(1996) 10 CAL CK 0019

In the Calcutta High Court

Case No : Company Petition No. 295 of 1995 connected with Company Application No. 220 of 1995

In Re: Kusum Products Limited and Another

Date of Decision : 11-10-1996

Acts Referred:
Companies Act, 1956 — Section 391

Citation : (1999) 98 CompCas 10

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Judgement

Shyamal Kumar Sen, J.—This is an application under Sections 391 and 394 of the Companies Act, 1956, for sanction of a scheme of amalgamation between the petitioners, Kusum Products Ltd. and Kusum Agrotech Ltd., (hereinafter referred to as "KATL"), whereby and whereunder the entire undertaking of petitioner No. 2, Kusum Agrotech Ltd., together with all the assets and liabilities as a going concern will be transferred to and vested in petitioner No. 1, Kusum Products Ltd., on the terms and conditions fully mentioned in the scheme of amalgamation being annexure A to the petition.

2. By an order dated June 28, 1995, direction was issued for holding separate meetings of the equity shareholders of the petitioner-companies to be held on August 4,1995, for the purpose of considering and if thought fit approving with or without modification the scheme of amalgamation and appointing a chairperson to convene and hold the said meetings and to report the results thereof to this court,

3. The meeting of the equity shareholders of the transferee-company, petitioner No. 1, Kusum Products Ltd., was held on August 4, 1995. The said meeting was attended by 26 equity shareholders holding 39,15,936 equity shares which constitutes 99.50 per cent. of the total value of the issued share captial of petitioner No. 1. All the equity shareholders present in the meeting and holding equity shares voted in favour of the said scheme being adopted and carried into effect without any modification. No shareholder voted against the scheme. In the

premises, the said scheme was approved without any modification both in number and value by the requisite majority of the equity shareholders of the transferee company. The report of the chairman of the said meeting has been annexed and marked "G" to the petition.

4. The meeting of the equity shareholders of the transferor-company Kusum Agrotech Ltd. was held on August 4,1995, at 3 p. m. The said meeting was attended by 369 equity shareholders holding 43,79,900 equity shares, which constitutes 50.34 per cent. of the total value of the issued equity shares of petitioner No. 2. Eight equity shareholders holding only 3,800 equity shares abstained from voting. 354 equity shareholders present in the said meeting holding 43,74,300 equity shares, i.e., 99.94 per cent. of the total value of the equity shareholders present in the meeting voted in favour of the scheme being adopted and carried into effect without any modification. Seven equity shareholders present in the meeting holding only 2,800 equity shares, i.e., 0.60 per cent. of the total value of the equity shareholders present in the meeting voted against the said scheme being adopted and carried into effect. In the premises, the said scheme was approved without any modification both in number and value by the requisite majority of the shareholders of the transferor-company u/s 391 of the Companies Act. A copy of the report of the chairman of the said meeting has been annexed and marked annexure H to the petition,

5. None of the said seven shareholders who voted against the scheme at the said meeting, however, came forward at the final hearing of this application to oppose the scheme.

6. Notice convening the meeting of the shareholders of petitioner No. 2, Kusum Agrotech Ltd., was published in the newspapers on July 6, 1995. One Tamal Kumar Majumdar, who purchased 100 equity shares of petitioner No. 2 and lodged the same for registration of the transfer on July 22, 1995, has come forward to oppose this application. It appears that on the date of the meeting, i.e., on August 4, 1995, Tamal Kumar Majumdar was not a registered shareholder of petitioner No. 2 and, therefore, did not attend the said meeting. His application for registration of the transfer was approved after the meeting on August 4, 1995.

7. Since the scheme of amalgamation has already been approved by the shareholders of the petitioner-companies an application was thereafter made u/s 391(2) for confirmation of the said scheme on the basis of the reports filed by the chairman. The notice of the said petition was duly advertised in the newspapers and no shareholder or creditor of either of the two companies has come forward to oppose the sanction of the scheme, except one Ghanashyam Das Daga, a shareholder of Kusum Agrotech Ltd., who subsequently withdrew his objection and the said Tamal Kumar Majumdar who purchased 100 equity shares for a total sum of Rs. 1,500 after the scheme had been propounded and is now seeking to oppose the said petition for sanction of the scheme,

8. It has been submitted on behalf of the petitioner that all the statutory formalities have duly been complied with. In other words, the meetings have been duly convened and held and the scheme was approved by the requisite majority.

9. It has been further submitted that the chairman of the respective meetings duly issued or caused to be issued the individual notices to the members of the petitioner-companies, issued or caused to be issued the advertisements, convening the meetings and presided over the meetings and submitted their reports to this court on the results of the meetings.

10. It has been further submitted that the notices of the meeting and the explanatory statement u/s 393 were duly settled by the Assistant Registrar (Companies) of this court. The individual notices were sent to all the members of the petitioner-companies and the notice was also duly advertised in the Economic Times and Janasatta on July 6, 1995. No shareholder of either of the companies has complained of non-receipt of notice or any defect in the explanatory statement. The explanatory statement u/s 393 disclosed all the relevant facts. The ratio of exchange was also stated in the scheme but the details of calculation are not required to be given.

11. It has been submitted that no shareholder has complained of the insufficiency or non-receipt of the notice or any defect in the explanatory statement u/s 393, and the statutory provisions have been duly complied with. Moreover, the notices and the explanatory statement having been settled by an officer of this court, no exception can be taken to the same. In this connection, the learned advocate for the petitioner has relied upon the judgment and decision in the case of Hindustan Lever Employees'' Union v. Hindustan Lever Ltd. [1994] 4 Comp LJ 267 (SC) : [1995] 83 Comp Cas 30.

12. It has further been submitted that the chairman himself scrutinised the votes cast in favour or against the resolutions and satisfied himself that the scheme had been approved by the requisite majority. With regard to the value of the votes it has been submitted that the chairman had to obtain information from the management and Sri Promode Dugar, a common director of the petitioner-company furnished the necessary particulars from the records of the company and the chairman relied upon the said information believing the same to be true. Accordingly, it has been submitted that no exception can be taken to the report of the chairman and no shareholder has raised any objection with regard thereto except Tamal Kumar Majumdar who was not even a shareholder of the company when the meeting was held.

13. It has accordingly been submitted on behalf of the petitioners that in the instant case all the statutory formalities have been complied with and the petition u/s 391(2) of the Companies Act has been properly made in this court for sanction of the scheme.

