

(1995) 02 CAL CK 0009

In the Calcutta High Court

Case No : Company Petition No. 379 of 1994 connected with Company Application No. 242 of 1994

In Re: Maknam Investments Ltd. and Others

Date of Decision : 13-02-1995

Acts Referred:

Companies Act, 1956 — Section 163, 163(2), 163(4), 172(3), 391

Citation : (1996) 87 CompCas 689

Hon'ble Judges : Baboo Lall Jain, J

Bench : Single Bench

Advocate : S.B. Mukherjee, S.N. Mukherjee, Ranjan Bachwat, D. Basak and Aniket Agarwal, for the Appellant; Ashok Das Adhikary and Dipak Kumar Pal, for the Respondent

Judgement

Baboo Lall Jain, J.—This is an application made under sections 391(2) and 394 of the Companies Act, 1956, for sanction of the scheme of amalgamation being annexure "A" to the petition. The scheme envisages amalgamation of Maknam Investments Ltd. (hereinafter shortly referred to as "Maknam") and Namtok Investments Ltd. (hereinafter shortly referred to as "Namtok") being the two transferor companies with India Foils Ltd. (hereinafter referred to as "IFL") being the transferee-company.

2. The case of the petitioner is, inter alia, to the effect that Maknam has an issued, subscribed and paid-up capital of Rs. 15 crores. Namtok has a paid-up capital of Rs. 14,50,00,000. The transferee-company, i.e., IFL, has a paid-up capital of Rs. 6,66,88,980 divided into 66,68,898 equity shares of Rs. 10 each fully paid up.

3. Pursuant to an order dated September 19, 1994, made by this court at the petition of the said transferee and transferor companies, meetings were held under the different chairmen appointed by this court. The said meetings were held on October 26, 1994. At the meeting of the shareholders of Maknam 99.98 per cent of the shareholders attended the meeting and they all voted in favour of the scheme and no one voted against the scheme. At the meeting of equity

shareholders of Namtok, 99.90 per cent. of the shareholders attended the meeting and they all voted in favour of the scheme. At the meetings of the preference shareholders of Maknam and Namtok, the preference shareholders who attended the meeting, voted in favour of the scheme. At the meeting of India Foils Ltd. out of holders of 66,68,898 shares, holders only of 33,16,051 shares attended the meeting. Out of the shareholders attending and voting at the said meeting, holders of 33,10,950 shares voted in favour of the scheme, and holders of 723 shares voted against the scheme. The percentage of the persons who voted against the scheme, so far as IFL is concerned, works out to .02 per cent. and of those who voted in favour of the scheme comes to 99.98 per cent. The other shareholders, holding 4,378 shares, who were present in the meeting did not cast their votes. The instant application was made for final sanction of the scheme. None of the holders of the 723 shares, who voted against the scheme, have appeared before this court to oppose this application. So far as the Union of India is concerned, it was served with a notice of this application and it has expressed through its advocate that the Union of India has no objection to the sanction of the scheme.

4. Notice of this application was published in the newspapers and Tamal Kumar Majumdar, a shareholder of India Foils Ltd., holding 13 fully paid equity shares of Rs. 10 each, has appeared and is opposing the sanction of the scheme.

5. The said Tamal Kumar Majumdar received the notice in respect of the meeting of the shareholders on October 28, 1994, The envelope in which the said notice was sent has been produced before me and it appears that the notice was posted on September 30, 1994. It also appears that due to some postal error, the notice erroneously went to Noapara on October 10, 1994, and the stamp of that post office is affixed on the said envelope. Thereafter, the envelope has been stamped with the stamp of Haridebpur which is dated October 28, 1994. According to the said objector, he received the notice on October 28, 1994, i.e., two days after the meeting was held. Such notices are issued by the chairman appointed by this court and the same are despatched by or under the supervision of the chairman by certificate of posting. Section 172(3) of the Companies Act provides that the accidental omission to give notice to or the non-receipt of notice by that member to whom it should be given shall not invalidate the proceeding at the meeting. I am satisfied that the late delivery of the notice to Sri Tamal Kumar Majumdar on October 28, 1994, was due to postal delays and/or omissions on the part of the postal authorities and this cannot be treated so as to invalidate the meeting. Even if Mr. Majumdar could have attended the meeting, his presence could not affect the result of the meeting even if he voted against the meeting.

