

(1993) 11 AP CK 0002

In the Andhra Pradesh High Court

Case No : Company Petition No. 27 of 1993 and Company Application No. 95 of 1993

**In Re: Sanghi Industries Limited
 In Re: Goldy Projects Limited**

Date of Decision : 16-11-1993

Acts Referred:

Companies Act, 1956 — Section 391(2), 394

Citation : (1993) 3 ALT 719

Hon'ble Judges : Parvatha Rao, J

Bench : Single Bench

Advocate : V.S. Raju and P.V. Rama Raju, for the Appellant; P. Innayya Reddy for the Central Government, for the Respondent

Judgement

Parvatha Rao, J.—This is a petition to sanction the scheme of arrangement for amalgamation of Goldy Projects Limited with the petitioner-company i.e., Sanghi Industries Limited u/s 394 read with Sub-section (2) of Section 391 of the Companies Act, 1956 (hereinafter referred to as "the Act").

2. The registered office of the petitioner-company is situated at Sanghi Nagar in the Ranga Reddy district of the State of Andhra Pradesh.

3. Earlier, the petitioner filed Company Application No. 95 of 1993 u/s 391 of the Act for convening a meeting of the equity share-holders of the company for considering the proposed scheme of arrangement for amalgamation of Goldy Projects Limited (hereinafter referred to as "the transferor company") with the petitioner-company and this Court by order dated 12-4-1993 allowed the same appointing Ms. M. Vidyavati, Advocate as Chair person to convene, preside over and conduct a meeting of the equity shareholders of the petitioner-company on 29-5-1993 after complying with the conditions imposed therein and in accordance with the Act and the Companies (Court) Rules, 1959 (hereinafter referred to as "the Rules"). The notice of the said meeting was required to be advertised in the Hyderabad editions of the English daily "News Time" and the Telugu daily "Andhra Bhoomi". Accordingly, the meeting was conducted on 29-5-1993 at the registered office of the petitioner-company by Ms. M. Vidyavati

and she filed a report in this Court on 10-6-1993 enclosing therewith a copy of the scheme of arrangement for amalgamation of the transfer or company with the petitioner authenticated by her which was approved at the said meeting by the following resolution passed unanimously:

"Resolved that the scheme of arrangement between the company and its members for the amalgamation of the Goldy Projects Limited with M/s. Sanghi Industries Limited in terms of draft scheme of arrangement for amalgamation was laid before the meeting initiated by the Chairperson for the purpose of identification be and is hereby approved subject to such alterations / modifications thereof as may be directed by the Hon"ble High Court of A.P."

As per her report, the said meeting was attended by 27 equity shareholders in person holding in all 70,99,000 equity shares representing a share capital of Rs. 7,09,90,000/- and 12 equity shareholders were present by proxy and they in all hold 8,81,000 equity shares representing a share capital of Rs. 88,10,000/-and together in all representing a share capital of Rs. 7.98 crores. The report states that none voted against the proposed scheme of arrangement for amalgamation and that the same was approved without any modification.

4. The authorised share capital of the petitioner-company in Rs. 25 crores divided into 2,50,00,000 of equity shares of the face value of Rs. 10/- each. The subscribed and paid up capital of the petitioner-company is Rs. 8 crores, out of which Rs. 7.98 crores was represented at the meeting.

5. After the report of the Chairperson was filed in Court, the present Company Petition is presented seeking the sanctioning of the said scheme as approved at the said meeting.

6. In the petition it is stated that the petitioner-company set up a unit for the manufacture of all kinds of leather, foam leather, PVC leather and synthetic products of PVC tapes of all types and is engaged in the business of manufacture of the said products and that it is also acting as consultants and advisors for the setting up of similar projects on turnkey basis. The objects of the company allow amalgamation with other companies carrying on or engaged in similar business.

7. In the petition it is further stated that the transferor company was incorporated as a public limited company on 15-11-1988 under the Act and is having its registered office in the Union Territory of Delhi and that the said company is engaged in the business of consultants and project advisors and financiers of industrial and other enterprises and also undertakes evaluation and feasibility studies. The objects of the transferor company enable that company to amalgamate with any other company engaged in similar business or other business which the transferor company is authorised to carry on. The authorised share capital of the transferor company is 3 crores divided into 30 lakhs equity shares of the face value of Rs. 10/- each. The subscribed and paid up capital of the transferor company is Rs. 24,90,000/-.

