshmanan, son of Shri A. L. Ramanathan, residing at No. 91, Durai Arasan Street, Kaveri Rangan Nagar, Saligramam, Madras-

93, has submitted a notice of opposition, dated July 30, 1991, opposing the scheme of amalgamation. He has also, with the leave of this court,

filed additional grounds dated November 11, 1991. The notice of opposition was opposed by the petitioner-company by filing their reply affidavit

dated October 25, 1991. The following are the grounds raised by the said Mr. R. Lakshmanan in his notice of opposition.

10. Mr. Arvind P. Datar, learned counsel appearing for the objector Mr. R. Lakshmanan, has raised the following submission at the time of hearing

on the basis of the notice of opposition and the additional grounds :

(a) The proposed scheme of amalgamation is against the interest of the shareholders and the public interest and is only for the benefit of the R. P.

Goenka group which has a controlling interest in both the companies. The real reason for amalgamation is possibly to reduce the shareholding of

the financial institutions in the petitioner-company;

(b) The object of amalgamation is set out in paragraph 9 of the petition and the reasons given therein are totally untenable and irrelevant and the

petition is liable to be rejected. It is stated that the petitioner plans to expand its production capacity and to set up facilities for manufacture of new

product lines;

(c) If the company has plans to expand its production capacity, it could always have gone for a right issue or issued debentures to the existing

shareholders;

(d) It is also not clear as to why the petitioner wants to make leather chemicals when the prospectus was issued for the manufacture of methyl ethyl

ketone, a 100% import substitution product. There is also no mention that the proposed scheme of amalgamation is the only way by which the

petitioner can raise funds for the proposed expansion and diversification schemes;

(e) No mention has been made as to the extent of funds required by the petitioner and the availability of surplus funds with KEC International

Limited;

(f) No reason or explanation is given for the sudden hurry to expand and diversify the petitioner's activities. Expansion and diversification are

normally done only after a company has stabilised its operation;

(g) A public issue was made stating that the prospective shareholders would get the benefit u/s 80CC of the Income Tax Act. Under this section,

shares obtained by an assessee cannot be sold or otherwise transferred to any person at any time within a period of three years from the date of

acquisition and if they are sold or transferred, the shareholders would be subjected to tax accordingly and that the proposed amalgamation would

result in a "transfer" and contrary to the statutory provisions of section 80CC of the Income Tax Act;

(h) Almost all the shareholders vehemently opposed the amalgamation at the meeting held on March 18, 1991, at Rani Seethai Hall. Several

objections were made by the shareholders which have not been recorded in the minutes of the meeting;

(i) The deponent of the affidavit in Company Petition No. 62 of 1991, Shri K. B. R. Mruthy, had warned the objector not to persist with his

objections. He was warned on two occasions that he should not confront such a

large group and if he continued to raise objections, his life was in danger and that he would be liquidated;

(j) The proposed amalgamation will be beneficial only to KEC International Limited, the transferee-company. The explanatory statement has deliberately omitted to give necessary particulars about the effect of the merger. All these benefits which would have accrued to the shareholders of the petitioner will now be passed on to the transferee-company if the merger is approved.

11. The petitioner filed a detailed reply affidavit denying the allegations contained in the notice of opposition. Mr. T. Raghavan, learned senior counsel appearing on behalf of the petitioner-company, submitted that the amalgamation is only in the interest of the shareholders of the company and in public interest and he denied the allegations that the scheme is for the benefit of any particular group. He invited my attention to the relevant records filed in the proceedings as annexures. It is seen from the records that the company has 34,238 shareholders as on date and that the said shareholders hold the entire issued and subscribed share capital of the company. Of this, it is seen that the shareholders in and around the city of Madras would only be about 1905, while the remaining number of shareholders numbering over 32,000 reside in other parts of the country. Mr. T. Raghavan has also denied the further statement of Mr. Arvind P. Datar that the possible reason for amalgamation is to reduce the holding of the financial institutions as incorrect. It is significant that the financial institutions, viz., IDBI and ICICI themselves are not opposed to the present scheme and have in fact approved the same. As the scheme of amalgamation had not been formulated at the time of the annual general body meeting, it was explained by him that there was no mention of the scheme at that meeting.

