

(2010) 05 RAJ CK 0060
In the Rajasthan High Court
Case No : Company Petition No. 10 of 2007
In Re: Multimetals Ltd.

Date of Decision : 06-05-2010

Acts Referred:

Companies Act, 1956 — Section 101, 102, 103, 104, 105

Citation : (2010) 103 SCL 352

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Instant company petition has been filed u/s 391 of Companies Act, 1956 ("the Act") by Multi Metals ("the Company") seeking sanction of Scheme of Arrangement providing for conversion of 65 lakh preference shares (out of 130 lakh shares, each of Rs. 10) into equity shares and reorganization of share capital, having been held by Hadoti Vikas Punji Ltd., Kota pursuant to Resolution passed by Board of Directors of the company on 5-9-2008.

2. The company initially filed Co. Appl. No. 12/2007 u/s 391 of the Companies Act on 22-1-2007 seeking directions to hold separate meetings of its preference and equity shareholders for consideration of scheme of Arrangement; wherein vide order dated 23-2-2007, this Court directed for holding of separate meeting of shareholders on 28-3-2007 at Company's registered office at Kota under Chairmanship appointed by the court. Pursuant to their separate meetings of preference and equity shareholders held on 28-3-2007 wherein the Scheme of Arrangement was unanimously passed and the report of meetings in Form No. 39 was filed on 4-4-2007 before this Court.

3. Consequent upon the report being submitted (supra), present company petition has been filed u/s 391(2) of the Companies Act - notices of which were issued on 23-11-2007 to the Regional Director, Department of Corporate Affairs, Noida and for its publication. After publication of notices in daily news papers the Statesman (Delhi Edn.) on 13-12-2007 and Dainik Bhaskar (All Rajasthan Edition) on 12-12-2007, copies whereof have been placed on record. Notices

were duly served upon Regional Director, Department of corporate Affairs, NOIDA and despite notices being published in newspapers, no objection to the sanction of the Scheme of Arrangement has been filed. At the same time, the company being a listed Company, has also obtained no objection in that regard from Regional Stock Exchange (i.e., Jaipur Stock Exchange Ltd.) vide letter dated 20-10-2008 (Ann. 7).

4. However, objections have been filed by one Phool Chand Bhagat Singh and Raj Metals and Alloys claiming themselves as creditors of the company on 19-9-2008. These objectors basically have raised three-fold objections that conversion of preference share into equity shares by way of sanction of Scheme of Arrangement which Petitioner-company has sought, in fact amounts to redemption of preference shares; for which the company is required to comply with mandatory requirement u/s 80 of the Companies Act; and the exercise initiated u/s 391 of the Act is not maintainable. Further objection is that since the process involves "reduction in capital", hence, Petitioner-company is under obligation to comply with provisions contained in Sections 101 - 104 of the Act, which has not been followed; and further objection is that meeting of creditors ought to have been called for consideration of the Scheme of Arrangement as proposed by the company.

5. Counsel for objectors submits that when a specific procedure has been provided under the Companies Act, provisions of Sections 391 - 394 cannot be invoked to circumvent procedure provided under the law; and that apart, Articles of Association of the company being a constituent document is binding upon company (Petitioner) while Article 8(d) of the Articles of Association clearly provides that such shares if are redeemed, should be in consonance with Section 80(2) of the Act, and shall be binding upon the company. Counsel submits that the proposed Scheme of Arrangement being contrary to provisions of law may not be approved by this Court. In support, counsel relied upon decisions of Apex Court in *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd.*, and of this Court in *RE Skipper Electricab (India) Ltd.*, *In re [2007] 136 Comp. Cas. 790 : 75 SCL 270 (Raj.)*.

6. While meeting out objections raised by the objectors, Counsel for Petitioner-company submits that present modus of scheme envisages organization of its capital and the term "Arrangement" used in Section 391 has been defined in Section 390 of the Companies Act *ad infra*:

390. Interpretation of Sections 391 and 393.-In Sections 391 and 393,:

(a) the expression "company" means any company liable to be wound up under this Act;

(b) the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods; and

(c) unsecured creditors who may have filed suits, or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

6.1 Counsel further submits that Scheme of Arrangement being placed in the proposed Form cannot be considered to be reduction in share capital but involves its re-organization where a part of preference share capital is being converted into equity share capital; inasmuch as where reduction in face value of preference share capital takes place, there may have an interplay in between Section 106 (variation in rights and share holders) and Section 391 of the Act.

6.2 Counsel further submits that the special rights to a class of shares are altered by machinery of a Scheme of Arrangement and u/s 391, the Court may sanction a scheme which involves alteration of class rights.

