

(2004) 03 AP CK 0039

In the Andhra Pradesh High Court

Case No : Company Petition No. 198 of 2003

In Re: ITW Signodge India Ltd.

Date of Decision : 17-03-2004

Acts Referred:

Companies Act, 1956 — Section 106, 391, 391(2), 392, 393

Citation : (2004) 3 ALD 519 : (2004) 3 ALT 169 : (2004) 121 CompCas 66 : (2004) 52 SCL 147

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Zahra Basraj, Ravi S. and L. Venkateshwara Rao, for the Appellant;

Final Decision : Allowed

Judgement

N.V. Ramana, J.—This Company Petition has been filed by M/s. ITW Signode India Limited (Transferee Company)) under Sections 391 - 394 of the Companies Act, 1956 (for short "the Companies Act") seeking approval of the Scheme of Arrangement between it and M/s. ITW Delfast Private Limited (Transferor Company).

2. The Transferee Company was incorporated on 30-11-1979 under the provisions of the Companies Act as a Private Limited Company in the name and style of M/s. Nagarjuna Strapping Systems Private Limited and on 21-4-1981 the name was changed as M/s. Nagarjuna Signode Private Limited. On 10-7-1981 the company was converted into Public Limited Company in the name and style of M/s. Nagarjuna Signode Limited and subsequently, w.e.f. 30-1-1992 the name was changed to the present one.

3. The Transferee Company, as is reflected by its Memorandum of Association, was incorporated with the main objects of establishing, owning or acquiring ferrous and non-ferrous metal melting furnaces and rolling mills; to carry on business as traders, manufacturers and fabricators of ferrous and non-ferrous ingots, blocks, billets, slabs, sheets, hot railed and cold rolled steel strips, strips with edges, coated strips, steel strappings of various ranges of tensile strength, seals of various types, non-metallic strapping systems; designing of industrial

and construction adhesives, preventive and protective coating products, non-destructive testing equipment, all kinds of engineered components, all kinds of wire and wire products, all kinds of value added products, materials for detection, all devices and equipment for various cooling types, all kinds of professional grade switches, all kinds of machine tools; manufacturing of industrial systems and related consumables, epoxies polyurethanes, all kinds of polyurethane cast parts, machining fluids, corrosion control products; and producing, generating, storing, distributing and dealing in any form of energy and power or sources of energy and undertaking power projects, etc.

4. The authorized share capital of the Transferee Company is Rs. 50,00,00,000 divided into 5,00,00,000 equity shares of Rs. 10 each. The issued capital of the Transferee Company is Rs. 23,29,93,340 divided into 2,32,99,334 equity shares of Rs. 10 each. The subscribed and paid-up share capital of the Transferee Company is Rs. 22,87,74,160 divided into 2,28,77,416 equity shares of Rs. 10 each fully paid up.

5. The Transferor Company was originally incorporated on 13-6-1997 under the provisions of the Companies Act as Private Limited Company in the name and style of M/s. ITW Jeju Industries Private Limited and, on 2-7-1998 it was changed into deemed Public Company and w.e.f. 10-5-2001 it was reconverted into a Private Company and subsequently, on 7-10-2002 the name of the company was changed to the present one, in the State of Maharashtra at Pune.

6. The Transferor Company, as is reflected by its Memorandum of Association, was incorporated with the main objects of carrying on business of manufacturers, producers, assemblers, dealers, importers, exporters, stockists, distributors, agents or otherwise deal in manufacture of parts and components of automobiles, vehicles, appliances, equipment and other goods including plastic moulded parts and components.

7. The authorized share capital of the Transferor Company is Rs. 5,00,00,000 divided into 50,00,000 equity shares of Rs. 10 each. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company is Rs. 3,32,47,220 dividend into 33,24,722 equity shares of Rs. 10 each fully paid up.

8. Pursuant to the approval of the Scheme of Arrangement by the Board of Directors of the Transferee Company on 31-7-2003 subject to the approval of the shareholders and of this Court and Mumbai High Court, the Transferee Company filed an application in C.A. No. 796 of 2003 before this Court seeking to convene the meetings of the shareholders as well as unsecured creditors. By order dated 25-9-2003, this Court directed conduct of the meetings of their shareholders as well as their unsecured creditors separately and appointed a Chairperson. The Chairperson having conducted the meetings of the shareholders as well as of the unsecured creditors of the Transferee Company in different sessions on 11-11-2003, filed her report stating, in respect of the meeting of the shareholders, that out of the 35 shareholders, 22 members holding 2, 21, 22,

551 shares voted approving the scheme, 7 members holding 1773 shares voted against the scheme and votes of 6 members holding 405 shares, were declared invalid; and in respect of the meeting of the unsecured creditors, it is stated that all the 25 unsecured creditors of the Transferee Company unanimously approved the Scheme of Arrangement.

