

(2000) 07 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Company Appeal No's. 1 to 3 of 2000

In Re: Highway Cycle Industries Ltd. and Another

Date of Decision : 03-07-2000

Acts Referred:

Companies Act, 1956 — Section 100, 101, 102, 391, 394

Citation : (2003) 115 CompCas 260 : (2004) 50 SCL 32

Hon'ble Judges : G.S. Singhvi, J;Bakhshish Kaur, J

Bench : Division Bench

Advocate : L.M. Suri and Deepak Suri, None, for the Appellant;

Final Decision : Allowed

Judgement

1. These appeals are directed against the order dated October 12, 1999, passed by the learned company judge dismissing Company Petition No. 135 of 1999 and Company Applications Nos. 241 and 242 of 1999 filed by the appellants under Sections 100, 101 and 102 of the Companies Act, 1956 (for short "the Act") and Rule 9 of the Companies (Court) Rules, 1959.

2. A brief statement of facts would enable us to appreciate the issue raised by the appellants in the correct perspective. Highway Cycle Industries Ltd. (appellant No. 1 in Company Appeals Nos. 1 and 3 of 2000) and the sole appellant in Company Appeal No. 2 of 2000 (hereinafter described as "the transferor-company") was incorporated as a private limited company on May 20, 1971. Its authorised share capital is Rs. 5,00,00,000 divided into 50 lakh equity shares of Rs. 10 each. The issued, subscribed and paid-up capital of the transferor-company was Rs. 3,48,80,000 as on March 31, 1996. The transferor-company initially started the business of manufacturing and dealing in automobile components, special purpose machines etc. in its factory at Ludhiana. Later on, it started the business of manufacturing and dealing in aluminium die-casting and automobile components in its unit Sunbeam Castings located at Narsinghpur, District Gurgaon. Sunbeam Auto Ltd. (appellant No. 2 in Company Appeals Nos. 1 and 3 of 2000) was incorporated on May 2, 1996, as an independent limited company (hereinafter described as the transferee-company)

with authorised share capital of Rs. 1,00,00,000 divided into 10 lakh equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the transferee-company was Rs. 10,00,700 as on June 30, 1996.

3. With a view to introduce greater efficiency in their operations, the transferor-company and the transferee-company formulated a scheme of arrangement which envisaged the transfer of the unit of Highway Cycle Industries Ltd., namely, Sunbeam Castings to the transferee-company at book value for all its liabilities and interests subject to the existing charges thereof in favour of the banks and financial institutions. For seeking approval of the scheme of arrangement, they filed separate petitions under Sections 391 and 394 of the Act. The learned company judge issued directions on October 3, 1996, and again on December 5, 1996, for holding the separate meetings of the equity shareholders and creditors. After receiving the report of the chairmen of the meetings and issuing notices to the Regional Director, Company Law Board, Department of Company Affairs, Kanpur and Registrar of Companies, the learned company judge sanctioned the scheme on February 10, 1999, with the following observations :

"The unit of the transferor-company is being transferred to the transferee-company. The scheme as proposed was approved by the board of directors of the respective companies. The report of the chartered accountants of the respective companies had also been filed on record copy annexed to this petition as well. Along with the balance-sheet of the company as on March 31, 1996, the Bank of Baroda, the lead bank in relation to the affairs of the companies, has issued a "no-objection certificate" for the implementation of the proposed scheme. It is true that consideration in cash is not being paid for transfer of the unit but for this purpose, the scheme has to be construed and read in its entirety. The scheme already stands approved by the shareholders as well as secured and unsecured creditors of the respective companies. It is settled principle of law that internal management and running of the business is primarily a matter which falls in the domain of management for internal affairs of the company. Unless and until such scheme is impermissible in law or bad in law and/or opposed to public policies, the court would not interfere in sanctioning of such scheme. It has been certified that the proposed scheme is not opposed to public policies and does not offend the interests of the shareholders/members/creditors of the company and that it is not opposed to the public at large. Growth, expansion and profitability appear to be the objects of both the companies without infringing the rights of all concerned. The function of the court while considering the scheme within the purview of Sections 391 and 394 of the Companies Act is more of supervisory in nature. The court certainly has to record its satisfaction that all relevant material as required under the proviso to Section 391(2) has been placed on record and the attempt of the scheme is not to work for the benefit of some particular interested person. The proposed scheme need not satisfy the basic ingredients of a contract. Cash consideration, per se, would not frustrate or invalidate the proposed scheme.