6. The next grievance of the objector, Mr. Majumdar, is that he has not been supplied a list of members. It appears that the objector had written a letter to the chairman, Mr. B. M. Khaitan, in which he, inter alia, prayed for supply of an updated list of members upon the usual terms. Section 163 of the Companies Act provides that the company shall keep the register of members open during

business hours subject to such reasonable restriction as the company may impose to the inspection of any member, without fee. There is no allegation that any such inspection was sought to be taken. u/s 163(2)(b), a member may require a copy of such register on payment of such sum as may be prescribed for every 100 words or fractional part thereof required to be copied. This provision, in my opinion, envisages that the member on payment of such sum obtain copies of the register of members. This envisages a prior payment to the company of the prescribed sum, and it is only upon such payment that a copy is to be supplied as provided u/s 163(4). A mere request to the chairman by letter is, in my opinion, insufficient. I am not satisfied that the objector complied with the requirements of Section 163(3)(b) of the Companies Act. Furthermore, the petitioner did not even make any attempt to take any inspection of the register of members which he could do under the said Section 163 of the Companies Act. It was up to the objector to take appropriate steps for obtaining the list of members or for inspection thereof, if he was of the view that it could have in any manner helped the objector in his case before this court.

7. A point has also been taken that out of the eleven directors, only four directors were present at the meeting and that two of them did not exercise their voting right and one director voted in favour of the scheme for 800 equity shares whereas his total holding was 2,207 equity shares. The court is concerned with the total voting of the shareholders and the pattern of its voting. There is nothing to show that there is any dispute as between the directors of IFL, as is being sought to be alleged. It is said that one of the directors, Mr. Amitava Roy, has left the company and joined another company. The said Amitava Roy might have been an employee director of the IFL. In any event, the leaving of the said Amitava Roy is in no manner relevant so far as the sanctioning of the scheme is concerned.

8. The next point that has been urged in the affidavit-in-opposition is that ten groups/associated companies hold about 48.32 per cent. of the paid-up capital of India Foils Ltd. The names of the said groups/associated companies are not given in the affidavit-in-opposition affirmed by Mr. Majumdar. The scheme is a scheme as between members of the company on the one hand and the company on the other hand, and I do not see as to how a shareholder of a company can be deprived of his voting rights at a meeting of the members. The shareholders of the company stand on the same footing and they have to consider the scheme in their capacity as members and to give their votes in the meeting of the shareholders. The benefit or loss, if any, has to go to the concerned shareholders.

9. The objector has also relied on certain resolutions which were passed at the annual general meeting of the company held on August 23, 1994. The minutes of the meeting have been placed before me. The resolutions passed thereat do not provide as to the date within which the right shares are to be issued. The said resolutions also provide for various requirements to be complied with before any rights issues are to be made. For example, premium in respect of rights issues

has to be fixed by the board prior to the issues in consultation with SEBI or such other authorities as may be prescribed. The rights shares have to be issued on such date as may be fixed by the directors. Such shares have to be issued in consultation with the Calcutta Stock Exchange with reference to equity shares. By another special resolution of the same date, the board of directors was authorised to issue and allot such number of equity shares as may be required to be issued and allotted whether to the member of the company or not of an aggregate amount not exceeding Rs. 150 crores. In short, it cannot be said that there has been any violation of the special resolutions passed at the annual general meeting held on August 23, 1994, since the date of issue of the rights shares has been left to the discretion of the board of directors.

10. It was also submitted on behalf of the objector that the word "private" has not been removed from the certificate of registration and/or respective documents in spite of the fact that both the transferor companies have become public limited companies. The certificate of registration was produced before this court and it appears that the name "private" has in fact been deleted from the certificate by the Registrar of Companies, West Bengal, in respect of both the transferor companies pursuant to a letter written in that respect. Unfortunately, the copies supplied to the objector did not show the said deletion in the copy. However, I do not think that there is any substance in this objection since the name "private" has already been deleted in accordance with law in the case of both the transferor companies.

