

(2009) 07 GUJ CK 0017

In the Gujarat High Court

Case No : C.P. No. 81 of 2009 in C.A. No. 65 of 2009

In Re: Reliance Petroleum Ltd.

Date of Decision : 29-07-2009

Acts Referred:

Companies Act, 1956 — Section 391(1), 391(2)
Constitution of India, 1950 — Article 226

Citation : (2010) 154 CompCas 286

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : K.S. Nanavati, S.N. Soparkar, S.N. Shelat, Mihir Thakore and Nandish Chudgar, for Nanavati Associates, for the Appellant; Harin P. Raval, Addl. Solicitor General, Vishwas K. Shah, Shalin Mehta and Hemang M. Shah, for the Respondent

Judgement

Jayant Patel, J.—The present petition is preferred by the petitioning transferor company-M/s. Reliance Petroleum Ltd. (hereinafter referred to as "RPL" for the sake of convenience), seeking sanction to the scheme of amalgamation with the transferee company-M/s. Reliance Industries Ltd. (hereinafter referred to as "RIL" for the sake of convenience).

2. It appears that after the scheme was accepted by the board of directors of the petitioning company, an application was moved to this Court for convening the meetings of the shareholders of the company. This Court (Coram : K. M. Thaker J.), vide order dated March 5, 2009, in Company Application No. 65 of 2009 had directed for convening of the meetings of the shareholders, secured creditors (class 1), secured creditors (class 2) and all unsecured creditors. The meetings, pursuant thereto, have been held and the chairman of the meetings has filed the report. As per the said report of the chairman, following position has emerged at the meetings of the equity shareholders:

(10)(i) 4,700 equity shareholders holding in aggregate 338,71,45,604 equity shares, constituting 99.745 per cent. in number and representing 99.9999 per cent. in holding of the equity shares, present in person or by proxy and voting at

the meeting, voted in favour of the scheme.

(ii) 12 equity shareholders holding in aggregate 4.588 equity shares constituting 0.255 per cent. in number and representing 0.0001 per cent. in holding of the equity shares, present in person or by proxy and voting at the meeting, voted against the scheme, and

(iii) votes of 339 equity shareholders present in person or by proxy holding 1,55,94,583 votes were declared invalid.

11. The joint report of the scrutineers appointed for the abovementioned meeting is annexed hereto and marked as annexure A. A Compact Disk (CD) containing a list of equity shareholders with their names, addresses and number of shares held, who attended and voted for and against and those whose votes were declared invalid was given by the scrutineers to me with their report, which I am presenting separately to the hon"ble High Court.

3. Ultimately, it is reported that the scheme of amalgamation was approved by the majority in number of the equity shareholders representing more than three-fourths of the shareholders present and voting either in person or by proxy at the meeting.

4. So far as the meeting of the secured creditors (class 1) is concerned, the following position had emerged:

10. (i) 5 secured creditors (class 1) having outstanding value of Rs. 1,950 crores and constituting 100 per cent. in number representing 100 per cent. in value, present in person or by proxy and voting at the meeting, voted in favour of the scheme.

(ii) No secured creditors (class 1) of the applicant-company, present-in-person or by proxy and voting at the meeting, voted against the scheme.

(iii) No vote was declared invalid.

5. It is reported that at the said meeting, the secured creditors (class 1) have unanimously approved the scheme of amalgamation, present and voting either by person or by proxy at the meeting.

6. In response to the meeting of the secured creditors (class 2), report is also filed by the chairman at the meeting and the following position emerged:

(i) 45 secured creditors (class 2) of the applicant-company, having outstanding value of Rs. 8,377 crores and constituting 100 per cent. in number representing 100 per cent. in value of the secured creditors (class 2), present in person or by proxy and voting at the meeting, voted in favour of the scheme.

(ii) No secured creditors (class 2) of the applicant-company, present in person or by proxy and voting at the meeting, voted against the scheme.