6.3 Counsel further submits that what has been required to be examined regarding the scheme u/s 391 of the Act is to ensure that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith; and were not playing coercion with the minority so as to promote any interest adverse to that of the latter comprising the same class to whom they purported to represent; and the scheme as a whole appears to be just, fair and reasonable from a point of view of a prudent man of business taking a commercial beneficial to the class represented by them for whom the scheme is meant.

6.4 Counsel further submits that since the present Scheme of Arrangement aimed as alleged, may affect right of shareholders, viz., preference and equity shareholders, constituting arrangement between the company and preference shareholders as well as the company and equity shareholders whose separate meetings pursuant to directions of the Court were convened, wherein resolution approving Scheme of Arrangement proposed was unanimously passed; in such circumstances, objections raised by the objectors are only to oppose the Scheme of Arrangement for their own personal reasons despite having remained contended with outcome in *Raj Metal & Alloy v. Multimetals Ltd.* Company Petition No. 10 of 2006 and *Phool Chand Bhagat Singh v. Multimetals Ltd.* C.P. No. 9 of 2006, dated 1-2-2008], by which both the petitions were indisputably dismissed as withdrawn and not pressed since the company had paid their alleged dues without any further objection.

7. This Court has considered rival contentions advanced by counsel for both the parties, and with their assistance, examined the material on record as well as the Scheme of Arrangement taking note of reports having been duly furnished based on unanimous resolution approving the scheme, itself in separate meetings of preference and equity shareholders held pursuant to order of this Court. It is relevant to mention that no objection to the Scheme of Arrangement proposed by present Petitioner-company has been filed either by Regional Director, Department of Corporate Affairs, Noida, or by preference and equity shareholders.

8. The scope and ambit of jurisdiction of the company court has been examined by Apex court in *Miheer H. Mafatalal's* case (*supra*); and broad contours of such jurisdiction have emerged *ad infra*:

(1) The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meeting as contemplated by Section 391(1)(a) have been held.

(2) That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391(2).

(3) That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just fair to the class as whole so as to legitimately blind even the dissenting members of that class.

(4) That all the necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391(1).

(5) That all the requisite material contemplated by the provision of Sub-section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

(6) That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view of to satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.

(7) That the company court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.

(8) That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

(9) Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court, there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme

rather than its supervisory jurisdiction.

The aforesaid parameters of the scope and ambit of the jurisdiction of the company court which is called upon to Sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction.

Objections raised and the material placed on record for seeking approval of the Scheme of Arrangement have to be examined in the light of parameters (supra) laid down by Apex Court.

9. As regards present objectors who claim themselves to be creditors, suffice it to say that they cannot be said to be affected directly or indirectly in any manner since the Scheme of Arrangement proposed by Petitioner-company indisputably does not affect the right of these alleged objectors, and is only with regard to conversion of preference shares into equity shares, besides reorganization of share capital.

10. Their basic objection that since the conversion of preference shares into equity shares amounts to redemption of preference shares, the company was under obligation to comply with Section 80 of the Act; and the provisions relating to reduction in share capital under Sections 101 - 105 of the Company Act, in the opinion of this Court is without substance. What has been proposed under the Scheme of Arrangement by Petitioner company will not amount to redemption of preference shares and if at all there would have been any objection, it could have been raised only by preference and equity shareholders but indisputably, no objection has been raised by either of them; whereas on the contrary, separate meetings of preference and equity shareholders were convened pursuant to order of this Court, wherein resolutions were unanimously passed for approval of Scheme of Arrangement-sanction of which is being sought for by Petitioner-company herein.

11. In fact, provisions contained in Section 80(1) provide protection to preference shareholders and their interest from any unilateral action of the company and so also equity shareholders; inasmuch as when the company unilaterally without participation of preferential shareholders, decides to redeem their stake, naturally it shall be in terms of Section 80(1) of the Act, and not otherwise.

12. In the instant case, while meetings of preference shareholders had taken place, all of them including equity shareholders have consented for approval of scheme of Arrangement proposed - resolution in that regard was also unanimously passed. Preference shareholders if at all adversely affected have not raised any objection to the Scheme of Arrangement impugned; in such circumstances, in the opinion of this Court, the Scheme of Arrangement proposed by Petitioner-company is not in any manner prejudicial to the interest of shareholders but it stands consented by them; therefore, there is no reason to withhold the sanction as sought for the Scheme of Arrangement as prayed for in

instant petition filed u/s 391 of the Act.

13. Consequently, company petition stands allowed; and the objections raised by the objectors stands rejected. The Scheme of Arrangement as proposed by the company (Ann. P.6) is hereby sanctioned and to be binding upon the preference share holders and equity shareholders of Petitioner-company and the Registrar (Admn.) of this Court is directed to draw "order on petition" in Form No. 41 of Companies (Court) Rules, 1959. No order as to costs.