(2007) 12 P&H CK 0101

In the Punjab And Haryana At Chandigarh

In Re: Niranjan Singh Kartar Singh Forgings P. Ltd.

Date of Decision : 14-12-2007

Acts Referred:
Companies Act, 1956 — Section 100, 394

Citation : (2009) 147 CompCas 46

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Permod Kohli, J.—This is second motion petition u/s 394 read with Section 100 of the Companies Act, 1956 and rule 79 of the Companies (Court) Rules, 1959, for sanction of the scheme of arrangement/reconstruction/reorganisation of the transferor company - M/s. Niranjan Singh Kartar Singh Forgings P. Ltd., and the transferee companies- M/s. NKH Hammers P. Ltd., M/s. NKH Alloys P. Ltd., M/s. Gurman Machine Tools P. Ltd., M/s. R.G. Knitwear P. Ltd., M/s Jaissons Engineering P. Ltd., M/s. Dynamic Forgings P. Ltd., and M/s. Amarjit Alloys and Rolling Mills P. Ltd., as per the scheme (annexure P3).

2. Petitioner No. 1 is the transferor/demerged company whereas the companies listed at Sr. Nos. 1 to 7 in the cause title are the transferee companies who are to take over various units of transferor company/demerged company whose units are being hived off, transferred and segregated with the transferee companies. Earlier the transferor company has filed a joint company petition bearing No. 93 of 2004 u/s 391(1) of the Companies Act for sanction of scheme of arrangement, reconstruction/reorganisation of the transferor company with the transferee companies. The said petition was disposed of by this court vide order dated August 6, 2004, with liberty to file a petition u/s 394 of the Companies Act read with Rule 79 of the Companies (Court) Rules, 1959. Thereafter, another C.A. No. 43 of 2006 came to be filed for withdrawal of the Company Petition No. 93 of 2004 with permission to file fresh petition on the ground that the scheme of arrangement had been based upon misunderstanding between the family members, and was not made in conformity with memorandum of understanding.

This court allowed the Company Application No. 43 of 2006 vide its order dated January 19, 2006 and liberty was granted to the petitioners to file fresh petition on the same cause of action in tune with the memorandum of understanding on payment of costs of Rs. 50,000 as awarded in the petition. Costs stand paid and pursuant thereto, a fresh Company Petition No. 22 of 2007 u/s 391 was filed in this court. Vide order dated March 15, 2007, this court dispensed with the necessity of convening meetings of the equity shareholders of the petitioners-companies as well as the unsecured creditors of the transferor company for approving the proposed scheme of arrangement/reconstruction/reorganization.

3. Further, liberty was granted to file petition u/s 392 of the Companies Act read with rule 79 of the Rules. The transferor/demerged company was incorporated on February 4, 1974, by S. Niranjan Singh and S. Kartar Singh, since deceased, both brothers and son of late Shri S. Budha Singh and his son S. Hira Singh. Later on, their family members joined the business and with the passage of time, they formed and incorporated various companies and partnership firms and expanded their business activities. Over a passage of time, the families of S. Niranjan Singh and S. Kartar Singh grew and their grandchildren also joined the business and became shareholders and directors in the transferor company. It appears that due to some differences and disputes amongst the members of the families representing different groups, the families entered into a family settlement/memorandum of understanding amongst the shareholders of the transferor and transferee companies for distribution of their assets and segregation of their business. The present scheme of arrangement/ reconstruction/reorganisation has been prepared with a view to implement the family arrangement between the shareholders of the transferor and transferee companies.

4. The transferor company M/s. Niranjan Singh Kartar Singh Forgings P. Ltd. (M/ s. NSKS P. Ltd.) was incorporated on February 4, 1974, under the Companies Act, 1956, with the Registrar of Companies, Punjab, HP and Chandigarh at Jalandhar city. The word "private" was deleted on March 2, 1987, u/s 43A of the Companies Act, 1956, being construed as deemed public company. However, the word "private" was restored vide order of the Registrar of the Companies dated October 19, 1987. The transferor/demerged company is having its registered office at Radha Swami Satsang, Ghar Street, Chandigarh Road, Ludhiana. The authorised share capital of the company as on March 31, 2006, is Rs. 50,00,000 consisting of 46,000 equity shares of Rs. 100 each aggregating to Rs. 46,00,000 and 4,000 redeemable cumulative preference shares of Rs. 100 aggregating Rs. 4,00,000. Issued and paid-up share capital as on March 31, 2006, is Rs. 30,00,000 consisting of 26,000 equity shares of Rs. 100 each aggregating Rs. 26,00,000 and 4,000 redeemable preference shares of Rs. 100 each aggregating Rs. 4,00,000. The entire shareholding has been held, owned and controlled by NSKS family, out of which 50 per cent, of the shareholding is held by group "I"/ group "A" and 50 per cent, of the shareholding is held by group "I"/group "B". It is not necessary to give details of the shareholdings held by individual family