(iii) No vote was declared invalid.

7. It is reported accordingly that the scheme of amalgamation was approved unanimously by the secured creditors (class 2), present and voting either in person or by proxy at the meeting.

8. At the meeting of the unsecured creditors, the following position emerged:

(i) 648 unsecured creditors having outstanding value of Rs. 8,488.33 crores and constituting 100 per cent. in number representing 100 per cent. in value, present in person or by proxy and voting at the meeting, voted in favour of the scheme.

(ii) No unsecured creditors of the applicant-company, present in person or by proxy and voting at the meeting, voted against the scheme.

(iii) The votes of 83 unsecured creditors having outstanding value of Rs. 27.95 crores were declared invalid.

9. It is accordingly reported by the chairman that the scheme of amalgamation was approved unanimously by unsecured creditors present and voting either in person or by proxy at the meeting.

10. The affidavit in support of the aforesaid reports has been filed by the chairman at the meeting together with the report for the proceedings of the meetings. The aforesaid shows that the statutory requirement for consideration of the scheme by the equity shareholders, secured creditors (class 1), secured creditors (class 2) and unsecured creditors has been followed and the scheme has been approved by the requisite majority of the shareholders at the meeting and unanimously approved by the secured creditors of class 1 and class 2 and unsecured creditors of the company. Thereafter, the present petition before this Court for seeking sanction.

11. This court (Coram : K. A. Puj J.), on April 17, 2009, had passed the order for admission and notice was issued to the Regional Director, Western Region, and also to the official liquidator with a direction to engage a chartered accountant at the cost of the petitioning company and to submit the report. The publication was also ordered to be made in The Financial Express, Ahmedabad edition, The New Indian Express and Noubat, Jam-nagar edition and Gujarat Samachar and Sandesh of Gujarati edition. The publication in the Official Gazette was dispensed with.

12. The official liquidator has filed the report dated May 21, 2009, with the report of the chartered accountant, Malay J. Dalai dated May 7, 2009, wherein it has been concluded as under:

On the basis of our comments in the above paragraphs and according to the explanations given to us and books of account produced before us, we report that the acts and transactions of Reliance Petroleum Ltd., were conducted within the objects mentioned in the memorandum of association of the company and that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or the public interest.

13. In response to the notice issued to the Regional Director, Mr. R. K. Dalmia, Deputy Registrar of Companies has filed the affidavit based on the opinion received by the office of the Registrar of Companies from the Regional Director dated June 10, 2009. The said communication is also produced together with the said affidavit, relevant of which is as under:

It is seen from the Registrar of Companies (A)'s report dated June 2, 2009, that various complaints from several parties on the present scheme of amalgamation have been received and the explanation of the transferor company have been obtained on each of the allegations. After examining the explanation of the transferor company, the Registrar of Companies deemed the replies to be satisfactory. His report has been reviewed by this directorate and on perusal of the information and explanation contained therein, it contours with the same.

14. It is also directed to bring it to the notice of this Court accordingly. The gist of the affidavit is that the Central Government on its own has no objection to the scheme of amalgamation, nor any objection is specifically spoken or written on behalf of the Central Government by the Regional Director. However, it further appears that certain complaints were received by the Registrar of Companies from several parties in response to the present scheme of amalgamation. As the complaints were received by the Registrar of Companies, it appears that the Registrar of Companies did call for the explanation of the transferor company on the allegations made in the complaint.

15. The Registrar of Companies has found that the explanation of the transferor company as satisfactory and has not found further case to resist the petition on behalf of the Central Government in the present proceedings, nor a further investigation based on such complaint. It further appears that thereafter a report has been forwarded to the Regional Director for review and the Regional Director has concurred with the view of the Registrar of Companies.

16. The aforesaid takes me to examine the fairness of the scheme of amalgamation, the scope of judicial review and the maintainability of the objections raised by the objectors to the scheme of amalgamation.