14. The contention of the learned advocate for the petitioners is that if the

statutory formalities have been complied with and the scheme is fair and reasonable and not fraudulent, the court would normally proceed to sanction the scheme and give effect to the business decision of the shareholders of the companies concerned.

15. It has further been submitted that in the event there is any opposition to the sanction of the scheme the onus lies heavily on those opposing to satisfy the court that the scheme is unfair or unreasonable or fraudulent. In this connection the learned advocate for the petitioners has relied upon the following decisions :

(i) In Re: Hindusthan General Electric Corporation Ltd., and

(ii) Sussex Brick Co. Ltd., In re [1960] 30 Comp Cas 536 : [1961] 1 Ch. 289.

16. The main objections to the sanction of the scheme raised by Tamal Kumar Majumdar are as follows :

(i) The ratio of exchange is unfair to the equity shareholders of the transferor-company, Kusum Agrotech Ltd.

(ii) The valuer has not taken into account the details mentioned in the respective balance-sheets, viz., auditor''s remarks, directors'' reply thereto, etc.

(iii) The valuer has not followed the guidelines issued by the Central Government regarding valuation of shares.

17. It is the contention of the learned advocate for the said Tamal Kumar Majumdar that the valuer''s report dated May 12, 1995, being annexure F to the petition is vague and not up to the mark which has been done only to serve the purpose of the promoters and as such is not maintainable in law.

18. Well-known methods of valuation of shares as mentioned by the Central Government guidelines, namely :--

(a) net asset value (NAV) ;

(b) profit-earning capacity value (PECV) ;

(c) market value (MV) in the case of listed shares ; have not been followed, All India financial institutions and banks have been following these guidelines uniformly and as such the procedure laid down in these guidelines is followed by the corporate sector and is in vogue.

19. In this connection he has referred to the following :

(Al) Corporate Mergers, Amalgamations and Takeovers-Dr. J. C. Verma, 2nd Edition-1995, page 207, para 9 and Page 208, Part II.

(A2) Hindustan Lever Employees'' Union v. Hindustan Lever Ltd. [1994] 4 Comp LJ 267 (SC) : [1995] 83 Comp Cas 30 (para. 43).

20. It has been submitted on behalf of the objector that the valuation has been

done pn the basis of unaudited figures of both petitioner-companies as at March 31, 1995, by taking average of book value without considering contingent liabilities and other items. Market value has been taken for a day, i.e., April 1, 1995, in case of both companies. This procedure is in conflict with the Central Government guidelines.

21. It has further been submitted that contingent liabilities mainly on account of Income Tax, surtax, excise duty, sales tax and purchase tax and turnover tax amounting to Rs. 5 crores (approx.) and also non-provision for doubtful disputed debts and customs duty amounting to Rs. 1.5 crores (approx.) has not been considered in the valuer''s report and as such no judgment was given so far as the contingent liabilities and non-provisioning of doubtful debts are concerned.

22. The learned advocate for the respondent has contended that petitioner No. 1 has been holding 11,64,000 equity shares of petitioner No. 2 which comes to 13.37 per cent. of paid-up capital of petitioner No. 2. At the time of valuation it has not been considered.

23. The further contention of the learned advocate for the respondent is that the revaluation reserve has been considered by the valuer for purpose of share valuation in respect of petitioner-company No. 1. This procedure is in conflict with the Central Government guidelines,

24. Mr. Das Adhikary, the learned advocate for the respondent has further submitted that the scrutineer has not been appointed in terms of Section 184 of the Companies Act, 1956.

25. It has been submitted by Mr. Das Adhikary that the court appointed chairperson has based her judgment upon information received from Shri Promod Dugar who is a director of both the companies and nothing but an interested person, which is contrary to the accepted principle of law and highly illegal.

26. The further contention of Mr. Das Adhikary, is that the auditor''s report is full of qualification/adverse comments.

27. The audited accounts of petitioner No. 1 is not at all acceptable and so far as petitioner No. 2 is concerned the report was made on the basis of the certificate by the management for the purpose of completion of accounts.

28. Further contention of the learned advocate for the respondent is that it appears from the verification of records with the Registrar of Companies that the transferee-company, Kusum Products Ltd., has only 30 shareholders out of which seven are minors. It was further revealed that six companies situated at No. 6, Royd Street, Calcutta-16, are holding 96.33 per cent. of the total capital.

29. Mr. Das Adhikary has submitted that there is violation of the statutory requirement so far as the minimum number of shareholders in respect of petitioner No. 1 is concerned.

30. In terms of the recommendations of the High Powered Committee on Stock Exchanges, the Government, vide its Circular No. F. 14(2)/SE/85 dated September 23, 1985, has taken a decision that a listed company should be de-listed after giving six months'' notice if the number of public shareholders falls below five for every Rs. 1 lakh of capital offered to the public. As per the audited accounts for the year 1994-95 in respect of petitioner No. 1-company, the issued and subscribed capital consists of 39.20 lakhs of equity shares of Rs. 10 each valued Rs. 3.92 crores which requires a minimum of 1960 shareholders whereas there are only 30 shareholders which has been admitted by Mr. Promod Dugar, chairman and managing director of Kusum Products Ltd., petitioner No. 1, as reported in the Statesman dated February 19, 1996.

31. In this connection he has referred to the press report which appeared in various newspapers. He has also submitted that the petition suffers from suppression of material facts.

32. It has been contended that the said Tamal Kumar Majumdar is a bona fide shareholder of the company and a respected accounts analyst in the corporate sector as well as in the media circle. Reports in many newspapers published from Calcutta, Mumbai and Delhi showing the analysis of Sri Majurndar, have been referred to in the course of hearing.

33. In support of his several contentions urged in this application opposing the sanction of the scheme Mr. Das Adhikary, the learned advocate for the respondent, has relied upon the following decisions :

(i) Sugarcane Growers Association v, Sakthi Sugars Ltd. [1995] 6 SCLR 155 : [1998] 93 Comp Cas 646 (Mad) ;

(ii) Jitendra R, Sukhadia v. Alembic Chemical Works Co. Ltd. [1988] 64 Comp Cas 206 , last paragraph.

(iii) In the matter of Carron Tea Co. Ltd. [1966] 2 Comp LJ 278 (Cal).