members. It has also come on record that 600 equity shares of Rs. 100 each aggregating Rs. 60,000 were held by Ms. Charan Kaur, wife of late Shri Kartar Singh, who expired on October 26, 2001 and after her demise her shares stand transmitted to her three sons in equal proportion. The objects for which the transferor company was established include to carry on business of manufactures, importers, sellers, purchasers and dealers in all kinds of forgings, hammers, presses and other forging machinery and castings, steel makers, steel converters, plate makers, manufacturers of agricultural implements and all kinds of machinery, tools, brass foundry metal workers, boiler makers, metallurgists and all kinds of rolling works, including bolts, nuts, revots, washers, screws, rods, bars, pipes, wires and all kind of ferrous and non-ferrous, rolling works.

5. Sub-clause 20 of Clause III(B) of the objects incidental or ancillary to the main objects of the memorandum of demerged company empower the company to merge/amalgamate with other companies. The board of directors of the transferor/demerged company in their meeting held on March 29, 2004, in pursuance to Clause 22, resolved to prepare the draft scheme or arrangement/ reconstruction/reorganisation for implementation of hiving off/transferring/ demerging/segregating the units of the transferor company to the various transferee companies.

6. The equity shareholders and preference shareholders in their extraordinary general meetings/class meetings held on March 26, 2004 and creditors in their class meeting held on March 27, 2004, have resolved and authorised the board of directors/committee of directors of the transferor company to frame and draft a scheme for this purpose.

7. All the shareholders (equity/preference) of the transferor company have filed their affidavits conveying no objection to the proposed scheme of arrangement being sanctioned. The transferor company has no secured creditors and has only one unsecured creditor, i.e., NK Forging and Rolling Industries, a partnership firm. This firm has given an affidavit through its partner S. Hira Singh conveying no objection for the approval of the proposed scheme.

8. The transferee company-1, M/s. NKH Hammers P. Ltd., was incorporated on March 25, 2004, under the Companies Act, 1956 with the Registrar of Companies, Punjab, HP and Chandigarh at Jalandhar city. Its registered office is situated at Radha Swami Satsang Ghar Street, Chandigarh Road, Ludhiana. The authorised share capital of the company as on March 26, 2004, is Rs. 1,00,000 divided into 10,000 equity shares of Rs. 10 each. Its issued and paid-up share capital as on March 26, 2004, is Rs. 1,00,000 consisting of 10,000 equity shares of Rs. 10 each.

9. The entire shareholding of M/s. NKH Hammers P. Ltd., has been held, owned and controlled by NSKS family and 100 per cent, of the shareholding is held by group T7group "A". The company is entitled to amalgamate/merge in terms of Sub-clause 30 of Clause III(B) of the objects incidental and ancillary to the

attainment of the main objects of the memorandum of association. The board of directors in their meeting held on August 2, 2006, agreed to accept the scheme of arrangement/demerger/segregation/appropriation of its assets and further authorised S. Hira Singh to represent the company in the matter of proposed scheme. It has two equity shareholders, i.e., Shri Niranjan Singh and S. Hira Singh, each having 5,000 equity shares of Rs. 10 each. Both the shareholders have conveyed no objection for the proposed scheme by filing their affidavits.

10. The transferee company-2, M/s. NKH Alloys P. Ltd., was incorporated on August 5, 2003, under the Companies Act, 1956, with the Registrar of Companies, Punjab, HP and Chandigarh at Jalandhar city. Its registered office is situated at Radha Swami Satsang, Ghar Street, Chandigarh Road, Ludhiana. The authorised share capital of the company as on March 31, 2006, is Rs. 4,00,000 consisting of 40,000 equity shares of Rs. 10 each. Its issued and paid-up share capital as on March 31, 2006, is Rs. 1,00,000 consisting of 10,000 equity shares of Rs. 10 each. Its entire shareholding has been held, owned and controlled by NSKS family and 100 per cent, of the shareholding is held by group "I"/group "A".