17. It may be recorded that at the first instance, when the petition for seeking sanction to the scheme of amalgamation was presented before this Court, report of Ernst and Young and Morgan and Stanley for recommendation of equity share exchange ratio to the proposed scheme of merger-amalgamation dated March 2, 2009, was produced. Together with the same, fairness report of City Group Global Markets India P. Ltd., dated February 3, 2009, was produced. During the course of the hearing, the objection was raised by the objectors (who shall be referred to hereinafter separately) contending, inter alia, that none of the reports speak for any arithmetic calculations or the facts and figures considered by the so-called experts in recommending swap ratio/exchange ratio between the shareholders of RIL-RPL. It was, therefore, submitted that the opinion is without considering the relevant and germane materials and, therefore, such report of

experts may not be relied upon by this Court.

18. This court had prima facie found that the facts and figures on the basis of which the exchange ratio is suggested are not incorporated by the experts in the opinion, therefore, to consider the aspects as to whether the experts, who have given opinion had considered the facts and figures to arrive at the opinion of exchange ratio of 1 : 16 or not, this Court had called upon the petitioner to show material, if any, considered by the experts. In response thereto, the petitioner had supplied the net working-out figures considered by Ernst and Young, one of the experts, whose opinion is pressed into service and produced in the petition comprising of 22 pages in a sealed cover. Together with the said papers, an affidavit was filed for treating the said documents as confidential and the prayer was made that the same may not be parted with or disclosed to the objectors, since the share market of both the companies are sensitive and it may adversely affect the interest of all the shareholders, if such is disclosed.

19. Learned counsel for the objectors, Mr. Shah and Mr. Mehta, and Mr. Maradia as party-in-person, did submit that such papers should be made available to the objectors also, so that they can reply to the said aspects and may assist the court in finding out as to whether such exercise is properly undertaken or not.

20. It also deserves to be recorded that in a scheme, which comes up for sanction of this Court, it is true that a shareholder, may be in minority, or any member of the public, who is to be adversely affected by the scheme may file objections, but considerations of such objections or the role of such objectors is unlike adversary litigation to be considered by the court while adjudicating the rights of private parties. The company in a matter of scheme of amalgamation, though may be working through the persons, who may be in management or having majority of the shareholding, but when the petition is presented and moved before this Court, such is to be treated as petition by the company and whether moved by majority or there is dissentment by a fraction of shareholders would not assume much importance, more particularly when the statute expressly requires approval of the scheme by majority in numbers representing three-fourths for the value. Therefore, when the statute requires approval of the scheme by majority representing three-fourths in value, there may be dissent of the minority representing value less than one-fourth or the remaining group or any individual person, but at that stage, even if such objection exists, the court while exercising power for sanctioning the scheme is not required to decide the inter se rights of the majority versus the minority or the rights of any individual shareholders as against requisite statutory majority group. The role of the court is to consider the fairness in the scheme and also to oversee the operation of the scheme as to whether it controverts any statutory provisions or not, etc., but such role is not as that of a court of appeal sitting over the commercial wisdom of the shareholders of the company, which the requisite majority has already taken a decision to accept the scheme or otherwise. Therefore, had it been a case where the court is called upon to adjudicate the personal rights of two

groups or two individual persons, which may be termed as adversary litigation, both the sides may be entitled to have complete record of the proceedings. Such is not the scope of judicial scrutiny in a matter to be considered for granting sanction to the scheme of amalgamation. However, thereby it cannot be said that this Court is prevented from examining the record, if it finds proper, considering the facts and circumstances of the case. If upon the record produced by the petitioning company, if the court finds that a further scrutiny is required to examine the fairness of the scheme, may be with or without the report of the experts, such exercise can always be undertaken for valid reasons. Therefore, it appears to this Court that examination of the scheme by the court on its own is one part and consideration of objection by objectors in a scheme of amalgamation is another part. There is no adversary litigation prevailing in such matters between the company on the one hand and the objectors on the other as sought to be canvassed on behalf of the objectors. Therefore, the petitioning company for the reasons may resist the disclosure of such information and if the court finds that disclosure may adversely affect the other shareholders of the company, such disclosure may be prevented or the material shown to the court for the purpose of examination may not be parted with to the objectors, who otherwise are expected to act in the best interest of the petitioning company. Since the record as tendered is examined by the court for which the reference shall be made hereinafter, it appears that considering the grounds raised in the affidavit, on behalf of the petitioning company, the disclosure of such information is not required when the said aspect is already considered by the court as stated hereinafter:

There is already a reference of three methods taken into consideration by the experts in the opinion. They are:

- (i) Market price method;
- (ii) Comparable companies multiples" method;
- (iii) Net asset value method.

21. The material produced goes to show that if the market prices method is applied taking the basis of average prices of three methods of both the companies in the respective stock exchange, the ratio would come to 1 : 15 between RIL and RPL. In the second method of comparative companies multiples" method, if the figures are considered, the ratio would come to 1 :15 for RIL and RPL. If the third net assets value method is considered based on the figures, it would come to 1: 26 for RIL and RPL. It further appears that the experts have given less weightage to NAV method and has given more weightage to the market price method and comparative companies multiples" method. To be specific, 40 per cent. weightage has been given to market price method and 40 per cent. weightage has been given to comparative companies multiples" method and 20 per cent. weightage has been given to net assets value method. Therefore, keeping in view the aforesaid weightage the experts have arrived at

the average and then the ratio of 1:16 for RIL and RPL. If the net assets value method is to be accepted as it is, the ratio as observed earlier is to be 1: 26 and the shareholders of RPL would be adversely affected namely that for 26 shares of RPL, one share in RIL would be available. Whereas in the other methods, the ratio of 1:15, which is just nearby the suggested ratio of 1:16. Therefore, it appears that giving less weightage to the net assets value method by experts has resulted in benefits to the shareholders of RPL. The aforesaid may have the bearing for considering of the objections by the objectors, who are shareholders of RPL.

22. It may also be recorded that the figures as mentioned in the papers submitted to this Court having compilation of 22 pages are supported by the other statements for arriving at such figures and they are tallying with the compilation of 22 pages in which the ratio is worked out by applying different methods. As against only one simple method of NAV, if additional market price method and comparative companies multiples" method are also considered and ultimately is to result in benefit to the shareholders of the petitioning company, it can hardly be said that the scheme would be unfair to the shareholders of the petitioner-company and the obvious reason is that if NAV is to be considered, for 26 shares of RPL in the scheme only one share of RIL may be available. As against the same, by incorporation of market price method and comparative companies multiples" method, against 16 shares of RPL, the shareholders of RPL are to receive one share of RIL, which is rather beneficial to the shareholders of RPL.

23. The aforesaid is only a general view of the calculations and the methods applied by the experts for suggesting the swap ratio, which is a part of the scheme in the present petition. As against the same, there is no material whatsoever produced by any of the objectors by production of another expert opinion or expert report showing that had all the three methods been applied, the exchange ratio would have been different, nor any material produced to show that the facts and figures as per the market price method or comparative companies multiples" method or net asset value method would be different and consequently this Court may not accept the exchange ratio as suggested in the scheme. It is hardly required to be stated that this Court cannot be called upon to exercise the power as if the experts in the field of accounting or assessment of the value of shares. It is not that in all the cases whenever scheme of amalgamation is moved for sanction every time it must be supported by the expert's opinion. Generally it is the commercial wisdom of the requisite shareholders to be considered while considering the aspects for grant of sanction. But thereby it does not mean that the court cannot further scrutinise the said aspect. In a given case, if the court finds, the court may insist for the report of the expert on the said aspects. In the present case, the expert's opinion and the reports are produced, based on the same, the scheme is approved by the board and further approved by the requisite majority of the shareholders and others. Therefore, in absence of any other opinion of any

expert produced by any of the objector and in view of the facts and circumstances mentioned hereinabove, it appears that the objections as sought to be canvassed that the scheme is unfair by the suggested ratio of 1 : 16, cannot be accepted.