Despite public notice no objection has been filed by any person interested or from the public at large. In other words, there appears to be no objection to the acceptance of the scheme. The concerned financial institutions have consented to the arrangement."

4. Soon after the sanction of the scheme of arrangement, the transferor and the transferee companies filed Company Applications Nos. 241 and 242 of 1999 for modification of the scheme in the following terms :

"(a) The transfer date shall be April 1, 1999 (instead of April 1, 1996, as sanctioned).

(b) The Sunbeam Auto Ltd. shall issue 17,44,000 equity shares of Rs. 10 each fully paid up on a premium of Rs. 30 per share to the shareholders of Highway Cycle Industries Ltd. (transferor-company) on a proportionate basis (instead of issuing to Highway Cycle Industries Ltd.-transferor-company).

(c) Subject to the approval of the High Court in pursuance of Sections 100, 101 and 102 of the Companies Act, 1956, the paid up share capital of Highway Cycle Industries Ltd. (transferor-company) shall stand reduced from Rs. 3,48,80,000 (rupees three crores forty-eight lakhs eighty thousand only) divided into 34,88,000 equity shares of Rs. 10 each by cancellation of 17,44,000 equity shares to Rs. 1,74,40,000 (rupees one crore seventy-four lakhs forty thousand only) divided into 17,44,000 equity shares of Rs. 10 each credited as fully paid up. The shareholders of the Highway Cycle Industries Ltd. shall stand reduced proportionately."

5. The transferee-company also filed Company Petition No. 135 of 1999 for approval of the resolution passed in the special meeting of its shareholders for reduction of the paid up share capital from 3,48,80,000 to Rs. 1,74,40,000 by cancellation of 17,44,000 equity shares of Rs. 10 each.

6. Notices of the company applications and petition were published in the newspapers in pursuance of the directions given by the learned company judge who, after hearing counsel appearing for the applicants and the official liquidator dismissed the company petition as well as the two applications filed by the appellants.

7. Shri L.M. Suri argued that the reasons assigned by the learned company judge for declining the prayer of the appellants for modification of the scheme of arrangement and approval of the resolution passed by the shareholders of appellant No. 1 for reducing the paid up share capital are ex facie erroneous and, therefore, the impugned orders should be quashed. He submitted that the observation of the learned company judge about the possibility of the appellants taking undue benefit under the Finance Bill, 1999, by seeking change in the scheme of arrangement is based on pure conjectures and there was no legal justification to decline the prayer made by them. He argued that the proposed amendment does not, in any manner, affect the existing shareholders and

creditors and, therefore, the learned company judge was not justified in refusing to entertain the request of the appellants ignoring the fact that the shareholders of appellant No. 1 had approved reduction in the share capital and the proposed amendment was necessitated due to the long lapse of time between the date of preparation of scheme of arrangement and approval thereof by the learned company judge.

8. We have given serious thought to the arguments of learned counsel and agree with him that the order under challenge deserves to be set aside. A careful reading of the order dated February 10, 1999, by which the scheme of arrangement was sanctioned and the order under challenge shows that in the first instance, the learned company judge had given due weightage to the management's prerogative to regulate its affairs and also to the fact that the proposed scheme was not adverse to the interest of the shareholders and creditors, but while rejecting the prayer for modification of the scheme, the learned company judge completely ignored the following important factors:

- (i) the transferee-company is a subsidiary of the transferor-company;
- (ii) the shareholders of both the companies had approved the scheme of arrangement as well as its amendment;
- (iii) all the creditors of appellant No. 1 including the banks and financial institutions had approved the scheme of arrangement; and
- (iv) the Regional Director, Company Law Board had not only given no objection to the scheme of arrangement and the proposed amendment but also clearly stated that the affairs of the companies had not been conducted in a manner prejudicial to the interest of their members or public.

Not only this, the learned company judge delved into the realm of conjectures by observing that the proposed amendment in the scheme of arrangement was meant to take undue advantage of the provisions introduced by the Finance Bill, 1999, and that the creditors are likely to be adversely affected by such modification. In our opinion, the impugned order suffers from an error of law because the learned company judge has not only ignored material aspects of the case but has also proceeded on conjectures.

Hence, the appeals are allowed. Order dated October 12, 1999, passed by the learned company judge is set aside and Company Applications Nos. 241 and 242 of 1999 as well as Company Petition No. 135 of 1999 are allowed in terms of the prayer made therein.