11. The company is entitled to amalgamate/merge in terms of Sub-clause 30 of Clause III(B) of the objects incidental and ancillary to the attainment of the main objects of the memorandum of association. The board of directors in their meeting has resolved to accept the proposed scheme. The shareholders have also in their extraordinary general meeting resolved to take over the hived off/ transferred and demerged unit(s) of M/s. Niranjan Singh Kartar Singh Forgings (P) Ltd. The board of directors of the company vide its resolution dated August 2, 2006, gave their acceptance to the scheme of arrangement/demerger/ reorganisation. It has two equity shareholders, i.e., S. Basant Singh having 1,000 equity and Smt. Kulwant Kaur having 9,000 equity shares of Rs. 10 each. Both the shareholders have given no objection to the proposed scheme by filing their affidavits.

12. Transferee company-3 M/s. Gurman Machine Tools P. Ltd., has its registered office at Radha Swami Satsang, Ghar Street, Beant Pura, Chandigarh Road, Ludhiana. Its authorised share capital as on March 31, 2006, is Rs. 1,00,000 consisting of 10,000 equity shares of Rs. 10 each. Its issued and paid-up share capital as on March 31, 2006, is Rs. 1,00,000 consisting of 10,000 equity shares of Rs. 10 each. Its entire shareholding has been held, owned and controlled by NSKS family and 100 per cent, of the shareholding is held by group "I"/group "A". Its main objects are to carry on the business of manufacturers, assemblers, exporters, sellers, purchasers, dealers in all kind of milling, planning, snapping, gear cutting and slotting machines. Sub-clause 30 of Clause III(B) of the objects incidental and ancillary to the attainment of the main objects of the memorandum of association empowers the company to amalgamate/merge/take over the running units of any other company, subject to provisions of Sections 391 to 394 of the Act.

13. The board of directors in their meeting on August 2, 2006, has resolved to

take over the hived off/transferred and demerged units of the company and to prepare a draft scheme of arrangement/reconstruction/reorganisation for implementation of hiving off/transferring demerging the units of the transferor company. The shareholders have also in their extraordinary general meeting resolved to take over the hived off/transferred and demerged unit of M/s. Niranjan Singh Kartar Singh Forgings P. Ltd. The board of directors of the company vide its resolution dated August 2, 2006, gave their acceptance to the proposed scheme. This company has two equity shareholders, i.e., S. Sarabjit Singh having 1,000 equity shares and Smt. Sharanjit Kaur having 9,000 equity shares of Rs. 10 each. Both the shareholders have given no objection by their affidavits to the proposed scheme.

14. Transferee company-4 M/s. R.G. Knitwear P. Ltd., was incorporated on August 5, 2003, under the Companies Act, 1956, with the Registrar of Companies, Punjab, HP and Chandigarh at Jalandhar city. Its registered office is situated at Radha Swami Satsang, Ghar Street, Beant Pura, Chandigarh Road, Ludhiana. Its authorised share capital as on March 31, 2006, is Rs. 1,00,000 consisting of 10,000 equity shares of Rs. 10 each. Its issued and paid-up share capital is Rs. 1,00,000 consisting of 10,000 equity shares of Rs. 10 each. Its entire shareholding has been held, owned and controlled by NSKS family and 100 per cent, of the shareholding is held by group "I"/group "A". It was incorporated for the achievement of the objects as contemplated in the memorandum of association of the transferee company. The main objects contained in the memorandum of association of the transferor company do not permit the company to carry on the business as contained in unit No. 5, but the main objects of the transferee company do permit, thus, if required, the transferor company shall alter its main objects suitably on or before the scheme is made effective. Sub-clause 30 of Clause III(B) of the objects incidental and ancillary to the attainment of the main objects of the memorandum empowers the company to amalgamate/merge/take over the running units of any other company. The board of directors in their meeting on August 2, 2006, has resolved to take over the hived off/transferred and demerged units of the company and to prepare a draft scheme of arrangement/reconstruction/reorganisation for implementation of hiving off/transferring/demerging the units of the transferor company. The shareholders have also in their extraordinary general meeting resolved to take over the hived off/transferred and demerged unit of M/s. Niranjan Singh Kartar Singh Forgings P. Ltd. The board of directors of the company vide its resolution dated August 2, 2006, gave their acceptance to the proposed scheme. This company has two equity shareholders, i.e., S. Sarabjit Singh having 1,000 equity shares and Smt. Sharanjit Kaur having 9,000 equity shares of Rs. 10 each. Both the shareholders have given no objection by their affidavits to the proposed scheme.

