

(2004) 07 MP CK 0065

In the Madhya Pradesh High Court

Case No : Company Petition No. 4 of 2004 and Company Application No. 1 of 2004

In Re: Eicher Ltd.

Date of Decision : 28-07-2004

Acts Referred:

Companies Act, 1956 — Section 391, 394

Citation : (2005) 1 BC 564 : (2005) 57 SCL 414

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : G.M. Chaphekar and Vandana Kasrekar, for the Appellant; T.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is a Company Petition filed by the petitioner-Company called "Eicher Motors Limited" (hereinafter referred to as "Transferee Company or "EML" for brevity) u/s 391 R/W Section 394 of the Companies Act for according sanction by this court for the scheme/arrangement embodied in the composite scheme of arrangement (Ex. "G") entered into between the three companies viz., Eicher Limited (for short called "EL", "EML") and Malbros Investment Limited (for short called "Malbros"). In terms of the scheme of arrangement which is essentially in the nature of merger/demerger of undertakings, it is proposed to transfer the Automobile undertaking of "EL" to "EML" and merger amalgamation of Malbros with EL. As stated supra the detailed terms/conditions of the proposed merger/demerger are set out in the scheme of amalgamation/composition in Ex. "G".

2. The amalgamation/merger is sought essentially on the grounds, inter alia that it will facilitate synergies of the size and financial leveraging of the business of the automobile undertaking, that it will result in consolidation of the investment business of EL and would serve in best interest of EL as well as Melbros and their respective shareholders, that it will be in the interest of all shareholders of three companies referred supra, all other stake holders of all the three companies as

also their creditors. It is also considered that the restructuring proposed under the scheme would enable focussed business proposal for the maximization of benefits to all stake holders and creating opportunity for future consolidation. In substance therefore, the amalgamation is proposed to enable the companies to help in improving their marketing share, self-dependency and competitive edge. It is also likely to result in bringing benefits of avoiding of intermediately cost, consolidation of resources, reduction in administrative expenses, overheads, duties payable including any kind of charges etc. It is felt that these are essentially the factors which are considered to be the one beneficial for the business of companies in their longer run in future years to come.

3. This court while deciding the earlier Company Petition No. 1 /2004 filed by the petitioner Company i.e., EML as contemplated by Section 391/394 of the Act appointed Shri B.L. Pavecha, Senior Counsel as Chairman and failing which Mr. Ashok Garg, Senior Counsel to act as a Chairman. Accordingly Mr. Pavecha convened the meeting of shareholders as also that of creditors on 27-3-2004 after following due procedure prescribed under the Act and the Rules framed thereunder and as directed by this court in its order dated 9-2-2004 passed in Co. P. No. 1/2003 for issuance of notices to shareholders and creditors. The chairman has then submitted his report dated 31-3-2004 (Ex. "I") in terms of Rule 78 of the Company Court Rules, 1959.

4. Similarly, this court in terms of the requirement of the Act and the Rules issued, notice of this petition to the Registrar of Companies invited their objections in the form of representation to the proposed scheme/arrangement / demerger. Accordingly, the Registrar has filed an affidavit dated 7-7-2004 of one Chakradhar Paik, Regional Director, working in the office of the Registrar of Companies. In this affidavit it is stated that Registrar has no objection to the acceptance of the scheme proposed. In other words it is stated on affidavit that the concerned official deponent has examined the scheme (Ex. "G") in minute detail after calling for necessary details from the petitioner-Company (EML) and has found, the same to be in order requiring no modification/amendment in it. He has also stated on oath that the scheme proposed can be accorded sanction by this court, as prayed for because it is found to be in conformity with the requirement of law and secondly it is further found that the affairs of the petitioner-company (EML) are conducted in the manner not prejudicial to the interest of the members or the public interest.

5. It is also reported by the Chairman in his report dated 31-3-2004 that all the shareholders as also the creditors of the petitioner-Company (EML) have unanimously concerned to the proposed scheme of arrangement/ demerger. In other words the scheme in question has been approved by the entire body of shareholders as also creditors of the petitioner Company in the meeting held on 27-3-2004.

6. Heard Shri G.M. Chaphekar, learned Sr. Counsel with Ku. V. Kasrekar for the petitioner and Shri T.N. Singh, learned Sr. Counsel for the Union of India i.e.,

Registrar of Companies.

7. Having heard learned counsel for the parties and having perused the record of the case, I am inclined to grant sanction to the scheme (Ex. "G") proposed by the aforementioned Company.

8. In my considered opinion, I have not been able to notice any infirmity or objectionable feature of any kind or illegality or lacking bona fide in the scheme so proposed, it also does not appear to have been framed to defeat the rights of the creditors or any class of creditors or even any class or group of minority shareholders or to defeat any governmental dues or Revenue. Indeed all persons, who are directly or/and indirectly associated and dealing with the petitioner-Company (EML) such as share-holders, creditors, Registrar of the Companies have given their no objection certificate/consent for approval of the scheme in question. As taken note of supra, the Scheme in question has been unanimously passed and approved by shareholders and creditors in their meeting held on 27-3-2004 by the Chairman appointed by this court as also in the meetings earlier convened to filing of this petition.

9. It cannot be disputed that all such schemes are essentially meant for shareholders and creditors of the Company. When the entire body of shareholders and creditors do not object to it and on the other hand approves it in express terms in the specially convened meeting for the said purpose then it has to be given effect to because wishes of shareholders and creditors must be allowed to prevail in the absence of any other illegality being noticed by this court within the meaning of Sections 391 and 394 of the Companies Act.

10. In my opinion, thus the scheme of amalgamation/demerger proposed appears more on administrative basis. It will enable the company in question to run their business more effectively and economically than what they are presently functioning. It will certainly reduce the expenses which are being incurred today by these Companies. Moreover, the proposed scheme does take into consideration and safeguard the rights of shareholders of the Companies. In other words, none of the liabilities of the Company are in any way going to be adversely affected by the Scheme if allowed to be implemented. So far as the rights of the creditors are concerned, they also remain intact so too shareholders who will be paid dividend on their shareholding depending upon the profitability of the Company and the business done.

11. I, therefore, allow the application and grant sanction to the proposed scheme of amalgamation/demerger (Ex."G") as prayed, subject to grant of sanction being accorded by other High Court to other two Companies whose registered office is situated in New Delhi.

12. An order in terms of Rule 37 read with Rule 81 be drawn up, as prescribed in Form No. 41 of the Companies (Court) Rules, 1959.

Petitioner to pay fees of standing counsel for the Central Government Rs. 10,000

on certificate being submitted by him.