24. At this stage and before the other objections are considered as sought to be canvassed by the objectors, it would be profitable to refer to the decision of the apex court in the case of *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd.*, for considering the scope of judicial scrutiny by the company court. The apex court, after considering various decisions, has made observations for broad contours of the jurisdiction of the company court, which reads as under (page 818 of 87 Comp Cas):

In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the company court has clearly got earmarked. The following broad contours of such jurisdiction have emerged:

(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 meetings 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 and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

(4) That all 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 proviso to 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 to be 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 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 could 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.

25. Keeping in view the aforesaid principles laid down by the apex court, the objections are required to be considered. Mr. V.K. Shah, learned Counsel appearing for one Shri Shailesh Mehta, who is a shareholder of the company and Mr. Shalin Mehta, learned Counsel appearing for one Shri Rathi, who is also one of the shareholders of the company mainly raised the contentions, as stated and referred to hereinafter. The first was for the deficiency in the valuation report. It was submitted that no facts and figures are considered by the valuer based on the balance sheet of the company and it is just by way of an opinion. It was submitted that if the facts and figures are not considered by the valuer and the expert, the consequence would be that there is no application of mind by the valuer and it is no valuer's report in the eye of law. What could be the ideal valuation report and what is required to be incorporated in the valuation report was sought to be submitted by learned Counsel and it was further submitted that since the basic data are lacking in the report, which is produced in the present proceedings, the valuation report may not be accepted by this Court and this Court may consider that the scheme is proposed without there being any proper valuation report for the swap exchange ratio and hence, the sanction may be declined.

26. As observed earlier production of expert opinion or report to every scheme of amalgamation is not a sine qua non, nor can be enforced as a condition precedent to sanction the scheme of amalgamation. If such report of expert is considered by the shareholders or the court while considering the question of sanction has insisted for report of any expert are different aspects. Further as observed and recorded earlier, it can hardly be said that the valuation report or the expert's opinion is not supported by the facts and figures. Further, as observed earlier none of the objectors has submitted any other expert opinion or other expert valuation report to contradict and show to this Court that the valuation would have been otherwise and other swap ration would have been fair to the shareholders of the petitioning company. Therefore, such objections deserve to be rejected.

27. Learned Counsel for the objectors as well as Mr. Maradia did submit that the latest financial statement of accounts is not produced by the petitioning company

and, therefore, there is non-compliance with the proviso of Section 391(2) of the Act and it was submitted that such would result in noncompliance to the statutory requirement. Therefore, this Court may decline the sanction.

28. Such objections also deserve to be rejected for two reasons; one is that the last balance-sheet on the basis of which the scheme was prepared and considered is already produced in the record of the present proceedings and; secondly the attempt to contend that the balance-sheet as on March 31, 2009, is not produced and, therefore, there is non-compliance, would hardly be of any importance. Further, when the basis of the exchange ratio is produced, namely, the balance-sheet prior to the appointed date, it can hardly be said that there is no compliance to the statutory requirement as sought to be canvassed. Hence, the said objection cannot be maintained.

29. It was next contended by Mr. Maradia, who is appearing as party-in-per-son as well as by learned Counsel Mr. V.K. Shah and Mr. Mehta for the respective objectors that there are lot of mismanagement in RIL as well as in RPL. It was also submitted that the prosecution has been filed against the managing director and other directors of the company by the respective authorities. It was also submitted that Shri Mukesh Ambani, who is holding command in RIL by utilising the funds of other sister companies has purchased the assets of RPL and the shares are purchased beyond his normal income as per the Income Tax record and, therefore, if this Court now accords sanction to the scheme of amalgamation, the consequence may arise of dissolution of RPL. As a result thereof, for all time to come, the prosecution as well as the mismanagement of the funds of other sister companies would be wiped out and, therefore, this Court may decline the sanction.