15. Transferee company No. 5-Jaissons Engineering P. Ltd., was incorporated on November 5, 1998, under the Companies Act, 1956, with the Registrar of Companies, Punjab, HP and Chandigarh at Jalandhar city. Its registered office is

situated at plot No. 1A, Industrial Area "A", Link Road, Ludhiana. Its authorised share capital of the company as on March 31, 2006, is Rs. 10,00,000 consisting of 1,00,000 equity shares of Rs. 10 each. Its issued and paid-up share capital is Rs. 1,00,000 consisting of 10,000 equity shares of Rs. 10 each. Its entire shareholding has been held, owned and controlled by NSKS family and 100 per cent, of the shareholding is held by group "II"/group "B". Its objects are to carry on business of civil, mechanical, electrical, electronics and consulting engineers, agricultural engineers, aeronautical engineers, aviation engineering and to carry on the trades or business of dealers, traders, importers, iron masters, steel makers, plate makers, steel converters, etc. The board of directors has in their meeting resolved to accept the proposed scheme vide its resolution dated August 2, 2006. It has two equity shareholders, i.e., S. Kulwant Singh having 9,900 equity shares and Smt. Ranjit Kaur having 100 equity shares of Rs. 10 each. Both the shareholders have given no objection through their affidavits for the proposed scheme.

16. Transferee company No. 6-Dynamic Forgings P. Ltd. (Dynamic) was incorporated on August 7, 2003, under the Companies Act, 1956, with the Registrar of Companies, Punjab, HP and Chandigarh at Jalandhar city. Its registered office is situated at 1-A, Industrial Area "A", Link Road, Ludhiana. Its authorised share capital as on March 31, 2006, is Rs. 10,00,000 consisting of 1,00,000 equity shares of Rs. 10 each. Its issued and paid-up share capital as on March 31, 2006, is Rs. 1,00,000 consisting of 10,000 equity shares of Rs. 10 each. Its shareholding has been held, owned and controlled by NSKS family and 100 per cent, of the shareholding is held by group "u"7group "B". It has two equity shareholders, i.e., S. Sharan Singh having 5,000 equity shares and Smt. Surjit Kaur having 5,000 equity shares of Rs. 10 each. Both the shareholders have given no objection through their affidavits for the proposed scheme. Its main objects are to carry on business as manufacturers, importers, buyers, sellers and dealers in all kinds of steels, alloys, alloys steel, etc. The board of directors of the company vide its resolution dated August 2, 2006, has given their acceptance to the proposed scheme.

17. Transferee Company No. 7-Amarjit Alloys and Rolling Mills P. Ltd., was incorporated on August 7, 2003, under the Companies Act, 1956, with the Registrar of Companies, Punjab, HP and Chandigarh at Jalandhar city. Its registered office is situated at Gali No. 7, Baba Deep Singh Nagar, Opp. Transport Nagar, G.T. Road, Ludhiana. Its authorised share capital is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each as on March 31, 2006. Its issued, subscribed and paid-up share capital as on March 31, 2006, is Rs. 1,00,000 consisting of 10,000 equity shares of Rs. 10 each. Its entire shareholding has been held, owned and controlled by NSKS family and 100 per cent, of the shareholding is held by group "II"/group "B". The board of directors of this company vide its resolution dated August 2, 2006, has given their acceptance to the proposed scheme. It has two equity shareholders, i.e., S. Surjit Singh having 5,000 equity shares and Smt. Amarjit Kaur having 5,000 equity shares of Rs. 10

each. Both the shareholders have given no objection through their affidavits for the proposed scheme. Its main objects are to carry on business as manufacturers, importers, buyers, sellers and dealers in all kinds of steels, alloys, alloys steel, etc.