8. It is further stated in the petition that the petitioner-company is manufacturing and marketing BOPP and PVC tapes under the brand name of "MIRACLE" which have become very popular throughout the country and that it achieved a turnover of Rs. 23.40 crores for the financial year ending 30th June, 1992 and that it is embarking upon an expansion-cum-diversification scheme for the manufacture of rigid and semi-rigid PVC film and sheets etc., and that the said products have a wide market both in the domestic as well as in the international markets. For the effective implementation of the expansion and for achieving better operational results, the petitioner-company needs expert consultants and advisors and also efficient financial and portfolio management. The petitioner found in the transferor company an able and competent alike and therefore proposed the amalgamation and the transferor company agreed to merge with the petitioner-company. The Boards of Directors of both the companies approved the scheme of arrangement for amalgamation to be brought into effect from 1-4-1993 and that date has been taken as the appointed date for the purpose of the scheme. It is also stated that taking into consideration the financial, capital and assets position of the two companies, it is agreed that for every 5 shares in the transferor company, one share in the petitioner-company would be allotted to the shareholders of the transferor company.

9. It is stated that the transferor company also approached the Delhi High Court by way of Company Application Nos.630 and 726 of 1993 on which the Delhi High Court passed orders on 21-4-1993 and 29-4-1993 respectively for the convening of a meeting of its shareholders on 31-5-1993 appointing Ms. Sadhana Sharma, Advocate as Chairperson and that the said meeting was duly held on 31-5-1993 and Ms. Sadhana Sharma filed her report stating that at the said "meeting all the shareholders present at the meeting either in person or by proxy unanimously approved the scheme without any modification. It is also stated by the learned Counsel for the petitioner that Company Petition No. 103 of 1993 was already presented in the Delhi High Court after the report was filed by Ms. Sadhana Sharma and that the same is pending before the Delhi High Court.

10. It is also stated in the Company Petition that no investigation or proceedings u/s 235 - 251 of the Act are pending against the petitioner-company or the transferor company and that they are not attracted by the provisions of the Monopolies and Restrictive Trade Practices Act. It is also stated that there is no common share-holding between the two companies. It is also stated that there is no financial inter relationship between the two companies.

11. By order dated 3-7-1993 this petition was posted for hearing on 20-8-1993 and notice of hearing of this petition was directed to be advertised in the Hyderabad edition of "News Time" and "Andhra Bhoomi" and accordingly the advertisement was effected in the "News Time" dated 16-7-1993 and "Andhra Bhoomi" dated 18-7-1993. Notice u/s 394A of the Act was also given to the Regional Director of Company Affairs, Southern Region, Madras on 15-7-1993.

12. In the counter affidavit dated 23-9-1993 filed by the Registrar of Companies,

Andhra Pradesh on behalf of the said Regional Director, the only objection raised for according sanction to the scheme in question is as regards the share ratio 1:5 between the petitioner-company and the transferor company adopted in the scheme. On the basis of the financial summaries of the transferor company and the petitioner-company (transferee company) as on 28-2-1993 and 2-1-1993 respectively, the Registrar worked out the net worths of the two companies as follows:-

Transferee Company: Networth as per Balance Sheet as at 2-1-1993. Paid up Capital Rs. 8,00,00,000 Add: Reserves and Surplus 6,83,40,111 Net Worth 14,83,40,111 Transferor Company: Networth as per Balance Sheet as at 28-2-1993. Paid up Capital Rs. 24,90,000 Add: Reserves and Surplus Nil Rs. 24,90,000 Less: Losses and Miscellaneous Expenses 2,46,988 Net worth: Rs. 22,43,012 On the basis of the net worth, he calculated the Fair Value of the share of the petitioner-company as Rs. 19/-. As regards the transferor company, he observed that even though its net worth was Rs. 22.43 lakhs, it had doubtful loans and advances amounting to Rs. 22.52 lakhs and therefore, its ultimate net worth would be negative for the purpose of ascertaining the share value and on that basis, he arrived at the Fair Value of the share of the transferor company as Re. 1/-. He contends that the share exchange ratio for the shares of the petitioner-company and of the transferor company should be 1:19 and not 1:5, and that the ratio of 1:5 would not be fair to the members of the petitioner-company and would be detrimental to the interests of its shareholders. He further states that the Central Government, therefore, is of the opinion that it would be expedient in public interest to accord approval for proposal of the scheme for amalgamation of the transferor company and the petitioner-company, subject to the condition that the exchange ratio is altered to 1:19 instead of 1:5 provided in the scheme. The counter-affidavit of the Registrar also refers to the letter dated 23-9-1993 addressed by the Regional Director to him, wherein it is stated as follows:-

