

(2004) 02 AP CK 0007

In the Andhra Pradesh High Court

Case No : Company Petition No's. 182 and 183 of 2003

In Re: Lanco Kalahasthi Castings Ltd.

Date of Decision : 20-02-2004

Acts Referred:

Companies Act, 1956 — Section 110, 391, 392, 393, 394

Citation : (2004) 2 ALT 598 : (2005) 124 CompCas 523 : (2004) 52 SCL 131

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

Bench : Single Bench

Advocate : D. Rama Prasad and Ravi S, for the Appellant;

Final Decision : Allowed

Judgement

N.V. Ramana, J.—These two Company Petitions have been filed by Lanco Kalahasthi Castings Limited (Transferor Company) and Lanco Industries Limited (Transferee Company) under Sections 391 - 394 read with Section 110 of the Companies Act, 1956 (for short "the Companies Act") seeking approval of the Scheme of Arrangement and reduction of share capital.

2. The Transferor Company was incorporated on 4-3-1997 as a Public Company under the provisions of the Companies Act in the name and style of "Kalahasthi Castings Limited. Subsequently, w.e.f. from 2-11-2000, it was changed to the present one. The Transferor Company, as is reflected by its Memorandum of Association, was incorporated with the main objects of carrying on business of iron castings, steel castings, non-ferrous castings, mechanical engineers, electrical engineers etc., to set up steel furnaces, such as electric furnace, induction furnace, LD converters and similar such modern equipments etc. Clause 3(B) 16 enables the Transferor Company to amalgamate with any other company or companies having objects altogether or in parts similar to it.

3. The authorized share capital of the Transferor Company is Rs. 36,00,00,000 divided into 3,60,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid up share capital of the Transferor Company is Rs. 36,00,00,000 divided into 3,60,00,000 equity shares of Rs. 10 each fully paid up. It is stated that the

equity shares of the Transferor Company are not listed on the Stock Exchange.

4. The Transferee Company was incorporated on 1-11-1991 under the provisions of the Companies Act as a Public Company limited by shares in the name and style of Lanco Ferro Limited. Subsequently, w.e.f. 6-7-1994, the name was changed to the present one. The Transferee Company, as is reflected by its Memorandum of Association, was incorporated with the main objects of carrying on trade and/or produce, manufacture, refine, make, contract, fabricate, shape, treat cure, prepare, import, export, purchase, sell and deal in all types and grades of composition of Iron and Steel including non-ferrous and ferrous materials, such as pig iron, sponge iron/hot brequetted iron by any type of blast furnace etc., to set up steel furnaces such as electric furnace, induction furnace, led connectors and similar such modern equipment etc., to carry on business of all or any kind of iron and steel founders, steel makers, steel shapers and manufacturers and, to acquire or amalgamate with any other company whose objects include or are similar to those of it.

5. The authorized share capital of the Transferee Company is Rs. 53,00,00,000 divided into 5,30,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid up share capital of the Transferee Company is Rs. 51,91,23,790 divided into 5,19,12,379 equity shares of Rs. 10 each fully paid up. The equity shares of the Transferee Company are listed on the Stock Exchange.

6. Pursuant to the approval of the Scheme of Arrangement by the Board of Directors of the Transferor and Transferee Companies on 31-7-2003, the petitioners filed applications in C.A. Nos. 779 and 780 of 2003 seeking to convene the meeting of the shareholders and dispensation of the meetings of the secured creditors. By order dated 22-9-2003, this Court directed the Transferor and Transferee Companies to conduct the meeting of their shareholders and appointed a Chairperson and dispensed with the meetings of the secured creditors. The Chairperson having conducted the meeting of the shareholders of the Transferor and Transferee Companies on 7-11-2003 filed his report stating that the shareholders of the Transferor Company have unanimously approved the Scheme of Arrangement, including reduction of share capital, while in case of the Transferee Company, he reported that the 38 shareholders, entitled to 3,32,12,976 equity shares of Rs. 10 each had personally or by proxy attended the meeting, and the said meeting by a majority of 3,32,11,976 votes of 37 members against 1,000 votes of one member approved the Scheme of Arrangement, including the amalgamation and reduction of existing share capital.

7. This Court while admitting the Company Petitions, by order dated 28-11-2003, directed publication of notice in newspapers namely "Andhra Jyothi" and "Indian Express" and issued notices to the Central Government and the Official Liquidator. The petitioners having taken out paper publication, filed proof thereof into Court.

8. The Official Liquidator filed his report stating that having perused the books,

accounts, records and other papers, he is of the view that the Transferor and Transferee Companies are not conducting their affairs in a manner prejudicial to the interests of their members or the general public.

9. On behalf of the Central Government, the Registrar of Companies, filed common affidavit taking two objections - It is stated that the Transferee Company is a listed company and whereas the Transferor Company is not a listed Company and though the Transferee Company had addressed letters on 1-8-2003 to the Stock Exchanges of Kolkata, Hyderabad and Mumbai for approval of the Scheme of Arrangement, as required under Clause 24 of the Listing Agreement, it had not received the "No Objection" letter from Hyderabad Stock Exchange. The shares have not been valued by the well accepted and known accounting principle, but had been valued by adopting different methods, and weightage had been given to arrive at a fair exchange ratio. The companies have not furnished information how the calculation of the share value adopting different methods had been done, and as such, it is difficult for him to comment whether the valuation of shares had been done correctly or not. It is, however, stated that the shareholders have approved the scheme.