9. It is stated that the Transferee Company has two secured creditors and they filed letters approving the proposed Scheme of Arrangement. It is also stated that the Transferor Company is also moving a separate petition before the Mumbai High Court for sanction of the proposed scheme.

10. This Court while admitting the Company Petition, by order dated 18-12-2003, directed publication of notice in newspapers namely "Eenadu" and "Business Standard" of Hyderabad editions and issued notices to the Central Government and the Official Liquidator. The petitioner having taken out paper publication, filed proof thereof into Court.

11. On behalf of the Central Government, the Registrar of Companies, filed common affidavit, stating that inasmuch as the Transferee Company has its registered office at Hyderabad and the Transferor Company has its Registered Office at Pune, the Scheme is subject to the approval of the High Courts of Andhra Pradesh and Mumbai.

12. In response to the notice of this petition in the form of paper publication, four shareholders of the Transferee Company viz., Praful Chavda, Rajkumar Khandelwal, Rahul Khandelwal and Ramesh Manguluri filed their objections to the proposed scheme of arrangement.

13. Mr. Praful Chavda, a shareholder of the Transferee Company opposed the entire scheme stating that the meeting of the shareholders, as ordered by this Court, was not conducted in accordance with law and the objections and representations of the shareholders were not considered and some of the shareholders were not allowed to speak even. It is his contention that reorganizing the share capital by increasing the face value of each equity share to Rs. 20,000 is an act to eliminate the small shareholders from the Transferee Company under the garb of the present scheme of arrangement. It is also his contention that the Transferee and Transferor Companies are subsidiaries of a foreign company M/s. Illinois Tools Works Inc. (USA), which is holding 9696 shares in both the companies, and the present scheme or arrangement paves the way for the said foreign company to have complete control over the Transferee and Transferor Companies detrimental to the interests of the small shareholders. He states that variation in the rights of the small shareholders under the proposed scheme without their written consent and sanction under special resolution is unconstitutional as per the provisions of Section 106 of the Companies Act. It is his contention that the proposed scheme is not within the purview of the Memorandum and Articles of Association of the Transferee Company and the change of equity base of the Transferee Company with the

Transferor Company, which is a non-listing company, is detrimental to the interests of the shareholders of the Transferee Company. Accordingly, he prays the Court to reject the Scheme.

14. Mr. Rajkumar Khandelwal, Mr. Rahul Khandelwal and Mr. Ramesh Manguluri, shareholders of the Transferee Company, opposed the proposed scheme of Arrangement with same set of allegations. It is contended that the proposed hike in the face value of the shares of the Transferee Company from Rs. 10 to Rs. 2,000 each is not justified and not in the interests of small and minority shareholders for it seeks to eliminate them. It is stated that the High Court of Maharashtra at Mumbai in the case of M/s. Sandvik Asia Ltd., while acceding to a similar plea raised by a minority Indian shareholder admitted the Company Petition for consideration.

15. The petitioner denied the contention of Mr. Praful Chavda that the shareholders were misled by the management. It is stated that all the relevant information in relation to the scheme was sent to all the shareholders. The relevant recorders, memorandum and articles of association of both the companies, audited balance sheets and valuation report were made available at the registered office of the Transferee Company for inspection by the shareholders. The meeting was conducted in a democratic manner and four persons who attended the meeting also voted against it. In reply to the contention raised by the minority shareholders that the scheme proposes to eliminate the small shareholders from the Transferee Company, the petitioner states that the reasons that prompted the company to go for reorganization of its share capital whereby the face value of each equity share would be Rs. 20,000 have been clearly stated, and it is not as if the Transferee Company had concealed the said reasons. The holding company holds more than 96% of shares in both the companies and it is empowered to take policy decisions. The restructuring of the capital of the Transferee Company would not bestow any further control on the holding company. The proposed restructuring is only for the purpose of administrative convenience and for reducing costs. The petitioner states that inasmuch as under the scheme, the share capital of the company is not proposed to be divided into different classes of shares and proposes only an increase in the face value of the equity shares, the provisions of Section 106 of the Companies Act are not attracted, and as such, their violation does not arise. The petitioner states that when once the scheme is accepted by the majority of the shareholders, minority shareholders cannot raise any objection with regard to the valuation of its share.

16. Heard the learned counsel for the petitioner, the learned Standing Counsel for the Central Government and the learned counsel for the Official Liquidator and perused the material on record.