"With reference to the above, I have to state that para 6 of the scheme contemplates exchange ratio of 1:5 i.e., one share in transferee company is treated as equal to 5 in transferor company. The said exchange ratio is based on share valuation report given by Ankit & Co., Chartered Accountants, Hyderabad. The valuers have not adopted normally accepted method of valuing shares such as net asset value method, earning capacity method or average of the two. The profit earning ratio as applicable to plastic industry has been considered without any regard to actual profitability of the transferee company. Details as to how earning per share of Rs. 4.10 has been arrived are not available. The market value of assets of the transferee company has been estimated at Rs. 60 crores for which supporting documents have not been furnished. The report is self contradictory, in the sense that the fair value per share in transferee company has been arrived at Rs. 90/- but then finally reduced to Rs. 50/-without spelling out any reason. The value per share in transferor company has been reckoned at Rs. 10/- but this value ignores the fact that the assets of the transferor company

consisted of mainly Loans and Advances of Rs. 25.09 lakhs out of which Rs. 22.52 lakhs have been considered doubtful, vide Note 4 of Schedule G to Notes on accounts for the year ended 31-3-1992 of the transferor company. On account of the above, the report of the share valuers could not be relied upon."

13. In the reply affidavit filed on behalf of the petitioner-company, it is stated that the net worth of the petitioner-company as on 30-6-1992 as per the audited balance sheet as at 30-6-1992 works out to Rs. 1,446 lakhs and that the net asset value per share on that basis works out to Rs. 45/-. It is stated that the net-worth of the transferor company as per the audited balance sheet as at 31-3-1992 was Rs. 22.40 lakhs and the net asset value per share of the transferor company works out to Rs. 9/-. On that basis, the share exchange ratio for the shares of the petitioner company and of the transferor company is stated to be 1:5. As regards the loans and advances of the transferor company amounting to Rs. 22.52 lakhs, it is asserted that they cannot be taken as doubtful because the advances were to the firms in which the Directors of the transferor company are interested, and that after 31-3-1992 a sum of Rs. 3 lakhs was recovered in the year 1993 and that the outstanding loans and advances are now reduced to a total of Rs. 19.52 lakhs. This fact is further reiterated in an additional affidavit filed on behalf of the petitioner company by one of its Directors, Sri Sudhir Sanghi, dated 29-10-1993. He states as follows:-

"I submit that the said amount of Rs. 19.52 lakhs will be recovered and that all the Directors of transferor company have given an undertaking that they will stand as guarantors for the recovery of the said amount. I further submit that even after the orders passed on this petition by this Honourable Court, the said amount of Rs. 19.52 lakhs will be shown as loans and advances in the consolidated balance sheet in accordance with the Act till it is recovered."

14. But this is not saying much because any way that amount of Rs. 19,52 lakhs has to be shown as loans and advances in the consolidated balance sheet and there is no escape from that unless the said amount is shown as "written off in the books of the transferor company. In this connection what is important is that in the Notes on Account in Schedule "G" to the balance sheet of the transferor company as on 31-3-1992, its auditors, Sanjay Singhal and Company, noted as follows:-

"4. Loans given and interest thereon, includes Rs. 22,52,053-75 which are considered doubtful. No provision has been made for these amounts considered doubtful. Interest for the year also has not been provided on these amounts."

In the Annexure to the auditor's report dated 13-10-1992, it is noted as follows:-

"8. The company has given loans to other parties but there are no terms and conditions for repayment of principal amount and interest thereon, therefore, we are not in a position to comment thereon. However, the loans together with interest are considered good by the management and no special steps have been taken for their recovery. No advances in the nature of loan have been given by

the company."