30. The submission is based on the wrong premise inasmuch as if the prosecutions are filed for any mismanagement or for any breach of law against the managing director or directors of the company concerned, they would not stand as wiped out nor they would be defeated even if the sanction is granted by this Court to the scheme of amalgamation. Further, if money of any sister concern of RIL is used by any director, including the managing director of RIL, may be for purchase of the shares of RPL or otherwise, the same would also not be covered up or be shielded by the sanction granted by this Court to the scheme of amalgamation. None of the objectors has brought to the notice of this Court any specific provisions made in this scheme for defeat of the prosecution or for covering up such transaction. Therefore, the only observation that deserves to be made is that any prosecution or any mismanagement of the funds made by any of the directors of the company would not be defeated by the sanction granted by this Court to the present scheme of amalgamation and suffice it to observe that law will take its own course if such proceedings are to be concluded in accordance with law. As observations have been made in the present order and even otherwise also the legal position is clear, the objection as sought to be canvassed, would not survive. Therefore, thus cannot be said to be

a valid ground for declining sanction to the scheme of amalgamation.

31. It was submitted by Mr. Maradia appearing as party-in-person, being one of the objectors, that the Central Government, namely, the Registrar of Companies as well as the Regional Director have not properly discharged their functions in not objecting to the scheme of amalgamation when a number of complaints were received by them. It was also submitted that even in the report of the official liquidator there is no reference to any mismanagement, which is based on the report of the chartered accountant. Therefore, it was submitted that this Court may direct for holding of the inquiry by the competent authority against the alleged mismanagement and misutilisation of the funds of sister company by the managing director of the company, Shri Mukesh Ambani and others.

32. It appears that the scope of judicial scrutiny in the present petition is whether to accord sanction to the scheme of amalgamation or not. This Court is not exercising the power, sitting as a company court, as that of a petition under Article 226 of the Constitution of India where the scope for exercise of the jurisdiction is much wider than that of the company court under the Companies Act. Further, merely because the Central Government has found the explanation satisfactory and the report is made to this Court, it cannot be said that there is non-discharge of the statutory function by the Central Government. The role of the Central Government is undoubtedly to assist the court in the event if there is any breach of the statutory provision and also on the other aspects, but merely because a particular report is filed wherein the explanations are found satisfactory, it cannot be said that there is any shirking of the responsibility by the Central Government as sought to be canvassed. Further, in any case, as observed earlier, granting of the sanction by this Court is not to be termed as foreclosing or termination of any prosecution or foreclosing or termination of any inquiry, if otherwise permissible in law against the concerned persons. Therefore, when express observations are made, the contention as sought to be canvassed by Mr. Maradia can hardly be countenanced. So far as the official liquidator is concerned, he has acted based on the report of the chartered accountant, who has opined that the affairs of the company are not being conducted in the manner detrimental to the interest of the shareholders or the public interest, but thereby it cannot be termed, nor can it be said that if any illegalities are committed, may be on the said aspects though it may be or may not be a subject-matter of prosecution or inquiry before the competent authority, the same would be foreclosed or stand terminated even if the scheme is sanctioned. Therefore, when actions, if any, on the basis of which the grievance is raised are saved, the objection as raised by Mr. Maradia would neither survive, nor can be accepted.

33. Learned counsel for the objectors did submit that irrespective of the fact that they have not filed objections within the stipulated time, they are entitled to raise the objections prior to the sanction granted by this Court. Therefore, their objections may not be thrown away on a mere ground that such were not filed in

accordance with the Companies (Court) Rules, 1959, or within the stipulated time limit as sought in the advertisement or otherwise. Whereas on behalf of the petitioning company it was submitted that the objectors have not filed any objections well in time and, therefore, their objections are barred. It was also submitted that the objectors are holding too meagre shares as against the large number of other shareholders. It was submitted that there is no bona fide purpose at all on the part of the objectors in filing the present objections and the ultimate purpose is to stall the scheme of amalgamation. It was, therefore, submitted that this Court may reject the objections outright.