17. The learned counsel for the petitioner submitted that when once the majority of the shareholders representing three-fourths in value of shares in the company approve the Scheme of Arrangement, as is required u/s 391(2) of the Companies

Act, 1956 this Court has not other option, the same shall be binding on all the shareholders, including the minority shareholders, who represent one-fourth or less than one-fourth in value of the shares. In the instant case, inasmuch as majority of the shareholders representing more than 99% in value of shares, have approved the scheme of Arrangement, the minority shareholders who represent less than one per cent in value of shares, cannot contend that the Scheme of Arrangement, as approved by the majority shareholders, cannot be approved. He submits that unless the proposed Scheme of Arrangement is violative of the provisions of the Companies Act, 1956 or is against the interests of the members or the general public, none can take any objection to the approval of the scheme.

18. Refuting the stand taken by the objection petitioners that the Scheme of Arrangement proposes to create different classes of shares, and that the procedure contemplated u/s 106 of the Companies Act, 1956 has to be followed, the learned counsel for the petitioner submitted that the Scheme of Arrangement merely proposed to increase the face value of each share to Rs. 20,000 and it does not create any different classes of shares, and inasmuch as the Scheme of Arrangement does not propose to create any different classes of shares, the provisions of Section 106 of the Companies Act, 1956 need not be followed. Denying the contention of the objection petitioners that the shareholders were misled by the management, the learned counsel submitted that inasmuch as all the material pertaining to the Scheme of Arrangement was sent to the all the shareholders, the question of the shareholders, and more particularly the objection petitioners, cannot make any complaint of their being misled by the management. He further submitted that the Mumbai High Court in relation to the Transferor Company had already approved the Scheme of Arrangement, and thus prayed that the Scheme of Arrangement as approved by the Board of Directors and majority of shareholders in respect of the Transferee Company also be ordered.

19. The report filed by the Chairman to oversee the conduct of the Meeting of the Shareholders discloses that in all 35 members attended the meeting, of 22 members holding 2,21,22,551 shares voted in favour of the Scheme of Arrangement, seven members holding 1773 shares voted against the scheme, which is inclusive of three postal votes, and six members holding 405 shares had cast invalid votes. The report of the Chairman in relation to the Meeting of the Unsecured Creditors discloses that none of them voted against the scheme and all have voted in one voice in favour of the scheme. So from the report of the Chairman, it is crystal clear that the persons who are objecting to the scheme are holding only 1773 shares, which forms a miniscule when compared to the shareholding of the members who voted in favour of the scheme which is 2,21,22,551 shares.

20. Admittedly, the petition is filed under Sections 391 - 394 of the Companies Act, 1956. Section 391 of the Companies Act, 1956 deals with the power of the

Court to compromise or make arrangements with creditors and members. Sub-section (2) thereof reads thus:

"(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the rules made u/s 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company."

21. A plain reading of the above provision, makes it manifestly clear that if a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or their proxies, agree to any compromise or arrangement, the compromise if sanctioned by the Court, would be binding on the company and all such class of persons, including those who voted in favour of the scheme as well as against the scheme.

22. In the management of the affairs of the company, the decision of the majority shareholders will prevail, and such decision will be binding on the minority shareholders. May be one single individual may be holding majority of the shares in a company and several individuals may be holding minority shares. But in the realm of corporate matters, the value in the shareholding of the individual matters, and if a single individual holding majority of the shareholding, votes in favour of the Scheme, the same shall be binding on the several individuals, who constitute minority having regard to the fact that their shareholding constitutes a minority and is far less when compared to the majority holding of a single individual. In the instant case, admittedly all the creditors and majority of the shareholders constituting more than 99% in value of the shares have in their respective meetings approved the Scheme of Arrangement between the Transferee Company and the Transferor Company, which inter alia provides for increase in the face value of each share to Rs. 20,000, and provides for payment of the monies to the shareholders who are entitled of fractional entitlement on the basis of Rs. 80 per equity share. Inasmuch as majority of the shareholders have approved the Scheme of Arrangement, the objection petitioners, who constitute a miniscule, cannot take any objection to the approval of the scheme, and more so when the voting of the scheme was done in a civilized and democratic manner well known to company jurisprudence. It is not the case of the objection petitioners that the Scheme of Arrangement was not put to voting or they were prevented from casting their votes against the scheme. The petitioners having attended the meeting and voted against the scheme, cannot complain that person holding majority of the shares cannot take a decision affecting the minority shareholders who constitute

a majority of individuals. It may be by reason of the proposed Scheme of Arrangement, shareholders who are holding few number of shares, will be eliminated from holding any shares of the company, but that by itself cannot be a ground not to approve the Scheme of Arrangement, and more particularly when the majority of the shareholders in their meeting have approved the Scheme of Arrangement, which is in accordance with the provisions of Section 391(2) of the Companies Act, 1956, and further having regard to the limited role of this Court to the extent of satisfying itself that the proposed Scheme of Arrangement is not violative of the provisions of the Companies Act, 1956 and is not opposed to public policy.