34. S. K. Kundu, the learned advocate for the Central Government, has submitted that the share valuation report is not fair. He has referred to the balance-sheet and the profit and loss account and the auditor''s report. The said valuation report is set out below :

35. Valuation of shares of KATL ; As on March 31, 1995, the share capital of KATL is Rs. 8.70 crores divided into 87,00,000 equity shares of Rs. 10 each. After considering the credit balance of Rs. 61, 19,562 in the profit and loss account and miscellaneous expenditure to the extent not written off Rs. 53,30,384 the net shareholders fund of KATL is Rs. 8,77,89,178. The book value of shares of KATL is, therefore, approximately Rs. 10 per share.

36. He has submitted that it would not be proper and correct to come to a conclusion in respect of book value of shares of the transferor-company (KATL) to be approximately Rs. 10 per share.

37. He has further submitted that in the first place, it appears from the annual report and accounts for 1994-95 of KATL that the share capital is Rs. 8,66,35,000 and not Rs. 8,70,00,000 as stated in the valuation report. Secondly, he has submitted that the miscellaneous expenditure to the extent not written off to the tune of Rs. 53,30,384 as stated in the report appears to be incorrect also. In schedule M to the said balance-sheet, a sum of Rs. 47,72,357 and not Rs. 53,30,384 can be found on that count. Thirdly, he has submitted that the sum of Rs. 61, 19,562 as credit balance as stated in the valuation report cannot be found in the profit and loss account. Instead a sum of Rs. 52,50,483 has been stated to be the surplus. Therefore, the valuation report in respect of KATL is wrong as it is based on wrong premises as stated hereinabove. The basis being wrong, the conclusion has become wrong.

38. Therefore, according to him, the valuation report of the transferor-company is not correct as it is based on the wrong terms.

39. It has also been submitted by Mr. Kundu that it would appear that the annual report for 1993-94 of KATL does not contain the "profit and loss account for the year ended at March 31, 1994" at all. Although the annual report and accounts for 1994-95 contains "profit and loss account for the year ended as at March 31, 1995", it does not contain the respective figures for the year ended as at March 31, 1994, which is the procedure prescribed by the Companies Act, 1956, in Parts I and II of Schedule VI as provided by Section 211 of the Companies Act, 1956. Therefore, the said accounts of KATL are not in proper form and as such cannot be relied upon. As a result, there is no authentic latest auditor''s report on the accounts of the company before the court.

40. It has further been submitted by Mr. Kundu, the learned advocate for the Central Government, that unless the ratio of exchange is properly worked out on the basis of a proper balance-sheet, and profit and loss account, the scheme which has been placed before the court containing the ratio which is not based on proper materials cannot be sanctioned and is fit to be rejected.

41. In support of his contention, he has relied upon the judgment and decision in N. A. P. Alagiri Raja and Co. v. N. Guruswamy [1989] 65 Comp Cas 758 (Mad) wherein it has been held that (at page 769) ". . . the court will not only have to be satisfied that the meeting was attended by 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, and they have agreed to the compromise of the proposal, but will also have to be satisfied that all the material facts relating to the company such as the latest financial position of the company, the latest audited report of the company, ... are placed before the court".

42. He has further pointed out that the valuers have taken into consideration the quoted rate of the Calcutta Stock Exchange per share in respect of KPL and the market value per share in respect of the transferor-company (KATL). Both the companies have raised shares in 1994-95, that is, in the year previous to the

scheme of amalgamation. The transfer date as per the scheme is April 1, 1995. During 1994-95, KPL has raised the share capital from Rs. 8,00,000 to Rs. 3,92,00,000 and KATL has raised the share capital from Rs. 7,000 to Rs. 8,70,00,000 of which Rs. 3,65,000 is in arrears. Therefore, both the companies are guilty of raising share capital by issuing equity shares of Rs. 10 each. When the value per equity share of Rs. 10 of KPL is quoted at the Calcutta Stock Exchange at Rs. 200 per share it has issued equity shares of Rs. 10 each at par and thereby has tried to make illegal gains against public interest. The same device has been adopted by KATL which is contrary to public interest and mala fide as its share is quoted in the market at Rs. 17.75 per share. Thereby, the company has tried to make illegal gains. If the shareholders of both the companies sell and transfer their shares they will be able to make huge profits. On the other hand, it has been submitted that the companies should have offered public issue of shares instead of dealing clandestinely. At least the shares should have been valued at the quoted rates while being issued to the shareholders, which would have given an altogether different picture. The result is sought to be achieved by fixing the ratio of value of shares of KPL and KATL at 1 : 10 by taking into account different valuation methods although for practical purposes it is otherwise. The ratio after amalgamation will give a share structure to the transferee-company (KPL) which acts contrary to public interest as the public will be duped to purchase the shares of KPL at Rs. 200 per equity share or even more when the existing shareholders on the transfer date have got the shares at par, namely, equity shares of Rs. 10 each at that value. Therefore, the scheme is against public interest and as such is fit to be rejected.

43. It has further been submitted that the valuers in adopting the methods should have taken into consideration the book value of three years or the quoted rate of three years for coming to a proper valuation of the shares as has been done in the case of Hindustan Lever Employees'' Union v. Hindustan Lever Ltd. [1995] 83 Comp Cas 30 : AIR 1995 SC 471.

44. In the next place, it has been submitted that it is evident on the face of the valuation report that, while considering the valuation of shares of KPL, the valuers have taken into consideration the share capital and the reserve and surplus including the revaluation reserves of KPL to determine the book value of shares while in the case of KATL it has taken into consideration the share capital, the credit balance and miscellaneous expenditure to the extent not written off. Therefore, it is apparent that the valuers applied double standard in calculating book value of shares of the companies and as such, it is unfair, unjust and unreasonable and, therefore, the share valuation is fit to be rejected.

45. Further, it has been submitted on behalf of the Central Government that there should have been a meeting of the creditors on the scheme of amalgamation as both the companies have taken substantial amounts by way of loan. KPL has taken secured loans to the tune of Rs. 3,63,29,443 from the Industrial Development Bank and Bank of India as appears from schedule "C". It

has also taken unsecured loans to the tune of Rs. 2,08,27,280 as appears from schedule "D". Similarly, KATL has taken secured loans to the tune of Rs. 12,96,96,570 as would appear from schedule "C" to the annual report and accounts for 1994-95. The loans taken from the banks belong to the public whose interest is being neglected.

