

(2004) 05 BOM CK 0029

In the Bombay High Court

Case No : Company Petition No. 270 of 2004 and Company Application No. 45 of 2004

In Re: IndusInd Bank Ltd.

Date of Decision : 06-05-2004

Acts Referred:

Companies Act, 1956 — Section 391

Citation : (2004) 6 BomCR 221 : (2004) 4 CompLJ 394 : (2004) 4 MhLj 524 : (2004) 55 SCL 37

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Virag V. Tulzapurkar, N.H. Seerval and Rajesh Shah, for the Appellant; R.C. Master, for the Regional Director and Prakash Shinde, for Secured Creditor, for the Respondent

Judgement

Anoop V. Mohta, J.—This Company Petition has been taken out by the petitioner IndusInd Bank Limited under Sections 391 to 394 of the Companies Act, 1956 (for short "Companies Act") for sanction of Scheme of Arrangement (for short "Scheme") between Ashok Leyland Finance Limited (for short "ALFL" or "transferor company") and IndusInd Bank Limited (for short "IndusInd" or "petitioner-company" or "transferee-company") and their respective members and creditors.

2. The petitioner company herein, i.e., IndusInd Bank Limited has its registered office at 2401, General Thimmayya Road, Cantonment, Pune 411001.

3. The share capital of the petitioner-company as on 31st March, 2004 and as on 31st January, 2004 is reproduced in paragraphs 4 and 5 of the Petition. The registered office of the transferor company is situated at Sudarshan Building, 86, Chamiers Road, Chennai 600018. The details of the transferor company's share capital is reproduced in Para 10 of the Petition.

4. In view of the objects of the Memorandum of Association of both the companies, they have decided to bring about the Scheme of Arrangement in question.

5. The purpose and object of the Scheme, as well, as its requirements have been laid down in the Scheme itself. The Scheme takes into consideration all the necessary requirements and has complied with all the necessary formalities. The Scheme, as approved, is nothing, but the objectives of both the companies to run with the time and the market and their respective business.

6. In view of this, the petitioner's basic prayer is to sanction the Scheme of Arrangement, as prayed, and accordingly, Petition dated 22nd March, 2004, has been filed. The companies have completed all the requisite formalities, including the requisite meetings.

7. Company Application No. 45 of 2004 was filed by the petitioner on 13th February, 2004, whereby the company was directed to convene the meeting of the equity shareholders. The meeting of unsecured creditors, in view of the averments made in paragraphs 22, 23 and 24 of the Petition, was dispensed with. Individual notices were issued. On 19th March, 2004, the meeting of Equity shareholders was convened and was chaired by one Mr. R.J. Sahaney. The Affidavit of the Chairman is also on record. The Scheme was sanctioned by thumping majority in all the meetings by all the shareholders, unsecured creditors and creditors.

8. The Affidavit dated 21st April, 2004, filed by the petitioners proving service and publication has been placed on record. By Affidavit dated 28th April, 2004, the details of the unsecured non convertible redeemable debentures/bonds of the petitioner-company alongwith their consent position, which constitute 100% in number and 100% in value of the total unsecured non convertible redeemable debenture/bonds is also placed on record.

9. The Regional Director, Western Region, Department of Company Affairs has filed his Affidavit dated 23rd April, 2004. There is no basic objection to the Scheme, except as contended in paragraph 4. As per the Affidavit, the Regional Director endorsed that the Scheme is not prejudicial to the shareholders' interest and creditors' interest, based on the Reports received from the concerned Registrar of Companies. The Regional Director's main objection was that the transferee company is required to pay requisite stamp duty under the Bombay Stamp Act, 1958 and the registration fees to the Registrar of Companies, Mumbai, Maharashtra, as provided u/s 611 read with clause 3 of Schedule X of the Companies Act. In view of this, the proposal contained in Clause 15 Sub-clause (iii) of the Scheme is objectionable and, therefore, the Regional Director submitted that the same should be deleted as it amounts to loss of revenue to the Government fees and stamp duty. The basic crux is that the transferee-company has to pay requisite stamp duty and Central Government fees, he has, therefore, submitted that Clause 15(iii) of the Scheme may be directed to be deleted. To this, the petitioner has filed an Affidavit dated 28th April, 2004, and contended as under :

"3. The petitioner company agrees to take all the necessary steps and pay all the

necessary fees to effect the increase in the Authorised Capital of the Petitioner Company from Rs. 2,50,00,00,000 to Rs. 3,00,00,00,000 and accordingly, Clause 15(ii) of the Scheme of Arrangement would be inoperative."

Considering the basic objection, as raised and as replied above, there is no reason not to sanction the Scheme.

10. After hearing the parties, a statement is again made that there are no objections received from any party. No one else raised any objection and nothing objectionable has been found on record or pointed out. All material documents and requisite and statutory compliances have been complied with.

11. The Scheme is fair, sound and reasonable and based on experts' opinion and above all, the majority decision of the concerned parties, including shareholders, creditors or unsecured creditors. In view of this, as already held in *Larsen & Toubro Ltd., In re* [2004] 60 CLA 335 decided by this Court [Anoop V. Mohta, J.] the commercial wisdom of the companies, in such circumstances, cannot be interfered with. The Scheme as such, is not against the public policy or against public interest. Mr. Tulzapurkar, learned counsel appearing on behalf of the petitioners has also pointed out that in Company Petition No. 88 of 2004 connected with Company Application No. 167 of 2004, the High Court of Judicature at Madras, by its order dated 29th April, 2004, has already sanctioned the Scheme of Arrangement in question at the instance of the transferor company, i.e., ALFL. Considering the observations made therein, and the finding given in this present Petition, as above, I see no reason not to grant the Scheme, as prayed.

12. In view of the above, the Scheme of Arrangement is sanctioned in terms of prayer Clauses (a) to (x) with liberty.

13. Costs of Rs. 2,500 each to the Regional Director and the Official Liquidator, to be paid by the petitioner within a period of four weeks from today.