

**(2004) 04 BOM CK 0005**

**In the Bombay High Court**

**Case No :** Company Petition No. 179 of 2004 and Company Application No. 62 of 2004

**In Re: Sarabhai Piramal Pharmaceuticals (P.) Ltd.**

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**Date of Decision :** 27-04-2004

**Acts Referred:**

Companies Act, 1956 — Section 394

**Citation :** (2004) 54 SCL 72

**Hon'ble Judges :** Anoop V. Mohta, J

**Bench :** Single Bench

**Advocate :** S.A. Diwan, for the Appellant; R.C. Master, T.C. Kaushik and S.R. Kom, for the Respondent

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## **Judgement**

Anoop V. Mohta, J.—The petitioner-company namely Sarabhai Piramal Pharmaceuticals Pvt. Ltd. (for short "Petitioner Company" or "SPPL" or "Transferor-company"), has invoked the provisions of Companies Act under Sections 391 to 394, to obtain sanction of the Scheme of Amalgamation with Nicholas Piramal India Limited (for short "NPIL" or "Transferee-company").

2. SPPL is a Private Limited Company having its office at Administrative Building, Morarjee Mills Compound, Parel, Mumbai. The authorised, issued and subscribed and paid up share capital of the petitioner-company, based on last Audited balance sheet for the year ended 31st March, 2003, read with the authorised, issued, subscribed and paid up share capital of the transferee company, as per the balance sheet for the year ended 31st March, 2003 and transferee-company's Audited financial results quarter ending 31st December, 2003 are part of record. The Petitioner-Company is wholly owned subsidiary of Transferee-company.

3. As per the objects of the respective companies, both the Companies have decided to merge and amalgamate with effect from 1st April, 2003 and accordingly the scheme was approved by the Directors of both the Company, at their respective meetings held on 28th January, 2004. The circumstances that are necessitated and justified the proposed scheme, in view of their business and

commercial marketing, sale and distribution strategy have been elaborated in the petition. In the scheme, every aspect of assets, liability, reserves, investments including all conditions of employees, workers, allotment of shares, contract, licence, arrangements, agreements including suit claims, pending proceedings, have been taken care of by both the companies including that the petitioner-company should stand dissolved without being wound-up.

4. By an Application No. 62 of 2004, the petitioner-company, therefore, moved the Hon''ble High Court to dispense with the convening the meetings of the equity shareholders, secured and unsecured creditors for the purpose of considering and to approve without modification the arrangement embodied in the scheme, and accordingly, obtained order on 27th February, 2004. It may be noted that this Hon''ble High Court has also directed that the separate application by the transferee-company was not necessary, in view of the fact, that the petitioner-company is wholly owned subsidiary of the transferee-company and that all the shares of the petitioner-company held by the transferee-company stand cancelled and no new shares are required to be issued.

5. These averments of para 26 of the petition is based on the judgment passed by this Hon''ble High Court in Mahamba Investment Ltd. v. IDI Ltd. [2001] 105 Comp. Cas. 16. Thereby filing of separate application by the transferee-company was also dispensed with. Considering the scheme, as well as, the purpose of scheme of Amalgamation in question and, as the interest of the unsecured creditors of the petitioner-company, as well as, transferee company is not affected and, as all necessary care has been taken in respect of the debts, duties, obligations and liabilities of the respective companies including taking over all of the assets, and as the transferee-company is in a sound financial position and the assets of both the companies are far in excess of their liabilities, such scheme cannot be said to be unfair or unreasonable or unsound. As averred, the net worth of the transferee-company would stand increased consequent to the merger of the petitioner-company with the transferee-company. The transferee company would be able to meet all its liabilities as and is transferred or together with the debts, duties, obligation and liabilities of the petitioner-company. There are no investigation proceedings instituted or are pending in relation to the company under Sections 235 to 251 of the Companies Act. The petition is bona fide and in the interest of all. Individual notices of hearing of petition to all unsecured creditors of the petitioner was sought to be dispensed with, on undertaking to give individual notices of hearing of the petition to the unsecured creditors.

6. On 5th March, 2004 the petitioner was admitted and the same was fixed for hearing on 8th April, 2004 and accordingly, due notice and publication were issued. An affidavit of Bhagwan Sawant, proving service of the petition, dated 17th March, 2004 was filed on record and affidavit of Mr. Madhusudan Nair, proving publication of notices in the newspaper, dated 17-3-2004 was also filed.

7. The Regional Director of Western Region, Department of Company Affairs, by

its affidavit, dated 7th April, 2004, averred that after receipt of the report from the Registrar of Companies and also replied from the petitioner-company and after considering all the aspects, they found that the scheme is not prejudicial to the interest of the creditors and shareholders, thereby submitted their no objection to the sanction of the scheme of amalgamation in question, and even during the hearing of the present petition also. The Official Liquidator, by its report, dated 7th April, 2004, after scrutinising the Auditors/Chartered Accountants report, submitted that the affairs of the Transferor-Company namely M/s. Sarabhai Piramal Pharmaceuticals Pvt. Ltd. have not been conducted in a manner prejudicial to the interest of its member or public interest. Thereby there is no objection even from the Official Liquidator. No other objection or any adverse material placed or pointed out by any parties. The matter was called out and parties were heard. Considering, the scheme, as well as, averments made in the petition and that there is no objection of any sort and in fact there is no objection from the competent authorities, as referred above, this is a fit case to grant sanction as prayed.

8. The Commercial exigencies and need of particular Company and its shareholders and reason for the respective decisions or Resolutions, in absence of any serious objection or prejudice to anybody, the Court will not sit over to reassess the wisdom of the Scheme. The scope of judicial review in such matters is very limited and definitely is not as that of an Appellate jurisdiction unless whole scheme is unfair, unreasonable, contrary to law and public policy.

9. In view of the above facts and circumstances of the case, the Company Petition as allowed in terms as to prayer Clauses (a) to (r) with liberty, in accordance with law.

10. Costs of Rs. 2,500 each to the Regional Director and as well as the Official Liquidator to be paid by the petitioner within four weeks from today.