46. In the next place, it has been submitted that both the companies have not made provision for contingent liabilities in their accounts. KPL has not made provision for contingent liabilities as would be available from the notes of auditors at page 36 of the report and accounts for 1994-95. KATL also has not provided for contingent liabilities which will be available from the notes on accounts at page 18 of the annual report and accounts for 1994-95. Most of the items of contingent liabilities are due to the public fund and, therefore, by ignoring the same the directors of the companies have acted mala fide and prejudicial to public interest.

47. It has been submitted on behalf of the Central Government that the scheme of amalgamation as proposed and especially the share ratio which is the basic structure of the scheme is not a bona fide one and is against public interest. Therefore, the scheme is fit to be rejected. In this connection, it has been submitted that simply because the "majority shareholders have voted in favour of the scheme, the company court is not to act as a mere rubber stamp and sanction the same". In support of this submission reliance is placed on the judgment reported in Sugarcane Growers Association v. Sakthi Sugars Ltd. [1995] 6 SCLR 144 : [1998] 93 Comp Cas 646 (Mad). It has been submitted on behalf of the respondents that it would appear that the Division Bench of the Madras High Court has taken into consideration various judgments of different High Courts including that of the High Court of Calcutta in Calcutta Industrial Bank Ltd., In re [1948] 18 Comp Cas 144.

48. It has been further contended that the report of the chairman of the meeting of the holders of equity shares of Kusurn Agrotech Ltd. by Ms. Ipsita Sett is to the effect that the meeting of the shareholders held on August 4, 1995, was attended by the holders of 43,79,900 equity shares which constitutes 50.34 per cent. of the total value of the issued equity shares, namely, 87,00,000 equity shares. Therefore, it is short of majority representing three-fourths in value. Section 391(2) of the Companies Act, 1956, is set out :

"391.(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."

49. Therefore, Section 391(2) of the Companies Act, 1956, prescribes 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, agree to any compromise or arrangement, the same will be binding on all, if it is sanctioned by the court.

50. It has further been submitted on behalf of the Central Government that in the instant case the majority as required has not sanctioned the compromise or arrangement and, therefore, the scheme fails and the court has no other option but to reject the scheme. Only when the required statutory majority accepts the compromise or arrangement, then the question of the court''s discretion to accept or to reject will arise. In this case, there is no question of applying the court''s discretion since the arrangement or compromise has not been accepted by the statutory majority and as such the application is fit to be rejected.

51. It is also the contention of Mr. Kundu that Section 391(2) of the Com panies Act, 1956, requires that a majority representing three-fourths in value is present and voting in favour of the scheme. It means that the majority of three-fourths out of the total shareholders participates in the meeting and accepts the compromise or arrangement. It does not envisage that out of the members present and voting in the meeting, a majority of three-fourths agree and vote in the meeting. In such a situation it has been argued that it might be possible to pass a scheme with a minority group of shareholders attending the meeting and passing the scheme by a three-fourths majority. For instance, if five shareholders holding 100 shares each attend a meeting out of 5,000 shares and four of them vote in favour of the scheme then it would mean that more than three-fourths majority present and voting of the shareholders have voted in favour and, therefore, the scheme has been accepted by the shareholders. It is not the intention of the statute. The words suggest that three-fourths in value out of total shareholders attend the meeting and accepts the scheme.

52. It has also been submitted by Mr. Kundu that the principles decided in the cases relied upon by the petitioner are based on different facts and circumstances and as such cannot have any application in the instant case.

53. I have considered the respective submissions of the advocates for the parties. It is on record that the meeting of the equity shareholders of the transferee-company, petitioner No. 1, Kusum Products Ltd., was held on August 4, 1995. These equity shareholders holding 39,15,936 equity shares constituting 99.90 per cent. of the total value of the issued share capital of petitioner No. 1, KPL, attended the meeting. All the equity shareholders present in the meeting and holding equity shareholders voted in favour of the said scheme and no shareholder voted against the scheme. The said scheme was approved without any modification both in number and value by a requisite majority of the equity shareholders of the transferee-company. The meeting of the equity shareholders of Kusum Agrotech Ltd., the transferor-company, was also held on August 4, 1995, and the said meeting was attended by 369 equity shareholders holding

43,79,900 equity shares which constitutes 50.34 per cent. of the total value of the issued equity shares of the said company. Eight equity shareholders holding only 3,800 equity shares abstained from voting. 354 equity shareholders present in the said meeting holding 43,73,300 equity shares, i.e., 99.94 per cent. of the total value of the equity shareholders present in the meeting voted in favour of the scheme being adopted and carried into effect without any modification. Seven equity shareholders present in the meeting holding only 2,800 equity shares, i.e., 0.60 per cent. of the total value of the equity shareholders present in the meeting voted against the said scheme being adopted and carried into effect. In the premises, the said scheme was approved without any modification both in number and value by the requisite majority of the shareholders of the transferor-company u/s 391 of the Companies Act.

54. All the formalities regarding the meeting of both the companies have been complied with. There is no allegation as to non-compliance with the statutory requirement.

55. Tamal Kumar Majumdar, who purchased 100 equity shares for a sum of Rs. 1,500 after the scheme had been propounded, now seeks to oppose the petition for sanction of the scheme. The main objection of the said Tamal Kumar Majumdar is that the ratio of exchange is unfair to the equity shareholders of the transferor-company, KATL.

56. It may be noted that this objection has not come from any shareholder of the transferor-company or the transferee-company on the date on which the scheme was sanctioned at the meeting of the shareholders. As stated already Tamal Kumar Majumdar was not a registered shareholder when the meeting was held. He purchased 100 shares for a total consideration of Rs. 1,500 after the scheme was propounded and has now come forward to oppose the sanction of the scheme. His stake at the most is Rs. 1,500. It is difficult to appreciate what benefit he would derive by opposing the scheme when no other shareholder of the transferor or the transferee-company is opposed to the same. The petitioner-companies have offered to arrange for purchase of the said shares at the price which he paid for them or at any other price which may be fixed by the court.

57. Apart from the fact that the said Tamal Kumar Majumdar was not a shareholder of the company at the material time when the scheme was approved by the shareholders, in the instant case, the valuation has been made by a reputed firm of chartered accountants. It has been repeatedly held in several decisions that if the ratio of exchange has been fixed by an experienced and reputed firm of chartered accountants then in the absence of any charge of fraud against them the court will accept such valuation and ratio of exchange. A mere allegation of fraud is not enough, it must be a proper charge of fraud with full particulars. In the instant case, there is no such charge made or established.