12. In answer to the objections made by the objector in paragraphs (c) and (d) of the notice of opposition, Mr. T. Raghavan contended that it is for the shareholders of the company to decide whether the company should merge with another undertaking and so long as such decision has been taken in accordance with the provisions of the Act, the fact that the applicant, admittedly, holds only 200 shares and that too not acquired in the public issue but later and is not in favour of such proposal cannot be a ground for

the court to decline to confirm the scheme. I see much force in the contention of Mr. T. Raghavan, learned senior counsel. It is relevant at this stage to refer to the report of the chairman of the proceedings of the meeting which would show that the meeting was attended by as many as 423 members residing outside the city of Madras and who were present by proxy and that the overwhelming majority of such shareholders approved the scheme at the meeting. The chairman's report has been filed as annexure V in these proceedings. The chairman has filed his report pursuant to the directions of this court. In his report, Mr. P. C. D. Nambiar, the chairman appointed by this court of the meeting of the equity shareholder of the company has stated that the meeting was attended personally by 108 shareholders and in proxy by 423 shareholders of the company in question entitled together to 46,59,260 equity shares of Rs. 10 each aggregating to Rs. 4,65,92,600. It is further seen in the report that the salient features of the arrangement being the scheme of amalgamation of Cetex Petrochemicals Limited with KEC International Limited were explained to the members present at the meeting. The members present at the meeting approved the scheme of amalgamation submitted at the meeting. It is also stated in the report that while several shareholders were of the opinion that the arrangement, viz., the scheme of amalgamation submitted at the meeting. It is also stated in the report that while several shareholders were of the opinion that the arrangement, viz., the scheme of amalgamation, should be approved, some shareholders opposed the proposal may be dropped and certain others sought clarifications. The queries/clarifications raised were explained to the members and, after due deliberations and discussions, the resolution was put to vote by ballot and 46,41,660 were the votes polled in favour of the proposed scheme of amalgamation being adopted and carried into effect (without modification), which represent that 99.8% of the members present had voted for the amalgamation. Six thousand four hundred and eight shareholders owning shares of Rs. 46,41,660 have voted in favour of the scheme of amalgamation and only fifty-four persons owning only Rs. 7,700 shares have voted against the proposed scheme of amalgamation being adopted and carried into effect (without modification). The chairman has also referred in his report to the report of the three scrutineers, viz., Mr. P.

Balakrishnan, Mr. Divyesh I. Shah and Mr. R. Lakshmanan. All the three scrutineers have, on March 18, 1991, addressed a letter to the chairman appointed for the meeting of the members of Cetex Petrochemicals Limited for confirmation that the ballot box was duly sealed, after the casting of votes, in front of the and that the same was unsealed at the registered office, at No. 12, Bishop Wallers Avenue (East), Mylapore, Madras-4, on the same day March 18, 1991, at 2:30 p.m. for scrutiny and counting of votes. Proxy forms were also verified and, after scrutiny was completed, a report was made at 11:45 p.m. The said letter was signed by all the abovenamed scrutineers, including Mr. R. Lakshmanan, the only objector in this court opposing the scheme of amalgamation. It is also relevant to extract the circular submitted by the to the chairman appointed for the meeting. The circular in the form of a report, dated March 18, 1991, is reproduced hereunder :

CETEX PETROCHEMICALS LIMITED

Registered Office :

No. 12, Bishop Wallers Avenue (E),

Mylapore, Madras-600 004.

March 18, 1991.

To

Mr. P. C. D. Nambiar,

Chairman appointed for the meeting of members of Cetex Petrochemicals Limited held on March 18, 1991, under the order dated February 8, 1991, passed by the High Court of Judicature at Madras.

Dear Sir,

As scrutineers appointed for the purpose of poll taken at the meeting of members of Cetex Petrochemicals Limited held on March 18, 1991, under the order dated February 8, 1991, passed by the High Court of Judicature at Madras, we hereby certify that the result of the poll is correctly set out as follows :

Yours faithfully,

(Sd.)

Balakrishnan

P. Divyesh I. Shah

Lakshmanan R.

(scrutineers)

Dated : March 18, 1991.

Time : 11:45 p.m.

