(1994) 11 GUJ CK 0011

In the Gujarat High Court

Case No : Company Petition No''s. 47 and 48 of 1994 and Company Application No''s. 66 and 67 of 1994

**In Re: Rangkala Investments Ltd.
 In Re: Gujarat Organics Ltd.**

Date of Decision : 17-11-1994

Acts Referred:
Companies Act, 1956 — Section 10E, 13(1), 149(2A), 149B, 17

Citation : (1997) 89 CompCas 754 : (1995) 1 GLR 308

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Advocate : S.M. Singhi, for the Appellant; Jayant Patel, for Central Govt., for the Respondent

Judgement

M.S. Parikh, J.—These two petitions are submitted by the petitioners for obtaining sanction of the scheme of amalgamation as per annexure

B"" in Company Petition No. 47 of 1994 and at annexure ""C"" in Company Petition No. 48 of 1994 by virtue of the provisions contained in

sections 391, 392 and 394 of the Companies Act, 1956 (for short ""the Act"").

2. The petitioner in Company Petition No. 48 of 1994, namely, Gujarat Organics Limited, is the transferor company and the petitioner in Company

Petition No. 47 of 19945, namely, Rangkala Investments Limited, is the transferee company. They are accordingly referred to as ""the transferor

company and the transferee company"", respectively, in this judgment. The transferor company is sought to be amalgamated with the transferee

company.

3. The reasons for the proposed amalgamation are more particularly set out in both the petitions. Accordingly, the transferor company is a

subsidiary of the transferee company, which has the holding to the extent of 97.58 per cent. of the paid-up equity share capital of the transferor company. Bearing in mind this glaring fact it was thought advantageous to combine the activities of both the companies with a view to carrying on

the same in a single company. The idea is to economies and run the company efficiently. The proposed amalgamation would also result in enlarging

the activities of the transferee company which would be conducive to avoidance of duplication and reduction in administration costs and there

overhead expenses. It would also result in the optimum utilisation of the management and other resources. For all these reasons the proposed

amalgamation has been sought to be sanctioned by this court.

4. Necessary advertisements have been published in the month of May, 1994, in the Times of India and Jansatta in various editions. The court

notice was also issued to the Central Government in accordance with the provisions contained in section 394A of the Act in each of the petitions.

Meetings of the shareholders and creditors of the transferor company and the meeting of the shareholders of the transferee company were ordered

to be dispensed with by order dated March 7, 1994 (coram S.D. Shah J.). After both these petitions came to be admitted, advertisements came

to be issued as stated above.

5. The official liquidator''s report is placed on record and according to that report there is no objection to granting sanction to the proposed

scheme of amalgamation.

6. In so far as the Central Government is concerned, Mr. Jayant Patel, learned Additional Standing Counsel of the Central Government, has

appeared in both these petitions and has placed on record the objection in the form of an affidavit of Mr. M.L. Sharma, Register of Companies,

Gujarat. This objection relates to the objects clause of the transferee company. It has been asserted that the transferee company does not have the

power to take up and carry on business which is carried on by the transferor company. The objects clause of the memorandum of association of

the transferee company does not include the power to manufacture and sell the paradroxy benzoic acid, adhesive and sealnats which the transferor

company is doing. Hence, after amalgamation the transferor company will not be able to take up and carry on its business unless that transferee

company amends the objects clause of its memorandum of association suitably by passing a special resolution u/s 17 of the Act and getting confirmation of the Company Law Board for the said amendment. It is submitted that the prayers in the petitions contemplating automatic changes

of the objects clause of the memorandum of association of the transferee company without complying with the requirements of section 17 of the

Act cannot be granted, since the jurisdiction to permit/confirm alteration in the objects clause of the memorandum of association of the company is

vested exclusively with the Company Law Board under the aforesaid provision.

7. In support of the aforesaid objection Mr. Jayant Patel, learned Additional Standing Counsel for the Central Government, read before me the

provisions contained in section 2(10A), section 10E and section 17 of the Act. He also read before me section 637 of the Act for showing

delegation of the power and for showing that the regional director of the Department of Company Affairs is a different authority from the Company

Law Board in order to distinguish the decision contained in In Re: Pmp Auto Industries Ltd., .