11. Objection has also been taken with regard to the increase in the share capital of the transferor companies. If there has been increase in the share capital of the transferor companies, I do not think as to how the same can be a subject-matter of objection by the objector in so far as the amalgamation of the companies is concerned.

12. It was also submitted that the objects of the transferor and transferee companies are not the same. The transferor companies are investment companies and it appears that they have made large investments. So far as the transferee company is concerned, the said transferee company also engages in investment and the investment of the transferee company as on March 31, 1994, has been shown in the audited balance-sheet at Rs. 6,17,72,295. The investments of Maknam as on March 31, 1994, are shown at Rs. 9,65,69,144 and those of Namtok as on March 31, 1994, are shown in the balance-sheet at Rs. 9,38,17,440. It shows that the transferee-company is also carrying on the business of investments as is being done by the transferor companies and that there is similarity in object so far as the business of investment is concerned. It is not necessary that all the objects should be identical in cases of amalgamation of companies.

13. The next objection that has been taken is that the income of the transferor companies is very meagre or even there are losses. So far as the transferee, IFL, is concerned, it has vast reserves and it has been earning substantial profits. The

transferor companies have undoubtedly large investments which can be utilised in the case of need for diversion in other useful purposes if the companies are ultimately amalgamated. It is a matter for the shareholders to consider commercially whether such merger is beneficial or not. The court is really not concerned with the commercial decision of the shareholders until and unless the court feels that the proposed merger is manifestly unfair or is being proposed unfairly and/or to defraud the other shareholders. Whether the merged companies will be ultimately benefited or will be able to economise in the matter of expenses is a matter for the shareholders, to consider. If three companies are amalgamated, certainly, there will be some economies in the matter of maintaining accounts, filing of returns and various other matters. However, the court is really not concerned with the exact details of the matter and if the shareholders approved the scheme by the requisite majority, then the court only looks into the scheme as to find out that it is not manifestly unfair and/or is not intended to defraud or do injustice to the other shareholders. I do not find that there is any material before me to hold that the proposed scheme of amalgamation is manifestly unfair or is intended to defraud any shareholders or to do injustice to other shareholders.

14. It was also submitted that the exchange ratio of shares has not been fixed properly. The exchange ratio has been fixed by a reputed firm of chartered accountants, namely, Price Waterhouse, and I do not think that it can be said that the same is unfair or unreasonable, simply because the objector says so. It was also submitted that the said Price Waterhouse did not fix the valuation on proper basis as required under, the guidelines issued by the Central Government. The guidelines relied on on behalf of the objector mention that the same are purely administrative instructions for internal official use 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 the exchange ratio 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 ratio as per valuations made by him, and if the same is accepted by the requisite majority of shareholders, the court will only see whether there is any manifest unreasonableness or manifest fraud involved in the matter. Mr. S. B. Mukherjee, learned counsel appearing on behalf of the companies, relied on a judgment reported in *In Re: Hindusthan General Electric Corporation Ltd.*, Some of the observations made in the said judgment are set out hereunder (at page 48) :

"The function 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 supposed 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, 239, 243 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 [Section 391(2) of the Indian Companies Act, 1956] [see

Dorman Long and Co., In re [1934] 1 Ch 635 ; [1935] 5 Comp Cas 30]. 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 of 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.

15. 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 these words "and voting" 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 a 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 Acts, 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 of Bengal Bank Ltd. Vs. Suresh Chakravartty and Others, in support of this argument, but that was a case u/s 153 of the Indian Companies Act of 1913 and so is not of assistance to Mr. Mitra."

16. He also relied on the judgment reported in Hindusthan Commercial Bank Ltd. Vs. Hindusthan General Electrical Corporation Ltd., which was in appeal from the aforesaid earlier judgment. The appeal court affirmed the said judgment of the trial court.