Thus, it is seen that the allegations of Mr. R. Lakshmanan now made in the notice of opposition is only an afterthought. Mr. R. Lakshmanan was

one of the three scrutineers appointed by the chairman. That apart, the financial institutions like LIC, ICICI, IDBI, IFCI and SBI are not objecting

to the scheme of amalgamation. None of the are objecting to the scheme and they were also not present in court.

13. In regard to the opposition made in paragraph (e) of the notice; of opposition, Mr. T. Raghavan, learned senior counsel, submitted that it is for

the company; to consider alternative methods for raising capital or augmenting the production and these are all essential matters of internal

management. As seen from the report submitted by the chairman of the meeting, the majority of the shareholders having accepted the proposal of

the board, the objector cannot insist that the company should adopt only the particular mode in regard to his objections raised in paragraph (e) in

the notice of opposition. Likewise, the objections raised in paragraphs (f) and (g) are misconceived and incorrect. The proposal to amalgamate

with another company has been accepted by the shareholders present holding 99.83 per cent. of the shares out of the members present and voting

at the extraordinary general meeting to consider the scheme of amalgamation. It cannot be contended that the said proposal is prejudicial to the

interest of any creditors or public interest. The mere fact that one member or some members are not in favour of the scheme or merger cannot be a

ground for preventing the company implementing a proposal which has the support of an overwhelming majority of shareholders, as stated supra.

14. In regard to the contentions raised in paragraph (g) in the notice of opposition and urged by Mr. Arvind P. Datar, Mr. T. Raghavan contended

that the company has been advised that the benefits u/s 80CC of the Income Tax Act, 1961, available to the original allottees of shares in the

company will not be lost by reason of its amalgamation with KEC International Limited. It is also seen that the objector, Mr. Lakshmanan, is not

one of the original allottees of the shares held by him and is not, therefore, entitled to such benefit. The insinuations and aspersions case in

paragraph (h) in the notice of opposition regarding the conduct of the meeting has also been denied by Mr. T. Raghavan as incorrect. Mr. T.

Raghavan's submission on this point is well founded and merits acceptance, in view of the report of the chairman and the other records in regard to

the conduct of the meeting and the decisions taken therein by an overwhelming majority of the shareholders.

15. The objector, Mr. R. Lakshmanan himself, was a scrutineer appointed by the chairman and he is fully aware that the majority of the members

present were in favour of the scheme. In so far as the value of the shares and votes cast in favour of the scheme is concerned, it is obvious that the

votes cast against the proposal were negligible in value. In regard to the allegations in paragraph (i) in the notice of opposition, it was submitted that

there was no occasion for the petitioners or any other member of the staff of the petitioner-company to threaten that the objector's life would be in

danger, Mr. T. Raghavan submitted that the said statement is only malicious and that there is absolutely no basis for making such a reckless

allegation. In regard to the additional grounds raised by Mr. Arvind P. Datar, at the time of hearing, Mr. T. Raghavan submitted that the real

reason for the merger has been disclosed in detail in the main petition as well as in the affidavit filed in support of Company Petition No. 62 of

1991. It is seen from paragraph 6 of the affidavit filed in support of the main company petition that the transferor-company has the necessary

infrastructure facilities and is keen to diversify in other allied products as well as to expand its capacity for which it need financial resources. The

directors of the transferor-company felt that if it merged with a financially strong company, it would be able to receive financial support for both its

current as well as diversified activities. As the transferee is a highly profitable company and also a financially sound company and is looking for

diversification, it was recognised that there merger of the transferor-company with the transferee-company would be in the interest of both the

companies. The salient features of the scheme of amalgamation of the petitioner-company with KEC International Limited have been explicitly and

fully set out in the affidavit itself. It is also mentioned that, on and from the appointed date, all debts, liabilities, duties and obligations of the transferor-company shall also be and shall stand transferred without any further act or deed to the transferee-company pursuant to the provisions of the Act so as to become the debts, liabilities, duties and obligations of the transferor-company and that all proceedings, if any, by or against the transferor-company relating to its undertaking, liabilities, obligations and duties pending on and after the appointed date shall be continued and enforced by or against the transferee-company. The scheme is also conditional upon and subject to the approval and consent of the Controller of Capital Issues under the Capital Issues (Control) Act, 1947, to the shareholders of the transferor-company pursuant to the scheme of amalgamation. It is further stated that the assets of the transferee-company are sufficient to discharge all the binding obligations of the transferor-company and that the scheme of amalgamation will not, in any way, be prejudicial to any person. It is also seen from the orders produced before me that the transferee-company as already moved the High Court of Bombay for the approval of the scheme of amalgamation and that the same has also been approved by the said court.

