(2004) 05 BOM CK 0037

In the Bombay High Court

Case No : Company Petition No. 73 of 2004 connected with Company Application No. 544 of 2003

In Re: Morarjee Goculdas Spg. and Wvg. Co. Ltd.

Date of Decision : 06-05-2004

Acts Referred:
Companies Act, 1956 — Section 391

Citation : (2004) 4 MhLj 192

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Janak Dwarkadas and S.A. Divan, instructed by Crawford Bayley and Co, for the Appellant; R.C. Master, Panel Counsel, instructed by T.C. Kaushik, for the Respondent

Judgement

Anoop V. Mohta, J.—The present Company Petition has been filed by the Company known as the Morarjee Goculdas Spinning and Weaving Mills Company Limited, a company deemed to be incorporated under the Companies Act and having its registered office at Administrative Building Morarjee Mills Compound, Dr. Ambedkar Road, Parel, Mumbai, whereby Section 391 to 394 of the Companies Act have been invoked for sanctioning the Scheme of Arrangement whereby the Morarjee Goculdas Spinning and Weaving Company Limited (for short "Morarjee" "petitioner-company" and/or "transferor-company") shall stand demerged or transferred to and vested in Canere Actives and Fine Chemicals Private Limited (for short "Canere" and/or "transferee company") as a going concern with effect from 1st December 2003 in terms of the Scheme of Arrangement (for short "Scheme"), without further act, deed, matter or thing pursuant to Section 394 of the Act and, inter alia, for vesting the Tools Division of the petitioner-company without any further act or deed in Canere.

2. The authorised, issued and subscribed paid-up capital of the petitioner-company passed on the latest audited account and Balance Sheet of the petitioner-company for the year ended 30th September, 2002 and unaudited Balance Sheet for half-year ended 31st March, 2003, is as under:

3. The transferee-company, Canere, has its Registered Office at 405-408, Navbharat Estate, Zakaria Bunder Road, Sewree, Mumbai. The authorised, issued, subscribed and paid up shares of Canere is as under :

4. The latest audited accounts and balance sheet of Canere for the period ended on 31st December, 2003, is annexed to the Petition.

5. Pursuant to the object of the respective companies, as set out in its respective Memorandum of Associations, they have decided to have a Scheme of Arrangement in question.

6. By order dated 12th December, 2003, and by further order dated 18th December, 2003, in Company Application No. 544 of 2003, the Court has directed the petitioner-company to convey a meeting of its equity shareholders on 15th January, 2004. The meetings of the secured and unsecured creditors of the petitioner-company were dispensed with by the said orders.

7. The notice of the said meetings were accordingly sent individually to the equity shareholders of the petitioner with the copies of the said Scheme of Arrangement, the statement required u/s 393 of the Act, the form of proxies. The notice of the said meeting was also advertised, as ordered. The petitioner-company accordingly, has filed Affidavit proving publication of the notice, convening the meetings of the equity shareholders of the petitioner-company.

8. As per Clause 24(f) in the Listing Agreement between the petitioner-company and the respective Stock Exchanges (Bombay Stock Exchange and National Stock Exchange), a copy of the Scheme was filed by the petitioner-company on 28th November, 2003 with both the Stock Exchanges. The BSE and NSE have both issued the No Objection letters dated 13th January, 2004, and 14th January, 2004 respectively to the Scheme.

9. On 15th January, 2004, meetings of the equity shareholders were held and the Scheme of Arrangement was submitted for their approval. By overwhelming majority, the Scheme in question was passed as referred in paragraph 23 of the Petition. The terms and implications of the scheme were briefly explained and after due deliberation, it was approved. The Chairman of the meeting, Mr. Ajayji Piramal, has filed his Affidavit verifying the Chairman''s Report dated 16th January, 2004. As per the Scheme, the effective date would be from the date of the certified or authenticated copies of the order of this Court under Sections 391 to 394 of the Act, sanctioning the Scheme. There is no investigations pending or have been initiated in relation to the petitioner-company u/s 235 to 251 of the Companies Act.

10. As per the Scheme Clause 5.4, reduction of share premium account is necessary. Therefore, procedure prescribed u/s 100 to 104 of the Companies Act read with the Rules have been complied with. A Special Resolution was accordingly passed with overwhelming majority on 15th January, 2004 and the consent of the shareholders of the petitioner-company have been recorded u/s

100 read with Section 78 of the Act. Notice was accordingly issued with the explanatory statement to the approval of the Scheme of Arrangement with the Special Resolution passed.

11. With all the necessary averments and documents, the Company Petition in question was filed on 16th January, 2004, which was re-verified on 26th March, 2004. The reason for revivification is to add Nicholas Piramal India Limited (for short "NPIL"), the successor of Canere Actives and Fine Chemicals Limited in pursuance to another Scheme.

12. By order dated 30th January, 2004, the petition was admitted and fixed for hearing on 18th March, 2004. The notices were issued to the Regional Director and upon all remaining creditors out of which notices to 188 unsecured creditors have been dispensed with in view of the averments made in paragraphs 3, 4 and 5 of the Additional Affidavit of Mr. Leonard D''Souza dated 30th January, 2004.