58. It may be noted that there are several methods of valuation. The judgment and the decision of the Supreme Court in Hindustan Lever Employees'' Union v.

Hindustan Lever Ltd. [1994] 1 Comp LJ 267 [1995J 83 Comp Cas 30 may be taken note of. In the aforesaid decision, the Supreme Court held and observed, inter alia, that normally there are three methods of valuation, viz., (i) the yield method ; (ii) the market value method ; (iii) the asset value method. The Supreme Court observed that in the case of amalgamation a combination of all or some of the methods of valuation may be adopted for the purpose of fixation of the exchange ratio of the shares of the two companies. In the instant case, the valuer has stated that since KATL started commercial production during the year 1994-95, they did not propose to take into consideration the valuation of shares of the transferor-company by the yield method and, in fact, no valuation of shares of KATL on yield basis can be determined. Therefore, they proposed to determine the valuation of shares by taking the average of the book value and market value. So far as KPL is concerned, the valuers have taken into consideration the book value and the market value. In the ultimate analysis they have recommended the ratio of value of shares of KPL and KATL as 10 : 1.

59. The valuation made in the instant case satisfies the test laid down by the Supreme Court in the latest judgment on amalgamations in Hindustan Lever Employees'' Union v. Hindustan Lever Ltd. [1994] 1 Comp LJ 267 [1995] 83 Comp Cas 30,

60. It may be noted that in the instant case the valuers have stated in their reports that they have taken into consideration the respective balance-sheets of the companies, the presumption must be that they have considered the same in full.

61. The said Tamal Kumar Majumdar has raised objection to the valuation relying upon the guidelines issued by the Central Government regarding valuation of shares. It may be noted that the same objection was taken by the said Tamal Kumar Majumdar, in another matter, namely, Maknam Investment Ltd., In re [1995] 1 CHN 368 [1996] 87 Comp Cas 689, The same objection was considered in the said judgment and B. L. Jain J., as he then was, held, inter alia, as follows : "The guidelines relied on behalf of the objector mentions that the same are purely administrative instructions for internal official views and are, therefore, not to be quoted, cited or published as the official guidelines of the Government. In my opinion, the court is not going into the matter of fixing of exchange rates in great detail or to sit in appeal from the decision of the chartered accountant. If a chartered accountant of repute has given the exchange rate as per valuations made by him and if the same is accepted by the requisite majority shareholders the court will only see whether there is any manifest unreasonableness or manifest fraud involved in the matter."

62. I find no reason to differ with the view expressed in the said judgment and respectfully agree with the same. Since the said guidelines issued by the Central Government are purely administrative instructions for internal official use, there is no binding effect and the reliance upon the same is totally misplaced and has to be rejected.

63. It appears that the majority of the shareholders have accepted the valuation and there is no reason why their business decision should be interfered with. In this connection, the judgment and the decision in the case of Hindustan Lever Employees'' Union v. Hindustan Lever Ltd. [1994] 1 Comp LJ 267 [1995] 83 Comp Cas 30 may be taken note of. In the aforesaid decision, it was held by the Supreme Court in para. 3 at page 275 of the said judgment as follows (page 37 of 83 Comp Cas) :

"But what was lost sight of is that the jurisdiction of the court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test. A company court does not exercise an appellate jurisdiction. It exercises a jurisdiction founded on fairness. It is not required to interfere only because the figure arrived at by the valuer was not as good as it would have been if another method would have been adopted, What is imperative is that such deter mination should not have been contrary to law and that it was not unfair for the shareholder of the company which was being transferred. The court''s obligation is to be satisfied that valuation was in accordance with law and it was carried out by an independent body. The High Court appears to be correct in its approach that this test was satisfied as even though the chartered accountant who performed this function was a director of TOMCO, he did so as a member of a renowned firm of chartered accountants. His determination was further got checked and approved by two other independent bodies at the instance of shareholders of TOMCO by the High Court and it has been found that the determination did not suffer from any infirmity. The company court, therefore, did not commit any error in refusing to interfere with it. May be, as argued by learned counsel for the petitioner, if some other method had been adopted, probably the determination of valuation could have been a bit more in favour of the shareholders. But since admittedly more than 95 per cent. of the shareholders who are the best judge of their interest and also better conversant with market trend agreed to the valuation determined, it could not be interfered with by courts as "certainly" it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The court is least equipped for such oversights. Nor indeed, is it a function of the judges in our constitutional scheme. We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the court. To do so, is incompetent and improper and, therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action and the funda-mental rules of reasonable management of public business, if breached, will become justiciable Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others, . See in Buckley on the Companies Acts, 14th edition pages 473 and 474 and Palmer on Company Law, 23rd edition para. 79,16)."

64. In the instant case, there cannot be any dispute that the formalities under the statute have been complied with and the petition has been properly made u/ s 391(2) of the Companies Act.

65. It is well settled that if the statutory formalities have been complied with and the scheme is fair and reasonable, there is no fraud involved, then the court would proceed to give effect to the majority decision of the shareholders of the company. In other words, only if the court finds that the scheme is fraudulent or unreasonable, the court would proceed not to sanction the scheme. Reference may be made in this connection to Palmer''s Company Law, 24th edition, para. 70.14. If the court is satisfied that all the statutory formalities have been complied with and the scheme is fair and reasonable and there is no fraud involved in propounding the scheme, the petitioners are taken to have discharged their onus and the scheme ought to be sanctioned by the court.

66. The onus lies heavily on those who oppose the sanction of the scheme to show that the scheme is unfair, unreasonable or fraudulent. In this connection, the following decisions may also be taken note of : (i) Hindustan General Electric Corporation Ltd., In re In Re: Hindusthan General Electric Corporation Ltd., ; (ii) Sussex Brick Co. Ltd. In re [1960] 30 Comp Cas 536 [1961] 1 Ch. 289, In the aforesaid decisions, it was held in No. (i) case that (head-note of AIR 1959 Cal) "the functions and duties of the court in the matter of sanctioning of schemes are well known. Any scheme which is fair and reasonable and made in good faith will be sanctioned if it could reasonably be supported by sensible people to be for the benefit of each class of the members or creditors concerned. It is also the duty of the court to see that the resolutions were passed by the statutory majority. The majority of the three-fourths value must be of persons who were present and who took part in the voting. Mere presence would not be enough. The onus of proving unreasonableness or unfairness about the scheme or of want of good faith is on those who object to the sanction of the scheme. This onus is not discharged by vague and general assertions devoid of any particulars."