17. The petitioner also relied on the judgment reported in Sussex Brick Co. Ltd., In re [1960] 30 Comp Cas 536 ; [1961] 1 Ch 289 ; [1960] 1 All ER 772. In the said case, it was held as follows (at page 538 of 30 Comp Cas) :

"That being the undoubted law, I think that the present scheme and the present offer are undoubtedly open to criticism, and that a clever businessman, a man well-versed in company law and matters which influence dealings on the stock exchange, could find a good many loopholes in it. That amounts to this : the scheme is open to criticism ; but does that go far enough ? That is the difficulty in the present case. It has not been suggested on behalf of the applicant that there has been any bad faith or any intentional misleading of the applicant, but although the scheme is open to a good deal of criticism, which, might be enlarged on at great length in one or more circulars, what exactly the effect on the mind of the shareholders would have been I do not pause to inquire. That the scheme is open to criticism I have no doubt, but can it be said therefore, to be unfair ? I think it rather difficult to predicate unfairness in any case in which there has been perfect good faith on the side of the person who is alleged to have been unfair, I think that the applicant is faced with the very difficult task of discharging an onus which is undoubtedly the heavy one of showing that he, being the only man in the regiment out of step, is the only man whose views ought to prevail. That is the difficulty he is faced with in the present case.

I agree that certain criticisms set out in the applicant's affidavit show that a good case could be made out for the formulation of a better scheme, of a fairer scheme, of one which would have been more attractive to the shareholders if they could have understood the implications of the criticism. I have no doubt at all that a better scheme might have been evolved, but is that enough ? Is it necessary to establish the validity of such an offer as put forward in the present case ? Is there any point in the scheme on which a better view might have prevailed, and rather more generous treatment might have been offered to persons whose shares are sought to be expropriated ? A better and fairer offer might have been made, possibly, but I do not think that because a scheme is not 100 per cent, fair or right, there is the kind of unfairness with which Maugham J. was dealing in the case Hoare and Co., In re [1933] 150 LT 374 to which I have

referred. The mere finding of items, or details, in the scheme which are open to valid criticism, is not unfairness consistent with the spirit of that judgment.

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] Ch 434 (CA), where the test laid down by Maugham J. in *Hoare and Co.*, *In re* [1933] 150 LT 374 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 . . .

There is no suggestion that there has been anything like intentional cheating or deception on the part of those promulgating this scheme and, particularly, on the part of the authors of the circular.

Without putting my own view as to how this scheme could have been improved and made a little more favourable and a little more fair, perhaps, to the ordinary shareholders, I do not think that unfairness in the sense in which it has been used in the reported cases has been established. It must be affirmatively established that notwithstanding the view of the majority, the scheme is unfair, and that is a different thing from saying that it must be established that the scheme is not a very fair or not a fair one : a scheme has to be shown affirmatively, patently, obviously and convincingly to be unfair."

18. Learned counsel on behalf of the respondent objector relied on the judgment in *Alembic Chemical Works Co. Ltd. Neomer Ltd.*, 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 Neomer 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."

19. 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 as 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 Neomer 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 a 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 the 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 almost three crores of rupees by way of tax benefit would also result to Alembic.

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 a 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 scrutinized 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."

20. The petitioner relied upon the judgment of the Supreme Court in *Hindustan Lever Employees' Union v. Hindustan Lever Limited* [1995] 83 Comp Cas 30. In the said case, one of the attacks on the sanction of the scheme was that there were statutory violation, procedural irregularities of provisions of the Act and undervaluation of shares. The Supreme Court held that there was no violation of Section 391(1)(a) of the Act and the claim that the disclosures in the explanatory statements were not as required was without basis, as it was not established that the statement did not disclose the correct financial position of Tomco, nor was there anything to show that the material was not disclosed. The court held that the petitioner failed to establish any fraud or prejudice. On the valuation of shares for the exchange ratio, the court found that a well-reputed valuer of a renowned firm of chartered accountants and a director of Tomco determined the rate by combining three well-known methods, namely, the net worth, the market value method and the earning method. The figure so arrived at could not be shown to be vitiated by fraud and mala fide and the mere fact that the determination done by a slightly different method might have resulted in different conclusion would not justify interference unless it was found to be unfair. In the instant case also, it was sought to be suggested that the explanatory statement did not disclose the full facts. The said explanatory statement was settled by an officer of this court and I do not think that the same can be challenged by simply saying that the same did not disclose the full facts. So far as the requirements of the statute are concerned, the same have been complied with. As in the case before the Supreme Court, here also overwhelming members of the company have supported the claim and have not complained about the lack of notice and/or the insufficiency of notice or lack of understanding of the same, and it will not be right to hold that the explanatory statement was not proper or was lacking in any material particulars.