15. The petitioner also filed letter dated 22-10-1993 addressed by the Managing Director of the Transferor company to the Board of Directors of the Petitioner company on the subject of recoverability of the unsecured loans, wherein it is stated as follows:-

"With reference to the subject matter, we hereby confirm and inform you that out of the unsecured loans of Rs. 22.52 lakhs shown in our audited balance sheet of 31st March, 1992, a sum of Rs. 3 lakhs was already recovered in the year 1993. The balance of amount of Rs. 19.52 lakhs will be recovered by the end of December, 1993 and all the Directors of our company (including the undersigned) will stand as guarantors for the recovery of all the said loans."

16. In the letter of the Industrial Finance Corporation of India Limited (IFCI) No. HRO/C.101/93-3179 dated 6-9-1993 addressed to the petitioner company, approval was accorded to the proposed scheme of amalgamation of the transferor company with the petitioner company subject to certain conditions one of which is as follows:-

"In case the loans and advances of Rs. 22.52 lakhs are not recovered by GPL (transferor company) by 30-9-1993, the promoters of your company shall bring in interest-free funds to meet the short fall (i.e., to the extent the amount is not recoverable) on the terms acceptable to IFCI." The said corporation is one of the creditors of the petitioner company. State Bank of Hyderabad, which is another creditor of the petitioner company, has also given a letter dated 11-10-1993 expressing no objection to the proposed amalgamation subject to certain conditions one of which is the same as that imposed by the IFCI.

17. In view of the fact that clear assurance is given in respect of the outstanding loans and advances of Rs. 19.52 lakhs due to the transferor company, by its Directors and also the letter dated 22-10-1993 of its Managing Director referred to above, it is not proper to treat the said outstanding sum as bad debt. The financial institutions have also given their approval to the amalgamation subject to the condition that the promoters of the petitioner company shall bring in interest-free funds to meet the shortfall i.e., to the extent any part of the said sum of Rs. 22.52 lakhs is not recoverable.

18. The Registrar of Companies can have no objection to the valuation of the share of the petitioner company at Rs. 45/- as against his valuation at Rs. 19/-. He cannot have any objection also to the valuation of the share of the transferor company at Rs. 9/- if the loans and advances of Rs. 22.52 lakhs are not considered as doubtful and are realisable. I have taken the view that it is not proper to treat the loans and advances due to the transferor company now standing at Rs. 19.52 lakhs as bad debts. Therefore, I am not persuaded by the objection of the Registrar to reject the share exchange ratio provided in the scheme as unreasonable or unfair to the share-holders of the petitioner-company. As held in *In re Maneckchowk and Ahmedabad Manufacturing Co. Ltd.*

(1970) 40 Comp. Cas 819 what has to be enquired into by the Court is whether the scheme for amalgamation is a fair and equitable one. In *In Re: Sidhpur Mills Co. Ltd.*, the Gujarat High Court observed as follows:-

"The scheme should not be scrutinised in the way of carping critic, a hair-splitting expert, a meticulous accountant or a fastidious counsel would do it, each trying to find out from his professional point of view what loopholes are present in the scheme, what technical mistakes have been committed, what accounting errors have crept in or what legal rights of one or the other sides have or have not been protected. It must be tested from the point of view of an ordinary reasonable shareholder, acting in a business-like manner, taking within his comprehension and bearing in mind all the circumstances prevailing at the time when the meeting was called upon to consider the scheme in question."

19. In *Coimbatore Cotton Mills Ltd.*, In re (1980) 50 Comp. Cas 623 Mad High Court enquired into the matter of valuation of shares at length. In that case also the question that arose was whether the exchange ratio adopted in the scheme which was before that Court for sanction, was fair and reasonable. Reference was made to the observations of Maugham, J., in *In re Hoare & Co. Ltd.* (1933) 150 LT 374:

"The other conclusion I draw is this, that again *prima facie* the Court ought to regard the scheme as a fair one in as much as it seems to me impossible to suppose that the Court, in the absence of very strong grounds, is to be entitled to set up its own view of the fairness of the scheme in opposition to so very large a majority of the shareholders who are concerned. Accordingly, without expressing a final opinion on the matter, because there may be special circumstances in special cases, I am unable to see that I have any right to order otherwise in such a case as I have before me, unless it is affirmatively established that notwithstanding the views of a very large majority of shareholders, the scheme is unfair."