67. In the aforesaid decision No. (ii) it was held that although it might be possible to find faults in a scheme that would not be sufficient ground to reject it. It was further held that a scheme must be obviously unfair, patently unfair, unfair to the meanest intelligence. It cannot be said that no scheme can be effective to bind a dissenting shareholder unless it complies to the extent of 100 per cent. It is the consistent view of the courts that no scheme can be said to be fool-proof and it is possible to find faults in a particular scheme but that by itself is not enough to warrant a dismissal of the petition for sanction of the scheme. The courts have gone further to say that a scheme must be held to be unfair to the meanest intelligence before it can be rejected. It must be affirmatively proved to the satisfaction of the court that the scheme is unfair before the scheme can be rejected by the court. It is not necessary to refer to many cases on this point but reference in this connection may be made to the decision in English Scottish and Australian Chartered Bank, In re [1893] 3 Ch. 385.

68. Objection has been raised on the ground that D. K. Chhajer, partner of D. K. Chhajer and Co., chartered accountants is the statutory auditor of Kusum Products Ltd., being petitioner No. 1 who is at the same time a director of Kusum

Agrotech Ltd., being petitioner No. 2. It may, however, be mentioned that even if the valuation had been made by a director of the company, who also happens to be a partner of the chartered accountant firm, the same by itself would not be of any consequence. In the instant case, valuation was also made by Roy Chowdhury and Moitra, Chartered Accountants. The judgment and decision in the case of Hindustan Lever Employees'' Union v. Hindustan Lever Ltd. [1994] 4 Comp LJ 267 [19951 83 Comp Cas 30 may be taken note of in this perspective. In the aforesaid case Mr. Malegam who happens to be a director of the company also happens to be a partner of the chartered accountant firm who made the valuation.

69. The question arose : should the fact that Mr. Malegam was a director of a company have been disclosed ? The Supreme Court, while considering the scheme, held that Section 393(1)(a) requires particulars to be given of any material interests of some persons connected with the company, including the directors and managing director. The interest that is contemplated u/s 393(l)(a) is interest material for consideration of the scheme by the shareholders. It has not been shown that Mr. Malegam had any interest in the scheme. If he had any shares in TOMCO, then his interest would be like that of any other shareholder. The Supreme Court observed that his specialised services were utilised for the purpose of arriving at a fair exchange ratio, and both the companies reposed faith in his professional skill and as such non-disclosure of the fact that Mr. Malegam, a director of the company, had been appointed valuer, will not detract from the scheme in any way. The Supreme Court held that this will not amount to suppression of any material interest of a director in the scheme.

70. The judgment and decision in the case of Alembic Chemical Works Ltd., In re [1988] 64 Comp Cas 186 (Guj) has been relied upon by the advocate for the respondent. The objections taken in the said case may be summarised as follows (headnote): "(a) that the explanatory statement sent along with the notice of the meeting did not give enough details to enable the shareholders to properly comprehend the ramifications of the scheme ; (b) that the shareholders of Neomar were to get dividend for a period for which they were not members of Alembic and during which Neomer had not made profits inasmuch as the scheme had to be deemed to have effect from an earlier date, from 1983 ; (c) that the value of the shares of Neomer arrived at by the chartered accountants for the purpose of amalgamation had no nexus to reality."

71. The findings of the court in the said case may be summarised as follows :

"(i) That the scheme ought to be sanctioned because the statutory provisions were complied with ; the majority was acting bona fide ; the class of creditors and shareholders were fairly represented and that the scheme was sanctioned by an overwhelming majority ; they had voted as men of business in favour of the scheme and their votes were not obtained by perpetrating any fraud upon them. The scheme was scrutinised from various angles by the authority constituted under the Monopolies and Restrictive Trade Practices Act as well as the Income

Tax authorities. Moreover, an industry in a backward area generating employment was required to be resuscitated and rejuvenated rather than annihilated and obliterated because the only alternative outcome of not granting sanction to the scheme would be that Neomer would have to be wound up. So far it was practical, the court would always be in favour of reviving an industry rather than closing it down.

(ii) That the break-up value of the shares of Neomar arrived at by the chartered accountants was not one which could be termed as grossly exaggerated. The only method which could be available for arriving at a break-up value under such circumstances would be the quotation of the Neomer share on the stock market. Where a large majority of shareholders had approved of a valuation, the burden would be upon the objector to prove that the said break-up value was either inadequate or that it was overrated. While arriving at a valuation of a particular share even of a consistently losing concern neither the stock market quotation nor the intangible assets could be overlooked and the court would usually accept the valuation accepted by the majority as fair and reasonable, unless the contrary was proved, and merely because a different method of valuation could have been adopted would be no reason for the court to dub the valuation as unfair.

(iii) That the shareholders of Neomer were not being made members with retrospective effect but were to be made members from a particular date, namely, the effective date and once the scheme was sanctioned, the scheme of amalgamation would relate back to the effective date and, hence, they would be entitled to all the benefits of being members of Alembic from the effective date just as they would be subjected to the disadvantages, if any, of being members of the transferee-company from the said effective date. The provisions of Section 205 of the Companies Act, 1956, therefore, could not be said to have been violated by making a provision for payment of dividend from the effective date.

(iv) That the prospect of reviving the unit and making it financially viable could not be totally disregarded. Moreover, the court also could not be oblivious to the fact that an industry started in a backward area and generating employment in such a backward area did not require to be obliterated if it could be resuscitated with assistance from a magna corporation like the transferee-company. It would be trite to say that when two alternative courses were presented to the court, and while following one, an established industry would be wiped out and by following the other it could be revived, the court would lean in favour of the second alternative.

(v) That as a result of the amalgamation, a sizable amount of three crores of rupees by way of tax benefit would also result to Alembic.

72. While sanctioning a scheme of amalgamation, a duty is cast upon the court to find out whether the statutory requirements have been complied with. But even if the statutory requirements have been complied with, the sanction of the

court would not automatically follow. A duty is cast upon the court to find out whether the proposed scheme is for the benefit of the company as a whole. The court is not supposed to set its seal upon a decision of the majority and while the court is not supposed to scrutinise the scheme with fine-tooth comb to find out flaws and then to view them through a magnifying glass, the court must be satisfied before the sanction is accorded that the majority vote was honestly obtained, that the majority acted honestly, that no financial or arithmetical jugglery was perpetrated either upon the creditors or upon the shareholders to cajole them or coax them into, voting in favour of the scheme. However, the scheme is not to be scrutinised by the court with the eye of an expert or the exactness of an accountant, but if the scheme is broadly speaking calculated to benefit the company as a whole it would be entitled to the sanction of the court."