10. The petitioners filed affidavits of their constituted Attorney, indicating that the secured creditors having considered the Scheme of Arrangement have approved it, and to prove this, both the Transferor and Transferee Companies filed letters of their secured creditors. The Transferor Company filed letters of its secured creditors, namely Industrial Development Bank of India, General Insurance Corporation of India, United India Insurance Company, HDFC Bank, IDBI Bank, BNP Paribas, Standard Chartered, expressing their "No Objection" to the proposed Scheme of Arrangement. While, the Transferee Company filed letters of its secured creditors, namely ICICI Bank and HDFC Bank, indicating their "No Objection" to the proposed Scheme of Arrangement. The Transferee Company in token of having liquidated the loans due to IFCI Limited and Birla Global Finance Co. Ltd., had filed letters addressed to them, which show that the Transferee Company had paid their dues.

11. Heard the learned counsel for the petitioners, the learned Standing Counsel for the Central Government and the learned counsel for the Official Liquidator.

12. The learned counsel for the petitioners submitted that having regard to the resolutions passed by the shareholders of the Transferor and Transferee Companies approving the Scheme of Arrangement, for amalgamation of the Transferor Company with the Transferee Company and the reduction of the existing share capital of the Transferee Company, as provided in the scheme, be allowed. He submitted that the reduction of share capital of the Transferee Company in the manner proposed, entails cancellation of capital, which has been lost and is unrepresented by available assets. He submitted that the reduction of shares does not involve any diminution of liability in respect of unpaid capital or payment to any shareholder of any paid up capital and will not prejudice the rights of any creditor either of the Transferor or of the Transferee Companies in

any manner whatsoever.

13. The learned Standing Counsel appearing on behalf of the Central Government submitted that though the Transferee Company had addressed letters dated 1-8-2003 to the Stock Exchanges of Kolkata, Mumbai and Hyderabad enclosing the Scheme of Arrangement, as agreed to by them in terms of Clause 24(f) of the Listing Agreement, for their approval, the Stock Exchange of Hyderabad had not given their consent, and unless and until, the Hyderabad Stock Exchange accords its consent, the petitioner cannot prefer the present Company Petition. The learned counsel for the petitioner to negative this contention of the Registrar of Companies, produced copy of the letter dated 1-9-2003 addressed by the Company Secretary of Hyderabad Stock Exchange to the Company Secretary of the Transferee Company stating that the Exchange does not have any objection for the Transferee Company preferring any petition to this Court for approval of the scheme. In view of this letter, the contention of the Central Government that inasmuch as the consent of the Hyderabad Exchange has not accorded its consent, the Transferee Company could not have preferred the Company Petition, cannot be accepted, and it is therefore, rejected.

14. Insofar as the objection taken by the Registrar of Companies to the effect that the shares have not been valued as per the accepted norms and accounting principle, and had been done by adopting different methods, and weightage had been given to arrive at a fair exchange ratio, is concerned, it is submitted by the learned counsel for the petitioners that inasmuch as the shareholders of the Transferor and Transferee Companies in their respective meetings held on 7-11-2003 have approved the Scheme of Arrangement and the allotment of shares, the Central Government, which is not in any way affected by such allotment of shares, cannot have any grievance. The learned counsel for the petitioners in support of his contention that the Court would not sit in appeal over the informed decision of the parties to the compromise, for the same are matters in the domain of corporate and commercial wisdom of the concerned parties, placed reliance on the judgment of the Apex Court in *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd.*, .

15. 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 a 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 parties thereto 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 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's* case (supra) 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 by the Company Court 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. (p. 506)

From the law laid down as aforesaid by the Apex Court, it becomes clear that this

Court cannot act as an appellate authority and minutely scrutinize the arrangement, and arrive at an independent conclusion whether the arrangement 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). All that the Court has to consider is whether the scheme is fair, just and reasonable and ensure that it does not run contrary to any provisions of law and it does not violate any public policy.

16. In the case on hand, though the Central Government has taken an objection with respect to the calculation of the share value, but the fact remains that the shareholders of the Transferor and Transferee Companies, who have immense interest in the affairs of the said companies, have in their meetings held on 7-11-2003, approved the scheme of arrangement, including the fair exchange ratio of the share value. Once the shareholders, who have much stake in the affairs of the companies, have in their wisdom agreed to the allotment of shares, no objection can be raised by anyone. This apart, the secured creditors of the Transferor and Transferee Companies, who have advanced huge loans, have addressed letters expressing their "No Objection" to the proposed Scheme of Arrangement. The Official Liquidator has also filed report stating that the Transferor and Transferee Companies have not conducted their affairs in a manner prejudicial to the interests of the shareholders or the general public. Inasmuch as the objections raised by the Central Government stood met by the petitioners and having regard to the report of the Official Liquidator which discloses that the affairs of the Transferor and Transferee Companies have not been conducted in a manner prejudicial to the interests of the shareholders or the general public, and having considered the Scheme of Arrangement, I am of the considered opinion that neither the Central Government nor the Official Liquidator nor this Court, should have any objection, in according approval to the Scheme of Arrangement, and more so when it is found that the Scheme of Arrangement is neither opposed to public policy nor has been made violating the statutory provisions pertaining thereto.

In the above view of the matter, the Company Petitions are liable to be allowed, and they are accordingly allowed. As a corollary, the Scheme of Arrangement, as approved by the Board of Directors and the shareholders of the Transferor and Transferee Companies in their respective meetings, is required to be sanctioned, and it is accordingly sanctioned. The transferor Company shall stand dissolved and get amalgamated with the Transferee Company without going through the process of winding up. The reduction of the existing share capital of the Transferee Company is also allowed. The petitioners 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.