8. For the purpose of appreciating the objection and the submissions made by the learned Additional Standing Counsel for the Central

Government, it would be necessary to visualise what is the objects clause of the transferor company. The objects clause of the transferee company

is divided into three sub-clause : (a) main objects of the company to be pursued by the company on its incorporation, (b) objects incidental or

ancillary to the attainment of the main objects, and (c) other objects. It would be appropriate to set out main objects in the first instance.

1. To carry on the business of an investment company and to underwrite, sub-underwrite, to invest in and acquire and hold, sell, buy or otherwise

deal in shares, debentures, debenture-stocks, bonds, units, obligations, and securities issued or guaranteed by Indian or foreign Governments,

dominions, sovereigns, municipalities, public authorities, bodies, sovereign rulers, commissioners or trusts and shares, stocks, debentures,

debenture-stock, bonds, obligations and securities issued and guaranteed by any company, corporation, firm or person whether incorporated or

established in India or elsewhere.

2. To finance industrial enterprises.

3. To manage investment pools, mutual funds, syndicate in shares, stocks, securities, finance and real estate.

Since Mr. Singhi, learned advocate for the petitioners, has made reference to clause 49 under sub-head ""Other objects"", it would also be

appropriate to set out the said clause :

49. To carry in business as manufactures, processors, refiners, exporters, importers and dealers in all types of chemicals, heavy chemicals, rubber

chemicals, organic, inorganic and mixed chemicals and chemical fertilisers, dyes, dyestuffs and dyestuff intermediate (all types of) pesticides,

including insecticides, fungicides, herbicides, weedicides, drugs and pharmaceuticals including biological and therapeutic preparations, hormones

including plant growth activators and regulatory and other articles and compounds, ingredients and products and other things of any description for

use in connection therewith.

Therefore, at the outset it should be noted that in the objects clause of the transferee company there is no total absence of the required objects for

carrying on business as manufactures, etc., of all types of chemicals including the basic chemicals, organic chemicals, inorganic chemicals, rubber

chemicals and mixed chemicals and so on and would include the power to manufacture and sell paradroxy benzoic acid, adhesive and sealnats,

which are all chemicals. It has, therefore, to be seen whether shifting of the provisions made in the ""other objects"" to the ""main objects"" would be

not permissible in these petitions, as submitted by the learned Additional Standing Counsel and to see whether section 17 has any overriding effect

over section 391 read with section 394 of the Act.

9. In reply, Mr. Singhi, learned advocate for the petitioners, read in the first instance the provisions contained in section 13(1)(c), (d), which read

as under :

13. Requirements with respect to memorandum. - (1) The memorandum of every company shall state - .....

(c) in the case of a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965, the objects of the

company;

(d) in the case of a company formed after such commencement, -

(i) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects;

(ii) other objects of the company not included in sub-clause (i); and....

According to the submission of Mr. Singhi, the effect of the amended clause is that when business as set out in other objects is to be carried on by

the company, the requirements of the provision contained in section 149(2A) would have to be followed. According to his submission, therefore,

section 17 has no role to play; for the simple reason that the objects clause contains within itself, although in the sub-head ""Other objects"", the

required object, which in future can be pursued by the company. In order to meet the argument of Mr. Jayant Patel, learned Additional Standing

Counsel, Mr. Singhi also read section 17, according to which a company may by special resolution alter the provisions of its memorandum so as to

change the place of its registered office from one State to another, or with respect to the objects of the company so far as may be required to

enable it to carry its business more economically or more efficiently or to attain its main purpose by new or improved means, or to enlarge or

change the local area of its operations, or to carry on some business which under existing circumstances may conveniently or advantageously be

combined with the business of the company or to restrict or abandon any of the objects specified in the memorandum or to sell or dispose of the

whole, or any part, of the undertaking, or of any of the undertakings, of the company; or to amalgamate with any other company or body of

persons. The alternation must be presented to the Company Law Board bearing in mind the provision contained in sub-sections (2) and (3) of

section 17 of the Act. He, however, submitted that even that would not be necessary by virtue of the fact that sections 391 and 394 of the Act

dealing with reconstruction and reorganisation or the amalgamation of the companies would provide a complete code within themselves and it

would not be necessary to undergo duplication of procedures.

