(2003) 10 DEL CK 0041

In the Delhi High Court

Case No : CP No''s. 247 and 248 of 2000

In Re: DCM Limited; In Re: DCM recision Engg. Limited

Date of Decision : 29-10-2003

Acts Referred:
Companies Act, 1956 — Section 391, 392, 393, 394, 394(4)

Citation : (2003) 108 DLT 181 : (2004) 50 SCL 585

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : C.S. Vaidyanathan and Ritu Bhalla and Ruchi A. Mahajan, Ravinder Sethi and Nandini Sahni, for Flat Buyers Association, Rajiv Kumar, for Flat Buyers, Ravindra Kumar, for the old and Dinesh Chand, Dy. ROC for Regional Director, Kanpu, for the Appellant;

Judgement

Mukul Mudgal, J.—The company petition, CP.No.247 of 2000 has been filed on behalf of the transferor company, DCM Ltd., under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as ''the Act''), praying for sanctioning of the Scheme of Restructuring and Arrangement between the Petitioner/Transferor Company and the Transferee Company, DCM Precision Engineering Ltd. Company Petition No.248 of 2000 has been filed on behalf of the transferee company. Upon the scheme being sanctioned by this Court, the DCM Limited seeks to restructure and revive itself and also repay its creditors across the Board by restructuring their debts. The present scheme is for restructuring of the company and for compromise with all the creditors of the company. In December, 1999, applications, CA 1742/1999 and 1743/1999 were filed by the DCM Limited(transferor company) and DCM Precision Limited respectively for convening the meetings of shareholders and creditors of the companies for approving the Scheme of Restructuring and Arrangement.

2. As per the prayers made in C.A. Nos.1742 and 1743 of 2000, on 14th February, 2000, this Court directed the convening of meetings of secured creditors, unsecured creditors & shareholders of both the companies on 17th, 18th and 19th May, 2000 respectively. Notice of the said meetings were duly published in the manner prescribed under the Act and on 17th, 18th and 19th

May, 2000, the meetings were held. In all the meetings of shareholders/ creditors, the scheme was approved by more than the requisite majority of the three-fourth in number and value of the shareholders and the creditors of the companies and were accordingly reported to this Court by the Chairpersons of the said meetings. In the meeting of shareholders of DCM, 99.97% of present and voting supported the Scheme. In the meeting of unsecured creditors of DCM, 99.59% present and voting supported the Scheme. 91.63% of the secured creditors present and voting supported the scheme. In the meeting of shareholders and creditors of DCM Precision Engineering, 100% present and voting supported the scheme.

3. On 29th July, 2000 the present petitions, CP.Nos.247-248 of 2000 were filed under Sections 391 to 394 of the Act seeking sanction and the approval of the proposed Scheme. This Court on 1st August, 2000 issued notice to the Official Liquidator(OL), attached to this Court and the Regional Director, Department of Company Affairs, Northern Region, Kanpur as well as the creditors and shareholders of the petitioner company by way of the prescribed publication in Statesman and Veer Arjun. By the Reports dated 30th October, 2000 filed in both the company petitions, the Regional Director, Department of Company Affairs has not indicated any objection to the proposed scheme. In his Reports dated 20th November, 2000, filed in both the company petitions, the Official Liquidator has not indicated any objection to the proposed scheme in the following terms:-

"the Official Liquidator has no objection to the proposed scheme of Restructuring and Arrangement between the transferor company and the transferee company ..."

4. The salient features of the scheme are as follows:

(a) Restructuring of the company, DCM Limited by developments of the real estate project of the M/s DCM Ltd., at the Bara Hindu Rao site by purchase of the balance development rights from M/s DCM Ltd for a consideration of Rs.288.2 crores by DCM Estates and Infrastructure Limited (DEIL Ltd.);

(b) Divestment of Engineering business to generate an inflow of Rs.128.02 crores;

(c) Merger of DCM Data Systems Limited into DCM Limited resulting in cash cash inflow of Rs.28.50 crores;

(d) Amounts payable to be repaid to each class of creditor have been uniformly frozen as on 31st December, 1998;

(e) The unsecured creditors of DCM are :

(i) Fixed Depositors

(ii) Inter Corporate Depositors (ICD) Lenders (Part) (including Corporate Bodies).

(iii) M/s Tiara Investments and Holdings and Trade Creditors.