16. It is further stated by Mr. Arvind P. Datar that the proposed terms of merger have also come as a shock to the shareholders who stand to incur, in the event, substantial financial loss and that the Cetex shareholders would get only two shares of KEC, of Rs. 10 each, for every five Cetex shares held by them. Hence, they would end up getting an odd lot of 40 shares of KEC, the market lot being 50. Besides, taking into account the market price of Cetex shares, the investors would lose once the merger takes place. It was pointed out that, at the prevailing price of Rs. 24, a lot of 100 Cetex shares is now worth Rs. 2,400. At the same time, at Rs. 45 for a KEC share, the conversion will leave the shareholders with only Rs. 1,800 for 40 shares. It was further submitted by Mr. Arvind P. Datar that, at the time of public issue last year, the RPG group made a big fanfare about the prospect of the Sun Rise Industry and lured them to invest in Cetex Petrochemicals and, while they responded in a big way to the issue, the merger move has shattered all their hopes and that it will ultimately wipe out the identity of the new company and those who were

allotted shares of KEC International will become second class shareholders. I have also carefully gone through the prospectus issued by the

company and the balance-sheet. Mr. Arvind P. Datar pointed out that the prospectus issued at the time of public issued promised attractive returns

claiming that it is a separate project and a profitable venture. Now, these assurances have been violated with impunity and the identity of Cetex

Petro will be lost. In addition, the investors had availed of section 80CC benefit and the shares will have to be retained in the same company at

least for a period of three years. He further stated that, following the merger proposals, the shareholders face the risk of the assessments being

reopened by the Income Tax authorities. Mr. Arvind P. Datar urged that this court has to see that the scheme is a fair and reasonable one and that

the courts should not be carried away by the majority of members voting in favour of the scheme of amalgamation. It is also the duty of this court

to see whether the majority of the members have been acting bona fide and the minority has not been overridden by the majority having interest of

its own clashing with those of the minority who they seek to coerce.

17. Though the argument of Mr. Arvind P. Datar is attractive at first blush, yet, on a deeper examination, it does not appear to be tenable.

18. The question for consideration is whether the necessary sanction of the court should be accorded to the proposed scheme of amalgamation.

Section 391(2) of the Companies Act, 1956, provides that the scheme of amalgamation should be approved by a majority in number representing

three-fourths in value of the members or class of members present and voting either in person or by proxy. It is not disputed by Mr. A. S.

Venkatachalamoorthy, learned Additional Central Government standing counsel, that this statutory requirement has been satisfied in this case.

From the figures already given in the above paragraphs, it is seen that the proposed scheme of amalgamation has been approved by an

overwhelming majority, both in number and value, of both the companies.

19. It is also clear from the order of the High Court of Bombay that the scheme of amalgamation has been approved by an overwhelming majority

and that the scheme has also been accordingly, sanctioned by the said court. The next aspect which this court has to bear in mind is to see whether

the majority having interests of its own clash with those of the minority who they