In order to appreciate the submission of Mr. Singhi, it would also be necessary to set out the provisions contained in section 149(2A). The

provisions read as under :

(2A) Without prejudice to the provisions of sub-section (1) and sub-section (2) a company having a share capital, whether or not it has issued a

prospectus inviting the public to subscribe for its shares, shall not at any time commence any business -

(a) if such company is a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965, in relation to

any of the objects stated in its memorandum in pursuance of clause (c) of sub-section (1) of the section 13;

(b) if such company is a company formed after such commencement, in relation to any of the objects stated in its memorandum in pursuance of

sub-clause (ii) of clause (d) of sub-section (1) of the said section, unless, -

(i) the company has approved of the commencement of any such business by a special resolution passed in that behalf by it in general meeting; and

(ii) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not

appointed a secretary, a secretary in wholetime practice in the prescribed form, that clause (i) or, as the case may be, sub-section (2B) has been

compiled with;

and if the company commences any such business in contravention of this sub-section, every person who is responsible for the contravention shall,

without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the

contravention continues.

The petitioners have placed on record a true copy of the registration of the resolution pursuant to section 149(2A) of the Act. Accordingly, the

resolution dated May 21, 1990, for commencement of other objects mentioned in clauses 48 and 49 of clause C of the memorandum and articles

of association has been approved by the shareholders and registered. A true copy of declaration of compliance with section 149(2A) or with

section 149(b) of the Act has been produced on record. A true copy of the resolution has also been placed on record. Hence, the transferee

company has complied with the provisions contained in section 149(2A) of the Act. What is now prayed for by the petitioners is the amalgamation

of the transferor company with the transferee company with a consequential prayer for switching over of the aforesaid objects appearing in the

other objects"" into the existing sub-clause 3 of clause IIIA of the memorandum of association.

10. In the above background Mr. Singhi has paced reliance upon a decision of the

Bombay High Court in the case of P.M.P. Auto Industries Ltd.

In re [1994] 80 Comp Cas 289. In that case, three company petitions were filed for sanctioning a scheme of amalgamation. Pursuant to the notice

issued u/s 394A of the Act, objections were filed and accordingly it was contended that under the memorandum of association of the transferee

company it did not have power to carry on business activity as carried on by the two transferor companies and the scheme of amalgamation itself

provided that from the effective date the memorandum of association of the transferee company would stand amended by addition of 10 sub-

clauses as detailed therein. It was, therefore, contended that for effective amendment in the objects clause of the memorandum of association of the

transferee company, the transferee company should follow the procedure prescribed under sections 17 and 19 of the Act and get the alternation of

memorandum of association confirmed by the Company Law Board, which is an independent quasi-judicial authority. Accordingly, it was

submitted that the court could not direct alternation in the memorandum of association as incidental to an order sanctioning the scheme of

amalgamation and thereby usurp the powers conferred by law to another quasi-judicial authority. After considering the submissions made of behalf

of the company, the Bombay High Court held allowing the petitions that in order to enable amalgamation between two companies, it is not

necessary that there should be unison in the objects of the two companies and that the objects of the transferor company were different from those

of the transferee company, could not, per se, be a fetter to the sanctioning of the scheme of amalgamation. The Bombay High Court ruled that

section 391 of the Act invests the court with powers to approve or sanction a scheme of amalgamation/arrangement and in doing so, if there are

any other things which, for effectuation, require a special procedure to be followed - except reduction of capital - and the court has power then

whole sanctioning the scheme itself, it would not be necessary for the company to resort to other provisions of the Companies Act or to follow

other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme, which is sanctioned by the court.

Relying upon a decision of this court in Maneckchowk and Ahmedabad Manufacturing Co. Ltd., In re [1970] 40 Comp Cas 819, the principles has been restated that not only is section 391 of the Companies Act, a complete code, but it is intended to be in the nature of a ""single window

clearance"" system to ensure that the parties are not put to unavoidable, unnecessary and cumbersome procedure of making repeated applications

to the court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall fairness

and feasibility has been judged by the court. What this court said at page 855 in Maneckchowk and Ahmedabad Manufacturing Co. Ltd., In re

[1970] 40 Comp Cas 819 has been excerpted. It would be useful to except the same in this judgment also.

If section 391 was subject to other provisions of the Act, every time the scheme of compromise and arrangement is put forth for the sanction of

the court, if it includes things for which specific provisions are made and that will have to be gone through before the scheme is sanctioned, it would

result in unnecessary duplication of procedure and would be cumbersome. On the contrary, it appears that if the creditors and members of the

company arrive at a certain compromise which the court considers fair, it can be sanctioned u/s 391 despite the fact that for some of those things

included in the compromise another procedure is prescribed in the Companies Act and which has not been carried out. It, therefore, appears that

section 391 is a complete code which provides for sanctioning of the scheme of compromise and arrangement...... Therefore, it appears that the

provisions contained in section 391 is a complete code.