(f) The secured creditors of DCM are :

(i) Banks and Financial Institutions (UTI, ICICI, IFCI, IRBI and IDBI);

(ii) Partly Convertible Debenture Holders (PCD) (and comprising of individuals, financial institutions, corporate bodies, mutual funds);

(iii) Non-Convertible Debenture Holders (NCD) and;

(iv) Inter Corporate Depositors (ICD) Lenders (Part) (include loans from Corporate Bodies).

(g) The impact of the scheme as per the repayment plan shows that the debt settlement is spread over 9 years and most of the small entities will be paid in first 2 years of the scheme as opposed to the larger secured entities such as the banks and financial institutions who are to be the recipients of back ended payments.

(h) The appointed days are :

(i) for restructuring of debts: 1st January, 1999

(ii) for demurer of Engineering Business: 1st April, 2000 as approved in the meeting but modified to 1st April, 2001 as per the separate order passed in CA.No.1789 of 2001;

(i) the scheme while seeking the restructuring of the company DCM Limited also envisages paying of debts of creditors.

5. Thus the applicant company has submitted that the scheme deserves to be sanctioned and approved by this Court as the requisite statutory majority as per the norms prescribed by Section 391(2) of the Act of not only the creditors both secured and unsecured, but all the shareholders present at the time of the meetings have overwhelmingly voted upon and approved the present scheme. It is also submitted that all the statutory procedures prescribed u/s 391 and 394(4) of the Act and the Company Court Rules 1959 have been followed. There have been no objections raised by the Official Liquidator and the Regional Director, Kanpur to the present scheme.

6. The position of law relating to the powers and obligations of a Company Court u/s 391 to Section 394 of the Act is as follows:-

(a) In United Bank of India Ltd. Vs United India Credit and Development Company Ltd. (1977) 47 Com. Cas 689 it was held that while exercising the discretionary power of the Company Court to sanction a scheme, it must be viewed as a whole by taking into consideration the objective of the scheme and surrounding circumstances and the Court must take into view the local conditions. The Court must honour the collective wisdom of shareholders and is not required to analyze the impact or potential of the scheme clause-wise;

(b) In Re: Cotton Agents (Rajasthan) Ltd., Jaipur, , In Re: Piramal Spinning and

Weaving Mills Ltd., and in the matter of Nayug Investments Ltd (1993) 3 Comp L.J 305 (Del) it has been held that when after notice to shareholders and other concerned, the scheme has been approved and no objection filed, the scheme should be considered by the Court to be fair to all concerned;

(c) In Vadlamudi Rama Rao Vs Asian Coffee Ltd 2000 CLC 1356 (AP), it was held that once financial institutions approved the scheme of amalgamation by an overwhelming majority, the Court cannot at the instances of the members of the Company enter into a role of a fault finder;

(d) In Ucal Fuel Systems Ltd. reported as (1992) 73 Com. Cas 63 (Mad) , the Court held that a unanimous decision of the shareholders ought not be lightly interfered with;

(e) In Shankarnarayna Hotels vs Official Liquidator 1992 (74) Com. Cas 290 and Kamla Sugar Mills Ltd reported as (1984) 55 Com. Cas 308 (Mad), it was held that a Company Court in its discretionary jurisdiction must take a overall view of the scheme to find it fair and reasonable and if a scheme of amalgamation benefits both companies and affairs of the companies are not conducted contrary to interest of the members of the companies and public interest, the determination of commercial merits and demerits of the scheme is not the domain of the Company Court particularly when the collective wisdom of the shareholders has been expressed in favor of the scheme and

(f) In Cetex Petro Chemicals Ltd reported as (1992) 73 Com. Cas 298 (Mad) it was held that it is for the members of the company to judge the benefits of a scheme and not for the Company Court.

7. In Miheer H. Mafatlal vs. Mafatlal Industries Ltd. reported as [1996] 87 Comp Cas 792, the Hon''ble Supreme Court held as under:

".......The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by section 391(1)(a) have been held; that the scheme put up for sanction of the court is backed up by the requisite majority vote as required by section 391, sub-section (2); that the concerned meetings of the creditors of members or any class of them had the relevant material to enable the voters to arrive at informed decision for approving the scheme in question; that the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class ; that all necessary material indicated by section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by section 391, sub-section (1) ; that all the requisite material contemplated by the proviso to sub-section (2) of section 391 of the Act is placed before the court by the concerned applicant seeking sanction for such a scheme and the court gets satisfied about the same ; that the proposed scheme of compromise and arrangement is not found to be vocative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the court, if necessary can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously x-ray the same. The company court has also to satisfy itself that the members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purported to represent. The scheme as a whole must also be found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the court are found to have been met, the court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the court there would be a better scheme for the company and its members or creditors for whom the scheme is framed."