13. The Regional Director, by his Common Affidavit dated 7th April, 2004, in Company Petition No. 73 of 2004 and Company Petition No. 91 of 2004, after verifying the Report of the concerned Registrar of Companies, confirmed that the Scheme is not prejudicial to the interest of the creditors and shareholders. The petitioner-company has also filed Affidavit proving service dated 23rd February, 2004.

14. The matter was called out and heard and there are no objections received on record or filed on record by any other parties. Counsel for the petitioner-company have also made statements that there are no objections received in this Petition, objecting to the Scheme. Mr. R. C. Master, learned counsel, appearing on behalf of the Regional Director, has also made a statement that they have no objection if the Scheme, as prayed for, is sanctioned.

15. The Scheme in question, which is part of the record, takes care of the relevant aspects as required under Sections 391 to 394 of the Companies Act. As referred above, the Scheme itself was modified by order dated 12th March, 2004, and thereby, instead of Canere, the name of NPIL has been added. Therefore, the Scheme of Arrangement provides and deals with and as the Scheme of Arrangement Morarjee Goculdas Spinning and Weaving Company Limited and Canere Actives and Fine Chemicals Limited now with successor as NPIL i.e. Nicholas Piramal India Limited. Pursuant to the Scheme of Amalgamation of Canere with Nicholas Piramal India Limited, whereby Canere in the Scheme of Amalgamation with Piramal India Limited merged/amalgamated and resulted into NPIL. It may be noted here that pending sanction of the demerger Scheme by this Court, Canere and Nicholas Piramal India Limited have proposed to enter into an arrangement as embodied in the Scheme of Amalgamation whereunder Canere undertaking would merge and amalgamate in NPIL with effect from 1st October, 2003, being the appointed date under the Scheme of Amalgamation and in consideration of NPIL to issue and allow preferential shares credited as fully paid up to the equity shareholder of Canere

as provided in the said Scheme of Amalgamation and in the result, Canere should stand dissolved without winding up when the said Scheme of Amalgamation would become effective pursuant to the order dated 6th February, 2004, in Company Application No. 37 of 2004 filed by NPIL. A meeting of equity shareholders of NPIL was duly conveyed and on 8th March, 2004, the said Canere merger Scheme had been duly approved unanimously.

16. In this background, the application was moved to modify the above Company Petition to the effect that the reference to Canere, as transferee company in the said Petition, shall now be the reference to Nicholas Piramal India Limited (NPIL), a company into which Canere is proposed to be merged as transferee company and accordingly, the Tools. Division of the petitioner-company i.e. Morarjee Goculdas which is to stand demerged and transferred and vested in Canere as a transferee company under the said demerger Scheme with effect from 1st December, 2003, i.e. the appointed date under the said demerger Scheme, shall now stand demerged and transferred to and vested in NPIL with effect from 1st December, 2003, The NPIL, instead of Canere, shall issue and allot 5% cumulative retainable preference shares credited as fully paid-up to the equity shareholders of the petitioner-company in the said proportion as stipulate in the demerger Scheme i.e. with preference share for every 5 equity share of Rs. 10/- each of the petitioner-company all the rights and obligations of Canere as transferee company under the said demerger Scheme shall stand transferred to and become those of NPIL as the transferee company. As noted above, by order dated 12th March, 2004, the said amendment was allowed and, therefore, under the present Scheme, NPIL will be read in place of Canere in view of the merger of Canere into NPIL.

17. The Scheme of Arrangement considers the basic definitions, share capital, transfer and vesting of the Tools Division of Morarjee i.e. petitioner in Canere and now NPIL as going concern free from all encumbrances, but subject to the subsisting charges as mentioned in the Scheme. The consideration of issue of shares, accounting treatment, conduct of business by Morarjee till effective date, profits division, bonus shares etc., contract deeds and other instruments, legal proceedings, transfer of employees of Morarjee (Tools Division) have been dealt with in accordance with law. The usual provisions of modification and amendment to the Scheme conditional or approval or sanction of the Scheme, date of taking effect of the operative date has also been dealt with. Considering the Scheme as a whole and its purpose and after hearing the parties, as there is no illegality or any unreasonableness has been pointed out or objected to by anybody, the Scheme appears to be sound, fair, reasonable and then the framework of law. All the necessary requisite formalities have been complied with. The majority of shareholders, after considering all the material documents and requisite details have, by overwhelming majority, accepted the Scheme of Arrangement. In such circumstances, in view of the settled principle of law, as referred to in Miheer H. Mafatlal v. Mafatlal Industries Limited (1994) 87 Comp Cas 792 and in the judgment passed by this Court [Hon. Anoop V. Mohta, J.J in

Company Petition No. 120 of 2004 connected with Company Application No. 540 of 2003 [Larsen and Toubro] dated 22nd April, 2004, I am of the view that the Scheme of Arrangement in this case is required to be sanctioned, as prayed.

18. In view of the above, the sanction of the Scheme, as prayed, is granted. The Company Petition No. 73 of 2004 is made absolute in terms of prayer Clauses (a) to (o) with liberty. Parties to proceed in accordance with law.

19. Costs of Rs. 2,500/- to the Regional Director be paid by the petitioner within a period of four weeks from today.

Parties to act on an ordinary copy of this order, duly authenticated by the Company Registrar of this Court.

Certified Copy expedited.