23. It is well settled law that this Court while exercising its power under Sections 391 - 394 of the Companies Act, exercises only peripheral and supervisory jurisdiction and does not act as an appellate authority over the informed judgment of the shareholders in matters relating to compromise or arrangement, for the propriety and the merits of such compromise or arrangement will have to be judged by the parties thereto, and once the persons interested in the affairs of the company and holding majority of the shares have taken a decision approving the compromise or arrangement, this Court has no option except to approve it, however, subject to its satisfaction that the compromise or arrangement, so proposed and approved by the Board of Directors and Shareholders, is not violative of any of the provisions of the Companies Act and is not opposed to public policy. The apex Court in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* [1996] 10 SCL 70 having considered this aspect of the matter, held thus:

"The Company Court which is called upon to sanction a scheme of compromise and arrangement has not merely to go by the ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to find out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. This is implicit in the very concept of compromise or arrangement which is required to receive the imprimatur of a Court of law. No Court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the Court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. Consequently, it cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got the requisite majority support of the creditors or members of any class of them for whom the scheme is mooted by the concerned company has to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme. It is trite to say that once the scheme gets sanctioned by the Court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme qua them also has to be kept in view while putting its seal

of approval on the concerned scheme placed for its sanction.

However, Court cannot have jurisdiction like an appellate authority to minutely scrutinize the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the majority of the creditors or members or their respective classes have approved the scheme as required by Section 391 Sub-section (2). The Court certainly would not act as a Court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the scheme by the requisite majority. Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the Rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire. The propriety and the merits of the compromise or arrangement have to be judged by the parties who as sui juris with their open eyes and fully informed about the pros and cons of the scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement. The Court cannot, undertake the exercise of scrutinizing the scheme placed for its sanction with a view to finding out whether a better scheme could have been adopted by the parties.

24. This being the legal position, the other contentions raised by the objection petitioners, namely that the Scheme of Arrangement proposes to vary their rights without complying with the provisions of Section 106 of the Companies Act, 1956 is concerned, it is stated by the petitioner that the Scheme of Arrangement does not propose to create different classes of shares and that with a view to synergize their business and reap the benefit of consolidation and improve their financial structure and cash flow management, and having regard to the fact that a large number of small shareholders had not claimed the dividend declared on the earlier occasion, and with a view to reduce the cost of distribution of dividend, cost of printing and posting of annual reports and dividend warrants, it was decided for administrative convenience to increase the face value of the equity share to Rs. 20,000 though in the course of such exercise high number of small shareholders are likely to be eliminated. By reading of the contents of the Scheme of Arrangement, it is clear that the petitioner is not creating any variation in the rights of shares or creating different classes of shares, and it is not as if the petitioner has proposed to divide the face value of the shares into different classes, one for the minority holders and the other for the majority holders. When such is not the case, merely because by reason of increase in the face value of each share, the minority shareholders are eliminated, it cannot be said that a different class of shares have been created, and therefore, the provisions of Section 106 of the Companies Act, 1956 which pertain to creation of different class of shares, are not applicable to the case on

hand.

25. What the Scheme of Arrangement sought was to increase the face value of equity shares to Rs. 20,000 each, and not to create different classes of shares. By reason of such increase in the face value of each share, persons who are holding less number of shares may be eliminated, but it is not as if such shareholders are being eliminated without compensating them, for Clause 6.5 of the proposed Scheme of Arrangement provides for payment of monies to the shareholders representing the fractional entitlement at the rate of Rs. 80 per share, and once the Scheme of Arrangement is approved, the minority shareholders, who in the instant case constitute less than 1 % in value of the shares, will be paid their monies as is provided under Clause 6.5 of the Scheme of Arrangement.

26. The contention of the objection petitioners that the shareholders were misled by the management as to the Scheme of Arrangement cannot be accepted having regard to the fact that all the relevant material pertaining to the scheme was sent to all the shareholders, including the objection petitioners, and the objection petitioners having received the materials, even attended the meetings and voted against the scheme, and therefore, it does lie in their mouth to contend that the management has misled them, and more particularly when it is the case of the petitioner that all the records were kept at the meeting for the perusal of all the shareholders.

27. In the above view of the matter, the Company Petition is liable to be allowed, and it is accordingly allowed. The Scheme of Arrangement, marked as Annexure-C is approved. The petitioner shall take steps to pay off the monies to the minority shareholders as is provided in Clause 6.5 of the Scheme of Arrangement. The petitioner shall cause a copy of this order on the Registrar of Companies, Andhra Pradesh, Hyderabad, within a period of 30 days from the date of its receipt. No costs.