seek to coerce. There is no averment in the representation filed by the Regional Director, Company Affairs, Madras., that there has not been a fair representation of the members of the company at the meeting. Nor has it been alleged that the minority have been coerced into submitting to the will of the majority. It is also not the case of the Central Government that there has been any lack of bona fides on the part of the majority or that the minority have been either coerced or tricked into submitting to the will of the majority or that the acceptance of the scheme of amalgamation on the part of the overwhelming majority of the members of the company has been the result of fraud or undue influence practised by the majority on the minority. In my view, the scheme as a whole is a reasonable and fair one, having regard to the general conditions and background and object of the scheme. It is not for this court to substitute its judgment for the collective wisdom of the shareholders of the company. Though certain objections have been made by Mr. R. Lakshmanan, the objector, that the scheme is not fair and reasonable and that no reasonable man would accept it, notwithstanding the views of the large majority of the shareholders that the scheme is a fair one, I am unable to affix my seal of approval to the said contention since, in my view the provisions of section 391 of the Companies Act have been fully satisfied and complied with. I am, therefore, satisfied that the scheme of amalgamation is a fair and reasonable one and that the same is not detrimental to the interest of the public. Hence, I hold that the scheme of amalgamation, on the face of it, is fair to the shareholders of the petitioner-company. It is also made clear in the scheme of amalgamation as to how the transferee-company would meet the liabilities of the transferor-company. None of the creditors of the company have raised any objections. That apart, the financial institutions like IDBI, ICICI, IFCI and LIC are not before this court to object to the scheme of amalgamation. I am not persuaded by the submissions of Mr. Arvind P. Datar that this court should be concerned with the commercial merits or demerits of the scheme in question. In my view, it is not for this court to see whether a particular scheme is beneficial or not and it is only for the members of the company to decide that question. It is also the contention of Mr. Arvind P. Datar that the transferee-company is not solvent enough to meet the liabilities of the transferor-company. The scheme

itself postulates that all the debts and liabilities of the transferee-company. As rightly pointed out by Mr. T. Raghavan, if any creditor did not accept

the scheme of amalgamation, he would have appeared before the court and objected to the scheme of being sanctioned in which event the

transferee-company would have paid off the creditor. It is important to note that notwithstanding the wide publicity being given to the company

petition, no creditor has come forward to object to the scheme of amalgamation. Therefore, I do not agree with Mr. Arvind P. Datar that the

proposed scheme of amalgamation is not a fair to reasonable one. It is also seen from the records produced before me that the transferee-

company is admittedly a very solvent company and is capable of meeting the liabilities of the transferor-company are amply safeguarded. Viewed

in this light, it is but reasonable that the scheme of amalgamation is not prejudicial or detrimental to the interest of the public. On the other hand, it is

beneficial not only to the public but also to the members and creditors of the transferor-company.

20. The scheme was opposed by the Regional Director on two grounds as mentioned earlier. However, it is stated that the Central Government

has not objection to the scheme being sanctioned by this court on its merits. It is made clear that if any complaints of non-refund of excess share

application money by the petitioner-company are made, it is always open to the authorities concerned to proceed against the company for

violation, if any, of section 73(2A) of the Act. The Central Government is at liberty to proceed against the persons concerned and the officers of

the company who are in default and proceed against them under the said provisions, if there is any, violation of section 73(2A) of the Act. It is

urged by Mr. A. S. Venkatachalamoorthy that the dissolution of the petitioner-company without winding up as prayed for in the scheme if ordered

or sanctioned, will nullify the penal proceedings which may be taken by the Central Government against the company and every officer of the

company in default. It was, therefore, contended that this court will not pass any orders on the prayer of the petitioner-company and every officer

of the company in default. It was, therefore, contended that this court will not pass any orders on the prayer of the petitioner-company for its

dissolution without winding up unless and until; the issue as to the violation of section 73(2A) of the Act is finally settled and the company complies

with provisions of the said section of the learned Additional Central Government Standing Counsel. Ample safeguards are provided under the

provisions of the Act itself. It is stated in the report that penal proceedings might be taken up by the Central Government against the company. It is

not for this court to wait till the proceedings are initiated by the Central Government for violation, if any, and for that purpose, this court need not

postpone the sanction of the scheme as prayed for. The interest of the Central Government to intimate proceedings against the company and every

officer of the company for alleged violation of the provisions of section 73(2A) of the Act. Likewise, the argument of Mr. A. S.

Venkatachalamoorthy, learned Additional Central Government Standing Counsel, is that the petitioner-company should not be dissolved without

winding up unless and until the same company complies with the provisions of section 73(2A) of the Act and also till a report is received from the

Officer Liquidator, Madras High Court, pursuant to the second proviso to sub-section (1) of section 394 of the Act. It is further stated that there is

no specific prayer in the main company petition for such a dissolution. In my opinion, such a prayer is not necessary since the scheme itself contains

the same.