The decision in Maneckchowk and Ahmedabad Manufacturing Co. Ltd., In re [1970] 40 Comp Cas 819 (Guj) was followed by the Bombay

High Court in Vasant Investment Corporation Ltd. v. Official Liquidator, Colaba Land and Mill Co. Ltd. [1981] 51 Comp Cas 20 and a reference

has also been made to that decision.

11. The present case stands on a better footing inasmuch as the procedure prescribed for giving effect to the other objects u/s 149(2A) has

already been followed. Besides, the objects clause, as stated above, in the present case is not silent about the requisite object and, therefore, the

proposed alternation of the memorandum of association is nothing but rescheduling/reshuffling of the object from one place to another place. In my

opinion, therefore, the principles laid down by this court in Maneckchowk and

Ahmedabad Manufacturing Co. Ltd., In re [1970] 40 Comp Cas

819 and followed by the Bombay High Court in P.M.P. Auto industries Ltd., In re [1994] 80 Comp Cas 289, squarely resolves the objection

taken by the learned Additional Standing Counsel for the Central Government.

12. Mr. Jayant Patel, learned Additional Standing Counsel, however, has vehemently argued that the Company Law Board is not a party to this

petition and the Bombay High Court had proceeded on the footing that section 394A provides for issuance of notice to the Company Law Board

of every application u/s 391 or u/s 394. According to the submission of Mr. Patel notice is required to be issued to the Central Government by

virtue of section 394A of the Act and the powers of the Central Government are delegated by virtue of section 637 of the Act to the regional

director. According to his final submission, the regional director is an authority different from the Company Law Board. I have gone through the

notifications set out under the provision of section 637 of the Act as appearing in the Companies Act by A. Ramaiya, 11th edition, 1988. I find that

the functions of the Central Government u/s 394A would stand delegated to the regional director of the Company Law Board. Even is at a later

point of time the authority is redesignated as the regional director of the Department of Company Law Affairs and if the Company Law Board has

any objection to the opposed scheme of amalgamation, it could have through the regional director of the Department of Company Law Affairs,

placed the same before the court for consideration. If the court is satisfied that the objection based on alternation of memorandum has no

substance, the court itself can accord its sanction incidental to the sanctioning of scheme. It would be permissible for the court to accord sanction

u/s 394 of the Act even if the scheme contemplates a consequential alternation in the objects clause of the memorandum of association of the

company. This would apply with greater force in the facts of the present case. In that view of the matter, the objection raised in the affidavit filed by

the Registrar of Companies and submitted by the learned Additional Standing Counsel would not hold goods. On the, merits of the scheme, there

is no ground shown as to why sanction to the proposed scheme of amalgamation as prayed for should not be granted. The scheme appears to be a

fair one and makes detailed provision for the protection of the interests of all concerned including the employees of the transferor company.

In the result the petitions deserve to be granted.

13. In view of what is stated above, it is ordered that the transferor company be amalgamated with the transferee company with effect from April

1, 1993, and as per the proposed scheme of amalgamation placed on record at annexures ""B"" and ""C"" with consequential reliefs as prayed for in

the petitioners. Consequently, all the rights, liabilities and duties of the transferor company shall stand transferred to and vested in the transferee

company, namely, Rangkala Investments Limited, without any further act or deed, and all the liabilities and duties of the transferor company shall

also become the liabilities and duties of the transferee company and the transferor company shall stand dissolved, without winding up, in view of

the scheme of amalgamation as per annexure ""C"" being sanctioned.

14. The petitioners are directed to file the copy of the order with the Registrar of Companies, within a period of thirty days and the Registrar of

Companies shall treat the transferor company as dissolved, with effect from April 1, 1993. It is also clarified that any person interested shall be

entitled to apply to this court for any appropriate direction that may be necessary.

15. The petitioners shall bear the costs of the respective petitions and shall also pay the fees of the learned Additional Standing Counsel appearing

on behalf of the Central Government, which is quantified at Rs. 3,000 (rupees three thousand only) in each of these two petitions.

16. Both these petitions would stand disposed of accordingly.