34. Considering the above, it appears to the court that the objections filed by the objectors may not be rejected on a mere ground that they are not filed well in time and the court may take a lenient view of the matter on the aspects of time limit in the event the court finds that the objections in substance are sustainable. But in view of the reasons recorded hereinabove, as it is found by this Court that the objections do not deserve to be accepted on the merits, I find that the other aspects would be irrelevant and hence, no further observations or discussions.

35. It was also submitted by learned Counsel for the petitioner that similar petition for sanctioning the very scheme of amalgamation was preferred by Reliance Industries Ltd., the transferee company before the High Court of Bombay, since the registered office of the said company is located within the jurisdiction of the Bombay High Court being Company Petition No. 296 of 2009 and it has been submitted that the High Court of Bombay has granted sanction to the scheme as per the order dated June 29, 2009 (Reliance Industries Ltd., In re [2009] 151 Comp Cas 124).

36. Whereas on behalf of the objectors, Mr. Shah as well as Mr. Mehta, learned Counsel had contended that before the High Court of Bombay the petition was by RIL and their fairness in the scheme was to be considered, keeping in view the interest of the shareholders of the RIL and not the interest of the petitioner who are shareholders of RPL. It was also submitted that the High Court of Bombay had suspended the operation of the order for four weeks, so as to enable the objectors to approach the higher forum and, therefore, the judgement of the Bombay High Court cannot be said to be operative.

37. Whereas Mr. Chudgar, learned Counsel for the petitioning company further stated that the O. J. Appeal is heard and the judgment is reserved, but the said has not been extended by the Division Bench1.

38. Be that as it may, the only factum deserves to be recorded is that the High Court of Bombay in the case of the transferee company has accorded the sanction to the very scheme of amalgamation, may be keeping in view the interest of the shareholders of the transferee company, but the pertinent aspect is that the scheme is common and the sanction has been granted. Even if the interest of the shareholders of the transferor company, i.e., the petitioner herein is to be considered, in view of the observations made hereinabove, it cannot be

said that the scheme is unfair to the shareholders of the transferor company, nor can it be said that the commercial decision taken by the shareholders in their commercial wisdom, deserves to be interfered with by declining the sanction at the instance of the objectors herein, more particularly when as observed earlier there is compliance with the statutory requirement for sanction to the scheme.

39. In the result the petition is allowed. The scheme of amalgamation at exhibit G is sanctioned, subject to the observations made hereinabove in the present order.

40. The cost of the Central Government is quantified at Rs. 5,000. It would be open to the petitioning company to pay the cost of the Central Government to Mr. Harin P. Raval, learned Assistant Solicitor General then, now learned Additional Solicitor General, by "account payee" cheque directly. The cost of the official liquidator shall be of Rs. 1,500 for preparation of the report and such cost shall also be paid by the petitioning company to the official liquidator by "account payee" cheque.

41. It has been prayed by learned Counsel for the objectors to stay the operation of the order for some time so as to enable them to approach the higher forum. Such prayer is objected to by learned Counsel appearing for the petitioning company.

42. Considering the facts and circumstances, the order shall remain suspended for a period of two weeks from today.

43. The papers tendered by the petitioning company for supporting the valuer's report and expert's opinion be returned to learned Counsel in a sealed envelop.

1 The decision of the single judge of the Bombay High Court in Reliance Industries Ltd. In re [2009] 151 Comp Cas 124 has been affirmed by the Division Bench in Anup Kumar Sheth v. Reliance Industries Ltd. [2010] 154 Comp Cas 278.