73. In the case of Jitendra R. Sukhadia v. Alembic Chemical Works Co. Ltd. [1988] 64 Comp Cas 206 (Guj), the Division Bench of the Gujarat High Court held that what Section 393(l)(a) required was that the explanatory statement should state and explain only the effect of the scheme of amalgamation and not the details and particulars of the consequence. If something was implied in the scheme which was not obvious, it had to be brought to the notice of the shareholders and creditors.

74. In what manner the exchange ratio has been worked out is not a matter required to be stated in the statement contemplated u/s 393(l)(a) as this was not the "effect" of the scheme. Once the share exchange ratio has been clearly stated, the shareholders of both the companies are alerted thereby and the duty cast under Clause (a) of Section 393(1) was discharged. The absence of details regarding the working out of the share exchange ratio in the statement did not amount to non-compliance with the provisions of Section 393(l)(a). It, therefore, appears that the said principles decided in the aforesaid decision do not really support the case of the respondent.

75. The judgment and the decision in the case of Carron Tea Co. Ltd., In re [1966] 2 Comp LJ 278 (Cal) has been relied upon by learned advocate for the respondent. In the aforesaid decision, it was held that it is the bounden duty of the court to probe into matters to find out whether the scheme is reasonable and if it finds it is so, unhesitatingly sanction the same.

76. In the instant case, nothing has been disclosed to show that the scheme is unreasonable. It has not been shown that in fixing the ratio of exchange, the valuer has adopted a procedure which is not warranted. Moreover, in the aforesaid decision in Carron Tea Co. Ltd., In re [1966] 2 Comp LJ 278 (Cal) it was found that the explanatory statement was insufficient. The members were not told that the ordinary rule of valuation-stock exchange quotation basis was not taken into account nor was it stated that the goodwill was not taken into account in the valuation on the net asset basis. Several irregularities in the valuation were shown.

77. In that view of the matter, the court refused to sanction the scheme. Accordingly, the court held that the ratio provided for cannot be justified by any known method of valuation, i.e., the net assets basis or the earning capacity or the income basis. In the instant case, it cannot be said that the share exchange ratio suffers from such irregularities.

78. In my view, the said decision cannot be of any assistance to the said objector.

79. The judgment and the decision in the case of Sugarcane Growers Association v. Sakthi Sugars Ltd. [1995] 6 SEBI C L144 [1998] 93 Comp Cas 646 (Mad) has been relied upon by the learned advocate for the respondent. In the aforesaid decision, the facts are that the respondent and the transferor-companies were both public limited companies belonging to the same group and having a common managing director. In separate meetings of the board of directors of the two companies, it was resolved to amalgamate the transferor-company with the respondent-company to enable the respondent to diversify its activities into an area with enormous potential for growth and the transferor-company to get adequate financial help. Resolutions were passed at the extraordinary general meetings of both the companies approving the scheme of amalgamation, subject to the approval of the financial institutions and other necessary approvals. Thereafter, petitions were filed by the respondent and the transferor-companies under Sections 391 and 394 for sanctioning the scheme of amalgamation and dissolution of the transferor-company without being wound up. According to the scheme of amalgamation, the assets and liabilities of the transferor would become the assets and liabilities of the respondent and the equity shareholders of the transferor were to get two equity shares at a premium of Rs. 40 per share of the respondent, fully paid-up, for every ten shares of the transferor. It was also averred in the petition that the respondent''s assets were adequate to discharge and satisfy all binding obligations of the transferor whose creditors would not be prejudiced in any manner by the scheme of amalgamation.

80. In the aforesaid case, the appellant, a society, claiming to represent the interest of 16,000 cane growers who supplied sugarcane to the respondent for crushing and conversion, one-sixth of whom were also shareholders of the respondent and filed a notice of opposition. The main crux of the opposition was that the respondent never had liquid resources to pay legitimate dues of sugarcane growers and amalgamation would be highly detrimental to the interests of the members of society and it will also result in financial ruin of the respondent, which, in turn, will seriously affect the sugarcane price payable to the growers. It was the transferor-company which had become commercially insolvent and it would be difficult to revive the same within the next two or three years and even after amalgamation, it will continue to be in a position of perennial loss and it would be a serious drain on the resources of the respondent. If the two companies were amalgamated the net liability of the amalgamated company will be a staggering sum of Rs. 116.88 crores and the interest burden on that amount will cripple the respondent. Further, the

transferor already had serious problems in its existing units, that the amalgamation would have an adverse impact on the majority shareholders who were the cane growers and whose survival depended upon the income derived from the respondent, and that the petition was mala fide and the proposal meant only to protect the interests of the directors who had given personal guarantee in favour of financial institutions for loans taken by the transferor.

81. The single judge hearing the petition held that the approval of the proposal had to be regarded as approval by members who fairly represented the general body of members at meetings and that no material had been placed on record to prove the lack of good faith of the majority which passed the resolution. In a separate order he also held that the sugarcane growers who supplied sugarcane to the respondents were not creditors of the respondent and, thus, had no locus standi to seek a direction to convene a meeting of the creditors.

82. The court, thereafter, accorded approval to the scheme of amalgamation and directed the official liquidator of the transfer to file a report regarding the affairs of the transferor-company with a view to enable the court to dissolve the said company without winding up.

83. An appeal was preferred against the decision of the learned single judge. The Division Bench of the Madras High Court, however, upheld the judgment of the learned single judge and, while disposing of the appeal, the Division Bench of this court laid down the following principles :

(1) The court has to be satisfied that the resolutions have been passed by the requisite majority as prescribed in the statute at a meeting duly convened.

(2) The court is not a mere rubber stamp and the fact that the majority has approved of the scheme is not conclusive.

(3) The approval by the majority is an important factor to be considered by the court.

(4) The court must be satisfied that all material facts have been disclosed at the meeting and before the court.

(5) The scheme is not for an oblique purpose to defeat the provisions of any law,

(6) The object cannot be achieved by resort to the other provisions of the Companies Act.

(7) The scheme as a whole is fair and reasonable and not vitiated by bad faith, fraud or mala fide and once the court is satisfied to that effect, the court should not substitute the decision of the majority with its own views.