8. In the case of Maneckchowk and Ahmedabad Manufacturing Co. Ltd. [1970] 40 Comp Cas 819 in a comprehensive and exhaustive summation of law u/s 391-394 of the Act, the Gujarat High Court held as under:

"............(i) The court in exercising its discretion in sanctioning a scheme of compromise with members and creditors u/s 391(2) of the Companies Act, 1956, must treat it as cardinal that its function does not extend to usurping the view of the members or creditors. It must look at the scheme to see that it is a reasonable one and, while so doing, the court will be strongly influenced by a big majority vote and the reasons which actuated the contesting creditors in opposing the scheme. None the less it is essential that the scheme must be a fair and equitable one, though it is none of the business of the court to judge upon the commercial merits which in fact is the function of the creditors and members.

(ii) The scheme has not got to be scrutinised by the court with that much care with which an expert will scrutinise it, nor will it approach it in a carping spirit with a view to pick holes in it. If the majority is acting in a bona fide and honest manner, and in the interests of the class that it purports to represent, then, if the scheme is such as fair-minded person, reasonably acquainted with the facts of the case as prevailing at the time when the scheme was sponsored and approved, can regard it as beneficial for those whom the majority seeks to represent, then, unless there are some strong and cogent grounds to show that the scheme was conceived, designed or calculated to cause injury to others, the court will ordinarily sanction it, rather than reject it. While examining the scheme the court should, keeping in view all the aspects of the matter, prefer a living scheme to compulsory liquidation bringing about an end to a company.

In Re: Sidhpur Mills Co. Ltd., relied on.

(iii) Before the court accords its sanction to any scheme of compromise and arrangement, it would normally expect to be satisfied about three important not; (b) whether the class or classes have been fairly represented; and (c) whether the arrangement is such as a man of business would reasonably approve."

....

(vii) A very general statement that there are several acts of mismanagement which must be investigated in winding up proceedings is rather vague and

(viii)

.....

(xi) If the holders of the preference shares meet in a meeting separate from the meeting of the ordinary shareholders and in each meeting the proposal for further issue of shares was considered and voted upon by a majority of 75 per cent of members present and voting, it can be said that the special resolution has been adopted. What is of the essence of the matter is that the persons affected must have an opportunity to consider the proposal and deliberate together. If the deliberations are carried on by two distinct classes having distinct interests separately it cannot be said that the proposal has not been considered in a general meeting. A too narrow and strict view may necessitate first convening the meeting of two classes together and then for the purpose of the scheme separate meetings of each class. It would be idle formality.

....

(xxi) It is always a moot question what constitutes "a class" of creditors. The creditors comprising the different classes must have different interests. When one finds a different state of fact existing among different creditors which may differently affect their minds and their judgment, they must be divided into different classes. "Class" must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. In order to constitute a class, members belonging to the class must form a homogeneous group with commonality of interest.

(xxii) Even if there are different groups within a class, the interests of which are different from the rest of the class or who are to be treated differently in the scheme, such groups must be treated as separate classes for the purpose of the scheme. Broadly speaking, a group of persons would constitute one class when it is shown that they have conveyed all interest and their claims are capable of being ascertained by any common system of valuation. The group styled as a class should ordinarily be homogeneous and must have commonality of interest and the compromise offered to them must be identical.

(xxiii) General speaking, the creditors of the company should be divided into three different classes, viz. secured creditors, preferential creditors and unsecured creditors. The workers of the company, each to the extent of the first Rs.1,000 of his claim in winding up, would be a preferential creditor and indisputably they would form a separate and distinct class. Unsecured creditors will normally form a single class except where some of them are to be treated in a manner different from the rest and have different interests which might conflict.

......