18. Units Nos. II to XI of the transferor/demerged company are to be taken over by the transferee companies as given below in accordance with the scheme:

-- Unit(s) No. Transferee Company No(s). -- I 1 III 2 IV 3 V 4 VI 5 and 6 VII 6 VIII 7 IX 5 and 6 X 5, 6 and 7 XI 5 --

19. The main object of the scheme of arrangement/reconstruction/reorganisation is to settle the mutual differences/disputes amongst the family members who are at loggerheads with each other and are involved in various civil and criminal cases. Even the functioning of the units has been adversely affected due to overlapping of the decision making body and conflict and approach and vision. It has also affected the reputation and goodwill of the family and all the companies in the general public and if allowed to continue will further create its adverse impact upon the companies, its shareholders and will also be against the public interest. The arrangement aims at bringing harmony in the family besides, providing opportunity to different groups/individuals in implementing their own independent ideas in carrying on the business activities and to exploit their individual and group potential without any conflict of opinion and interference from each other. This will ensure a public growth of the companies and will also be in public interest.

20. On filing this petition, notice of the same was directed to be published in The Tribune (English), Punjab Kesri (Hindi) and Punjab Government Official Gazette besides notices were issued to Regional Director, Department of Company Affairs and the official liquidator attached to this court, vide order dated April 5, 2007, passed by this court. Affidavit of publication has been filed. The report/affidavit of the official liquidator as also the Regional Director has also been received. The Regional Director raised an objection to the sanction of the scheme wherein it is mentioned that the company has submitted the valuation report of the transferor company.

21. However, subsequently, valuation report was obtained duly approved by the chartered accountant, M/s. K.K. Bector and Co., and has been filed as annexure A1. The report was also made available to Regional Director who has filed his additional affidavit wherein he has stated that the valuation report prepared by M/s. K.K. Bector and Co., dated June 15, 2007, has been filed. It is, however, stated that the earlier report was from M/s. V.V. Bhalla and Co., chartered accountant, Ludhiana and later report was by M/s. K.K. Bector and Co., chartered accountant and the companies may be asked to file an application for rectification of the scheme of arrangement.

22. I have considered the additional affidavit and also the scheme of arrangement. Under law, the company is required to file a valuation report prepared by the authorised chartered accountant which has been done. Since the chartered accountants who have prepared the second report are duly licensed chartered accountants, there is no need of formal rectification once it is found that the valuation report has been prepared in accordance with rules and is in order. Hence I accept the valuation report.

23. From the above said circumstances, I am of the considered opinion that me scheme of arrangement/reconstruction/reorganisation of the companies is also in order and is for larger public interest as also for the interest of shareholders of the transferor/demerged and transferee companies who are the members of the same clan. The scheme is in accordance with the family settlement and memorandum of understanding duly executed by the members of the family. The scheme is for better economic growth of the companies and also aims at creating harmony amongst the members of the family, besides providing opportunities to the respective shareholders of the transferee companies to take independent decision and to exploit their individual potential for the better and effective growth of the companies fallen to their shares.

24. It has also been stated that there are no proceedings or investigations pending against the companies under Sections 235 to 251 of the Companies Act, 1956. No person has objected to the sanction of the scheme after notice of the petition was published in two newspapers and official gazette of Punjab Government.

I accordingly allow this petition and sanction the scheme of agreement/ reconstruction/reorganisation (annexure P3) between M/s. Niranjan Singh Kartar Singh Forgings P. Ltd. (transferor company) and M/s. NKH Hammers P. Ltd., M/s. NKH Alloys P. Ltd., M/s Gurman Machine Tools P. Ltd., M/s R.G. Knitwear P. Ltd., M/s. Jaissons Engineering P. Ltd., M/s Dynamic Forgings P. Ltd., and M/s. Amarjit Alloys and Rolling Mills P. Ltd., (the transferee companies). The scheme shall come into operation from the effective date, on completion of necessary formalities. A notice of this order be published in The Indian Express (English), Dainik Bhaskar (Hindi) and Official Gazette of Government of Punjab within 30 days.

26. Any person interested shall be at liberty to approach this court in the above matter for any directions that may be necessary.

Let formal order of sanction be drawn in accordance with law.