84. There cannot be any dispute with regard to the principles laid down by the Division Bench of the Madras High Court. In the facts of the instant case, however, the said decision cannot be of any assistance to the objector.

85. The said objector, Tamal Kumar Majumdar, has also relied upon the circulars

and guidelines of the Central Government and has submitted that the exchange ratio has not been fixed properly according to the law guidelines and administrative instructions. In the instant case, the exchange ratio has been fixed by a reputed chartered accountant and I do not think that it can be said that the same is unfair or unreasonable simply because the objector said so. The guidelines relied on on behalf of the objector mentions that the same are purely in the nature of administrative instructions for internal official use and, therefore, not to be quoted, cited or published as the official guidelines of the Government,

86. It is well-settled that the court should not go into the matter of fixing of exchange ratio in detail or to sit in appeal over the decision of the chartered accountant. A chartered accountant of repute has given the exchange ratio as per valuation made by him and the same was accepted by the requisite majority shareholders. The court will only see whether there is any manifest unreasonableness or manifest fraud involved in the matter. In this connection, the judgment and the decision in the case of Hindustan General Electric Corporation Ltd., In re In Re: Hindusthan General Electric Corporation Ltd., relied upon by the learned advocate for the petitioner may be taken note of. The relevant portions of the judgment made are set out hereinbelow :

"The functions and duties of the court in the matter of sanctioning of schemes are well-known. Any scheme which is fair and reasonable and made in good faith will be sanctioned if it could reasonably be supported by sensible people to be for the benefit of each class of the members or creditors concerned (Alabama, New Orleans, Texas and Pacific Junction Railway Co., In re [1891] 1 Ch. 213 and English Scottish and Australian Chartered Bank, In re [1893] 3 Ch. 385). It is also the duty of the court to see that the resolutions were passed by the statutory majority. ... In the case before me Mr. Mitra, who opposed this scheme on behalf of the Hindustan Commercial Bank Ltd., which is the holder of 2,000, 5 per cent. preference shares of Rs. 100 each of the company, has contended that the scheme was not passed by the requisite majority. It is argued with reference to the report of the chairman of the meeting held on December 11, 1957, that holders of preference shares of the value of Rs. 6,42,700 were present at the meeting but only holders of the preference shares of the value of Rs. 4,42,700 voted in favour of the resolution whereas to constitute the requisite majority the holders of the preference shares of the value of Rs. 4,82,000 should have voted and so the resolution was not validly passed. Now there is some controversy raised in the affidavit of Mr. Pai, the representative of the Hindustan Commercial Bank as to what attitude he took up at the meeting held on December 11, 1957. Mr. Pai''s suggestion is that he voted against the scheme for reduction resolution which was passed at the meeting of February 14, 1957, when this resolution was placed before the meeting of December 11, 1957. It is, however, clear from the report of the chairman that those resolutions which were passed on February 14, 1957, were not put to vote at all in the meeting of December 11, 1957. It was only the modified scheme which was put to vote but Mr. Pai expressed his intention to remain neutral in respect of this matter. He did not vote either in favour or against the modified scheme. In other words, he did not take part in the voting at all. All the other preference shareholders present voted in favour of the resolution. Section 391(2) of the (Indian) Companies Act is as follows :

''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 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 the contributories of the company''.

It will be seen from the above provision that additional words ''and voting'' between the words ''present'' and ''either in person'' have been introduced in Sub-section (2) of Section 391 which were absent from Section 153(2) of the Act of 1913. There can be no doubt that the words ''and vot ing'' have been introduced with a purpose and it appears to me that the intention of the framers of this section was that the majority of the three-fourths value must be of persons who were present and who took part in the voting. Mere presence would not be enough, This being the proper construction of Sub-section (2) of Section 391 it appears that all the preference shareholders present besides Mr. Pai voted in favour of the resolution. In other words, there was an unanimous passing of the resolution. Therefore, there is no doubt that the requisite majority contemplated in Section 391(2) agreed to the arrangement now presented before the court for sanction. Reference may be made to Buckley''s Companies Act, latest edition, page 408, where Buckley points out that the words ''and voting'' had brought about an alteration in the corresponding English section. Mr. Mitra relied on the case reported in Bengal Bank Ltd. Vs. Suresh Chakravartty and Others, , in support of his argument but that was a case u/s 153 of the (Indian) Companies Act 1913, and so is not of assistance to Mr. Mitra."

87. S. B. Mukherjee, the learned advocate for the petitioner, has relied upon the judgment and the decision in the case of Sussex Brick Co. Ltd.. In re [1960] 30 Comp Cas 536 [1961] 1 Ch. 289. In the said case, it was, inter alia, held as follows :

"A scheme must be obviously unfair, patently unfair, unfair to the meanest intelligence. It cannot be said that no scheme can be effective to bind a dissenting shareholder unless it complies to the extent of 100 per cent., with the highest possible standards of fairness, equity and reason. After all, a man may have an offer made to him and, although he would prefer something better, would be quite prepared to accept it because it was good enough in all the circumstances. It may be that the grounds for criticising the present scheme are not grounds of such a nature as to render the whole thing unfair in the sense in which Maugham J. used the words in the case which I have cited.

A good deal of light is thrown in the consideration of this section in Press Caps Ltd., In re [1949] 19 Comp Cas 327 [1949] 1 AH ER 1013 where the test laid down by Maugham J. in Hoare and Co., In re [1933] All ER 105 [1933] 150 LT 374 (Ch D) that where the statutory majority has accepted the offer, the onus must rest on the applicant to satisfy the court that the price offered is unfair, was approved."

88. It does not appear in the instant case that the scheme is obviously unfair or unfair to the meanest intelligence. There is no question of fraud or cheating or deception in the instant case.

89. Accordingly, in my view, considering the facts and circumstances of this case, the order for approval of the sanction of the scheme should be passed.

90. There will, accordingly, be an order in terms of prayers (a) to (h) of the petition.

91. The petitioners will pay costs assessed at 100 G. Ms. to the Central Government.

92. The learned advocate appearing for Tamal Kumar Majumdar, the objector, has prayed for stay of operation of this order.

93. In my view, there is no need for grant of stay in view of the fact that the sanction will only become effective upon filing of the certified copy of the order which will take some time.

94. In that view of the matter, stay is not granted,

95. All parties concerned including the official liquidator are to act on a signed copy of the operative portion of this judgment and order on the usual undertaking.