(xxv) The essential requirement of section 393(1)(a) is that the creditors and members who are to assemble in the meeting should have advance information of the proposed scheme of compromise and arrangement and its effect on their interest as members and creditors. If the whole of the proposed scheme was annexed to the notice, anyone having a bare perusal of the scheme would be able to .... out what was intended to be done by the scheme of compromise and arrangement and what would be its effect on his interest as creditor or member of the company and the first part of clause (a) of section 393 (1) will be fully complied with.

....

(xxx) The court has power at the time of making an order sanctioning the scheme u/s 392(1)(b) to make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement. This power can be exercised not for substituting the scheme as approved by the creditors and members but for making the scheme of compromise and arrangement effective and workable. In other words, the court can modify the scheme of compromise and arrangement so as to make it effective and workable."

9. On 23rd October, 2001, the Binani & Bells Controls have filed their respective objections to the proposed scheme and the said objections as well as the objections of P.C. Mathur & Swaroop Rani Mathur were withdrawn as per the Order dated 8th May, 2002. Objections, raised on behalf of Rakesh Gupta and V.K. Gupta filed on 6th December, 2001 stand disposed of on 15th May, 2002. The objections of DCM Technoplaza and Green Acres Flatbuyers Association stand withdrawn in view of the settlement agreement dated 10th May, 2003 and as recorded in this Court''s Order dated 19th May, 2003, passed in CA Nos.616 and 618 of 2003 in CP No.247-248 of 2000. Other objections to the proposed scheme filed by Mohan Lakhani, Mohini Dayal, Nitin Dayal and Shashi Kala Jain were duly settled by the petitioner company and hence have become infructuous. Objections to the proposed scheme by Pushpa Mittal; G.D. Sharma; Deepa Garg; Prashant Garg; Harish Garg; Swati Aggarwal; B.K. Garg; R.C. Garg were never pressed and/or nobody appeared in this Court to support such objections. No other shareholder, secured or unsecured creditor has filed any objection to the grant of sanction to the proposed Scheme of Restructuring and Arrangement.

10. Having regard to the averments in the petitions and the materials placed on record, I am satisfied that the petitioner companies have disclosed to this Court all material facts relating to the company as are required under Sections 391 to 394 of the Companies (Court) Rules, 1959. Since the shareholders and the

creditors of the companies have approved the proposed Scheme of Restructuring and Arrangement by the requisite statutory majority and since the Central Government as well as the Official Liquidator have no objection to the grant of sanction to the proposed Scheme nor has any objection been found existing to the proposed Scheme, I do not find any legal impediment to the grant of sanction to the proposed Scheme of Restructuring and Arrangement.

11. Considering the averments explaining the contents of the scheme and the other facts disclosed in this petition, it is found that:-

(a) The statutory procedure for holding the meeting and formulation of the scheme was complied with as per the requirement of Section 391(1)(a).

(b) It was approved by the requisite majority stipulated by Section 391(2).

(c) There was relevant and adequate material before creditors and members so as to arrive at an informed decision.

(d) Section 393(1)(a) ''s requirement of placing relevant material before the voters at the statutory meeting u/s 391(1) was complied with.

(e) Requisite material has been placed before the Court by the propounder of the Scheme u/s 391(2).

(f) There are no objections to the Scheme by any shareholder or unsecured/ secured creditor. The objections raised by the flat-buyers association have since been settled by virtue of orders passed in CA 616/2003 filed pursuant to a settlement dated 10th May, 2003.

(g) The Scheme is not contrary to any public policy nor does it violate any provisions of law.

(h) There has been no coercion of the minority by the majority of either the member or any class of creditors.

(i) The small creditors are being repaid within the first two years of the scheme indicating the public interest subserved.

(j) A living scheme like the present one approved by the vast majority, is preferable to compulsory liquidation.

(k) The majority view of the shareholders and the creditors has to be given weight.

(l) Neither the Regional Director, Department of Company Affairs nor the Official Liquidator attached to this Court have indicated any objections to the scheme.

(m) All the classes of creditors and members were fairly represented in the meetings.

In my view, the prayer made in these company petitions deserve to be allowed in the interest of justice.

12. In the above circumstances, I am, Therefore, of the view that none of the objections to the scheme now survive and accordingly the sanction u/s 394 of the Companies Act is granted to the proposed Scheme of Restructuring and Arrangement.

13. Both the company petitions stand disposed of in the above terms.