21. This court, in *Coimbatore Cotton Mills Ltd., In re* [1980] 50 Comp Cas 623, while sanctioning a scheme under sections 391 and 394 of the

Act, held that this court should normally be satisfied in respect of the following four matters (p. 630) :

(1) The court should be satisfied that the resolutions are passed by the statutory majority in value and in number in accordance with section 391(2)

of the Act at a meeting or meetings duly convened and held;

(2) The court should satisfy itself that those who took part in the meeting are fairly representative of the class and that the statutory meeting did not

coerce the minority in order to promote the adverse interest of those of the class who they purport to represent;

(3) In exercising its discretion under sections 391 and 394, the court is not merely acting as a rubber stamp. It is the function of the court to see

that the scheme as a whole, having regard to the general conditions and background and object of the scheme, is a reasonable one and, if the court

so finds, it is not for the court to interfere with the collective wisdom of the

shareholders of the company;

(4) There should not be any lack of good faith on the part of the majority.

As already stated, this court should be satisfied that the resolutions are passed by the statutory majority in value and in number in accordance with

the provisions of section 391(2) of the Act. I have also held that the meeting was duly convened and held. This court is also satisfied that the

statutory meeting did not coerce the minority in order to promote the adverse interest of those of the class who they purport to represent. In fact,

the report of the chairman amply proves this view. The meeting was conducted in a fair manner. Everyone present at the meeting was allowed to

express his grievance and, ultimately, the resolution was passed by an overwhelming majority. When once this court finds that the scheme is a fair

one, then it is for the objector to show convincingly that the scheme is unfair and that, therefore, the court should exercise its discretion to reject the

scheme, notwithstanding the views of a very large majority of the shareholders that the scheme is a fair one. In my view, the objector has miserably

failed to prove that the scheme is not a fair or a reasonable one. The scheme as a whole, in my view, is a fair and reasonable one. It is not the duty

of this court to launch on an investigation upon the commercial merits or demerits of the scheme which is the function of those who are interested in

the arrangement. In my view, there is also no lack of good faith on the part of the majority. The materials on record showed that the provisions of

the Act had been fully complied with and that no ground existed to withhold sanction to the scheme of amalgamation in its essentially broad

features.

22. Mr. Arvind P. Datar cited the decision in *Central India Industries Ltd. v. CIT* [1975] 45 Comp Cas 229 to show that, under the scheme of

amalgamation, the two amalgamating companies lost their existence by operation of law after the amalgamation and that the shares allotted will be

issued and delivered to the registered shareholders in exchange for ordinary shares in some proportion which will amount to a case of transfer of

shares, if not an exchange. The view taken by the Division Bench of the Calcutta High Court mentioned above, in my view, is no longer good law,

in view of the recent decision of the apex court reported in *CIT v. Rasiklal Maneklal (HUF)* : [1989]177ITR198(SC) . This decision was cited by

Mr. T. Raghavan, learned senior counsel, in reply to the above argument of Mr. Arvind P. Datar. The assessee before the Supreme Court was a Hindu undivided family deriving income from interest on securities, dividends, property, etc. The assessee purchased shares of Shorrock Spinning and Manufacturing Co. Ltd., hereinafter referred to as "the Shorrock Co.". There was another company called the New Shorrock Spinning and Manufacturing Co. Ltd. to which reference may be made as "the New Shorrock Co." It was decided to amalgamate the Shorrock Co. with the New Shorrock Co. and, upon petitions filed under sections 391 and 394 of the Companies Act, 1956, the Gujarat High Court made an order dated September 23, 1960, directing meetings of the shareholders of both the companies. The meetings were held on October 27, 1960, and the scheme of amalgamation was approved. The High Court sanctioned the scheme of amalgamation and declared that the scheme would be binding on members of both the companies. Under the scheme of amalgamation, the undertaking and all the property, rights and powers as well as all liabilities and duties of the Shorrock Co. were to stand transferred to and vest, with effect from January 1, 1960, in the New Shorrock Co. The scheme provided further for an increase in the share capital of New Shorrock Co. and it permitted the creation of 14,625 new ordinary shares of the face value of Rs. 125 each of the transferee-company. The newly created shares were to rank *pari passu* with the existing shares of the transferee-company in all respects. Under the scheme, the New Shorrock Co. as the transferee-company was directed to allot to members of the Shorrock Co., the transferor-company, one share in the transferee-company for every two shares of the transferee-company for every two shares of the transferor-company held by them. During the assessment proceedings for the assessment year 1961-62, the previous year being the financial year ending March 31, 1961, the Income Tax Officer although apprised of the fact of the scheme of amalgamation and of the acquisition by the assessee of 45 shares of the new Shorrock Co. omitted to consider the applicability or otherwise of section 12B of the Indian Income Tax Act, 1922. The Commissioner of Income Tax issued a notice u/s 33B of the Act to the assessee stating that the receipt of 45 shares of the New Shorrock Co. in exchange for his original holding of 90 shares in the Shorrock Co. in December, 1960, had resulted in an assessable profit, and