21. In the said case *Hindustan Lever Employees' Union v. Hindustan Lever Limited* [1995] 83 Comp Cas 30 (SC) at page 39, the Supreme Court, inter alia, held as follows :

"Section 394 casts an obligation on the court to be satisfied that the scheme of amalgamation or merger was not contrary to public interest. The basic principle of such satisfaction is none other than the broad and general principles inherent in any compromise or settlement entered into between parties that it should not be unfair or contrary to public policy or unconscionable. In amalgamation of companies, the courts have evolved the principle of "prudent business management test" or that the scheme should not be a device to evade law. But when the court is concerned with a scheme of merger with a subsidiary of a foreign company then the test is not only whether the scheme shall result in maximising the profits of the shareholders or whether the interest of employees was protected, but it has to ensure that merger shall not result in impeding promotion of industry or obstruct growth of the national economy. Liberalised economic policy is to achieve this goal. The merger, therefore, should not be contrary to this objective. Indeed, the power of the court is to be satisfied only whether the provisions of the Act have been complied with or that the class or classes were fully represented and the arrangement was such as a man of business would reasonably approve between two private companies-may be correct and may normally be adhered to, but when the merger is with a subsidiary of a foreign company, then the economic interests of the country may have to be given precedence. The jurisdiction of the court in this regard is comprehensive.

Here, each of the challenges claimed to be violative of public interest has to be examined in the prevailing atmosphere which opted for liberalisation of the Government policies to promote economic growth of the country, What is remarkable is that the Legislature itself has amended Foreign Exchange Regulation Act, 1973, by Act 29 of 1993 ("FERA" for short), the Monopolies and Restrictive Trade Practices Act, 1969, and the Companies Act, 1956, by Act 58 of 1991.

The scheme of amalgamation does not run counter to any legislative provision or policy of the Government. Even assuming that the assets are being transferred for a very meagre sum, but that by itself would not render the agreement bad or against public policy. Once the FERA was amended and assets of the Indian company could be transferred to the foreign company, then the amalgamation cannot be withheld when the shareholders themselves did not raise any objection nor was it raised by financial institutions or statutory bodies. The challenge, therefore, founded on transfer of assets at a lower price cannot be upheld as violative of public interest."

22. The court further held (at pages 55 and 57 of 83 Comp Cas) :

"It was contended by Mr. Dholakia that a foreign company was being given a

large interest in the assets of Tomco at a gross undervalue. We are unable to uphold this argument. The shareholder has no interest in the assets of the company while the company is in existence. It is only at the stage of liquidation of the company that the shareholders become interested in the assets of the company. The share of any member in a company is movable property and transferable in the manner provided by the articles of the company. This is provided by Section 82 of the Companies Act. The definition of "goods" in the Sale of Goods Act, 1930, specifically includes stocks and shares. A share represents a bundle of rights which includes, inter alia, the rights (i) to elect directors ; (ii) to vote on resolutions at meetings of the company ; (iii) to enjoy the profits of the company, if and when dividend is declared and distributed ; and (iv) to share in the surplus, if any, on liquidation. In the case of *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, , the position of a shareholder was explained . . .

A similar question came up for consideration before a Division Bench of the Gujarat High Court in the case of *Alembic Chemical Works Co. Ltd. Neomer Ltd.*, That was also a case of amalgamation. In that case, it was held that the exchange ratio of the shares of the two companies, which were being amalgamated, had to be stated along with the notice of the meeting. How this exchange ratio was worked out, however, was not required to be stated in the statement contemplated u/s 393(1)(a)."

23. At one stage, the company had offered to the objector to make arrangements for purchase of the objector's shares at a price Rs. 5 higher than those prevailing on or before the time when the scheme was initially proposed. However, the objector declined to accept such offer.

24. I do not think that the objector has made out any case for rejecting the sanctioning of the scheme. There will, therefore, be an order in terms of prayers (a) to (j) of the petition of the petitioners dated November 10, 1994. There will be no order as to costs, save and except that the petitioners will pay the costs of the Central Government, assessed at 150 G. Ms.

25. All parties concerned to act on the signed copy of the operative part of this judgment and order on the usual undertaking.