Padmanabhan, J., held in that case as follows:-

"Lastly, in exercising its discretion under Sections 391 and 394, the Court is not merely acting as a rubber stamp. It is the function of the Court to see that the scheme as a whole, having regard to the general conditions and background and object of the scheme, is a reasonable one and if the Court so finds, it is not for the Court to interfere with the collective wisdom of the shareholders of the company. When once the Court finds that the scheme is a fair one, then it is for the objector to convincingly show that the scheme is unfair and that, therefore, the Court should exercise the discretion to reject the scheme, notwithstanding the views of a very large majority of the shareholders that the scheme is a fair one. If the Court is of the opinion that there is such an objection to it as any reasonable man would say that he would not approve of it, then the Court may refuse to confirm the scheme. However, if the scheme as whole is fair and reasonable, it is the duty of the Court not to launch on an investigation upon the

commercial merits or demerits of the scheme which is the function of those who are interested in the arrangement."

This view has been followed by the Madras High Court recently in *Cetex Petrochemicals Ltd., In re* (1992) 73 Comp. Cas 298 and accepted by the Rajasthan High Court in *Indo Continental Hotels and Resorts Ltd., In re* (1990) 69 Comp. Cas 93.

20. It has to be noticed also that the valuation of the shares of the company on the basis of its net worth is a rough method. The "net worth" taken by the Registrar of Companies is the sum total of the paid up capital and free reserves. This does not take into account the erosion of the capital, if any, on one side, or on the other the value of the good will and the accumulated technical know how, and the appreciation in the value of the assets. The usual methods of valuation of shares are: (i) the Break-up value; (ii) the Yield value; and (iii) the Market value. But none of these methods take into the reckoning the imponderables like market fluctuations, future prospects based on increased competition and changes in consumer preferences, and swings in Governmental policies including those relating to fiscal and incentive schemes, and so on. Managerial skills, product adaptabilities, expansion possibilities including product diversification both downstream and upstream, availability of ample infrastructural facilities - to mention only a few of the relevant factors - are also to be taken into account. Share values cannot be ascertained with exactitude in the present changing economic scene for the purpose of arriving at precise share exchange ratios.

21. It is not the case of any one that the shares of the petitioner-company and the transferor-company are being traded in the stock exchanges. Therefore, market value method has no relevance in their case. The petitioner-company declared a dividend of 10% for the year ending 30-6-1992. The transferor company has not declared any dividend for the year 1991-92. As there is no parity, the yield value also cannot form the basis for arriving at the share exchange ratio between the two companies. The break-up value is not usually resorted to in the case of going concerns and that requires the ascertainment of current market values of the assets. That method has not been adopted in the present case. The net worth basis seems to have been adopted as a rough and ready method. No shareholder complained in that regard assuming that a common shareholder is perceptive of all these ramifications. The shareholders of the petitioner-company unanimously accepted the scheme of arrangement for amalgamation. The Chairperson's report states that share capital of Rs. 7.98 crores out of the subscribed and paid up capital of Rs. 8 crores was represented at the meeting of the equity shareholders of the petitioner-company held on 25-9-1993. Thus the share exchange ratio provided in the scheme was approved unanimously by an overwhelming majority of the shareholders. No shareholder or creditor has appeared before this Court and opposed the scheme. Except as regards the share exchange ratio, no other objection to the scheme is raised by the Registrar of the Companies on behalf of the Regional Director.

22. In the circumstances, the Company Petition is allowed and sanction is accorded to the scheme of arrangement for amalgamation of the transferor company i.e., Goldy Projects Limited with the petitioner-company. However, this sanction is subject to the orders of the Delhi High Court in Company Petition No. 103 of 1993 filed by Goldy Projects Limited. A copy of the scheme filed with the report of the Chairperson Ms. M. Vidyavati shall be attached to the order of this Court to be given in Form No. 42 with such variations as per Rule 84 of the Rules. A certified copy of the order of this Court shall be filed with the Registrar of Companies, Hyderabad within 30 days from this date under Sub-section (3) of Section 394 of the Act. No costs.