this aspect had been overlooked by the Income Tax Officer when making the regular assessment, and, therefore, he proposed a revision of the assessment. The Commissioner of Income Tax passed an order directing the Income Tax Officer to revise the assessment and to include an amount of Rs. 49,350 representing the capital gains resulting from the transaction of the acquisition of 45 shares of New Shorrock Co. in the place of the 90 shares held in the Shorrock Co. On appeal by the assessee before the Income Tax Appellate Tribunal, the Appellate Tribunal held that the transaction represented neither an exchange nor a relinquishment and, therefore, section 12B of the Act was not attracted. At the instance of the Revenue, the Appellate Tribunal referred the following questions to the High Court for its opinion :

1. Whether, on the facts and in the circumstances of the case, the sum of Rs. 49,350 could be assessed in the hands of the assessee as capital gain as having accrued to the assessee by exchange or relinquishment as provided for u/s 12B of the Act ?

2. If the answer to the above question is in the affirmative, whether the said sum of Rs. 49,350 was assessable in the year 1961-62 ?

23. The High Court took the view that no exchange could be said to have taken place on the allotment of the 45 shares of the New Shorrock Co.

under the scheme of amalgamation. Nor, in the opinion of the High Court, did it constitute a relinquishment. In the result, the High Court answered

both the questions in favour of the assessee and against the Revenue. On the sole question, the Supreme Court held as under (at pages 201-2) :

The sole question is whether the receipt of the 45 shares of the New Shorrock Co. upon amalgamation by reason of the shareholding of the 90

shares of the Shorrock Co. can be described as an exchange or relinquishment within the meaning of section 12B of the Act. It seems plain to us

that no exchange is involved in the transaction. An exchange involves the transfer of property by one person to another and reciprocally the transfer

of property by that other to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another. In the present

case, the assessee cannot be said to have transferred any property to any one. When he was allotted shares of the New Shorrock Co., he was

entitled to such allotment because of his holding 90 shares of the Shorrock Co. The holding of the 90 shares in the Shorrock Co. was merely a

qualifying condition entitling the assessee to the allotment of the 45 shares of the New Shorrock Co. The dissolution of the Shorrock Co. deprived

the holding of the 90 shares of that company of all value.

On the question whether there was any relinquishment, the decision must again be against the Revenue. A relinquishment takes place when the

owner withdraws himself from the property and abandons his rights thereto. It presumes that the property continues to exist after the

relinquishment. Upon amalgamation, the shares of the Shorrock Co., as has been mentioned earlier, lost all the value as that company stood

dissolved. There is no relinquishment.

Thus, it is seen from the above judgment that no exchange is involved in the transaction and that the assessee cannot be said to have transferred

any property to any one. When he was allotted shares of the New Shorrock Co. he was entitled to such allotment because his holding of the

shares of the Shorrock Co. was merely a qualifying condition entitling the assessee to the Shorrock Co. was merely a qualifying condition entitling

the assessee to the allotment of the shares of the New Shorrock Co. This decision of the apex court is the direct answer to the points raised by

Mr. Arvind P. Datar in his additional grounds as well. Thus, none of the points raised by Mr. Arvind P. Datar deserve consideration and hence all

the objections raised by the objector are rejected.

24. In the result, the company petition succeeds and sanction is accorded to the proposed scheme of amalgamation. In view of the fact that the

company has to be dissolved without winding up, notice will go to the official liquidator u/s 394 of the Act. The scheme will be operative from June

1, 1990, as provided in the scheme of amalgamation.