

(1996) 06 AP CK 0060

In the Andhra Pradesh High Court

Case No : Company Petition No. 85 of 1995

In Re: Sumitra Pharmaceuticals and Chemicals Ltd.

Date of Decision : 14-06-1996

Acts Referred:

Companies Act, 1956 — Section 100, 391, 391(1)

Citation : (1997) 88 CompCas 619

Hon'ble Judges : S. Dasaradharama Reddy, J

Bench : Single Bench

Advocate : S. Ravi, P. Raviprasad, for official liquidator and P. Inayya Reddy, for Central Govt, for the Appellant;

Judgement

S. Dasaradha Rama Reddy, J.—This is a petition filed by Sumitra Pharmaceuticals Limited, Hyderabad, for sanction of this court to a scheme whereby the entire bulk drug division of the petitioner company will be transferred and merged with Nicholas Piramal India Limited (for short "NPIL") in accordance with the scheme of arrangement approved by the members of the company at its meeting held on December 15, 1995, pursuant to the direction of this court in C.A. No. 203 of 1995. According to the petitioner, the petitioner company was incorporated on November 30, 1988, under the Companies Act. The authorised capital is Rs. 35 crores consisting of 3.2 crores equity shares of Rs. 10 each and the issued and subscribed capital is Rs. 24,53,82,000 while the fully paid-up capital is Rs. 19,53,82,000 and partly paid-up capital is Rs. 1,25,00,000. The main objects of the company are to carry on the business of manufactures, buy, sell, import, export and generally deal in all types of chemicals, pharmaceuticals, drugs and intermediaries, dyestuffs and surgicals and medical equipment. NPIL is a company incorporated on April 26, 1947. Originally the company was incorporated under the name of the Indian Schering Limited. Later its name was changed into Nicholas Laboratories India Limited. It was further changed to Nicholas Piramal India Limited. The authorised capital to NPIL is Rs. 20 crores consisting of 2 crores shares of Rs. 10 each while the issued, subscribed and paid-up capital is Rs. 17,39,05,540. The main objects of NPIL are to carry on business in all kinds of pharmaceutical preparations. As the activities carried on

by the petitioner company and NPIL are complementary to each other, the petitioner company thought is advisable to dispose of the entire bulk drug business to NPIL, which is a growing concern. The shares of the petitioner company are listed on the stock exchanges of Hyderabad, Bombay, Calcutta, Delhi and Ahmedabad while those of NPIL are listed on the Bombay and Ahmedabad stock exchanges. The scheme provides that the new equity shares in NPIL issued to the shareholders of the petitioner company shall rank for dividend and voting rights and in all other respects *pari passu* with the existing shares in NPIL except that they shall be entitled to proportionate dividend for the year in which they are allotted. The scheme is to take effect from April 1, 1995, and the share exchange ratio is 5 : 100 in the case of fully paid up share and 5 : 400 in the case of partly used shares. It also provides that the share capital of the petitioner company shall stand reduced to the authorised capital of Rs. 11,07,52,550 and issued and subscribed capital at Rs. 61,34,550 and paid up capital at Rs. 48,84,550 and partly paid up capital at Rs. 3 lakhs.

2. Pursuant to the order of this court in connected Company Application No. 203 of 1995, a meeting of the shareholders of the company was held on December 15, 1995, where the scheme was approved. Notices have been issued to the Regional Director, Company Law Affairs, Madras. The question of issuing notice to the official liquidator does not arise as the petitioner company is not going to be dissolved. The Registrar of Companies has filed a counter raising four objections :

(1) In the interest of shareholders of the company, the stock exchange ratio may be fixed at 5 : 50 and 5 : 200 instead of 5 : 100 and 5 : 400 in respect of fully paid and partly paid shares.

(2) A separate application has to be filed before this court u/s 100 of the Companies Act for reduction in share capital which cannot be part of the arrangement.

(3) Delisting of shares on the stock exchange can be done only with the approval of the concerned stock exchanges and the company cannot unilaterally delist.

(4) The financial competency of the managing director is not shown as to how he can purchase such of the shares of the company as are offered to him at par.

3. The petitioner has filed a reply saying that the share exchange ratio has been approved by the majority of the shareholders of both the companies and the share valuation was fixed after taking into consideration the valuation report of the reputed chartered accountants, viz., Harbakti and Co. and Gautam Doshi and Company. Regarding the reduction of share capital, it is stated that separate meeting of the shareholders for approving the reduction of the share capital was held and the shareholders unanimously approved the proposal by passing a special resolution which was filed the Registrar of Companies accompanied with the requisite fee. It is also stated that as the secured and unsecured loans are being taken over by NPIL, the interests of the creditors are in no way affected. It is further stated that the consortium of financial institutions led by the Industrial

Development Bank of India and the consortium of banks led by the State Bank of Hyderabad which are the major secured creditors have given approval to the scheme. Regarding the dislisting of shares on the stock exchanges, the reply says that this is given more as information to the shareholders than as a condition of the scheme. Regarding the last objection also it is stated that this is also more by way of information to the shareholders but not a condition of the scheme.

4. Heard the parties. Regarding the first objection about the share exchange ratio, Mr. Ravi, learned counsel for the petitioner, submits that when the shareholders of both the companies approved the share exchange ratio based on the valuation made by reputed chartered accountants who have taken the average value arrived at by the net asset method, the profit earning capacity method and the market quotation, giving due weightage, the Central Government has no locus standi to object. It is submitted that the role of Central Government is only to see whether the scheme is prejudicial to the interests of the shareholders. He replied on a decisions of the Supreme Court in *Hindustan Lever Employees' Union v. Hindustan Lever Ltd.* [1995] 83 Comp Cas 30 sc, where it was held that a combination of three well known methods of valuation of shares, namely, the yield method, the net assets value method and the market value method to arrive at the share exchange ratio giving due weighted to each method based on the company's performance, operating losses and future maintainable profits is a fair method to arrive at the averaged value of the share and that the fact that at the relevant time the book value of the share of one company was higher than that of another is not material. Further, it was held that as the financial institutions which held 41 per cent. shares in one of the companies as well as two independent valuers and the ICICI approved of the valuation there cannot be any objection to the share exchange ratio. Here also the average of the three methods was adopted giving due weightage. It was approved by the shareholders of the two companies and also by major financial institutions. The only objections of the Central Government is while the appointed date is April 1, 1995, the valuation of the share is taken as on August 31, 1995. There is no substance in their objection. If the valuation of one company is taken as on one date and the other company as on a different date, then there may be a valid objection. But both are taken as on August 31, 1995. As Mr. Ravi rightly contends, merely because the appointed date is April 1, 1995, the actual position of the two companies on the relative date of negotiations cannot be ignored while fixing the share exchange ratio.

5. Regarding the objection about reduction of share capital, learned counsel for the petitioner relies on a decision of this court in *In Re: Novopan India Limited*, wherein it was held that requirement of setting out of intention to move a resolution as a special resolution for reduction of the share capital cannot be said to be a mandatory requirement, though passing a special resolution is mandatory, that the provision contained in section 391(1)(a) is directory and that it is enough if it is substantially complied with. The supports counsel for the

petitioner. The resolution in the instant case has been approved by the shareholders and this has been intimated to the Registrar of Companies by the requisite fee. The major secured creditors have also agreed to the proposed reduction of share capital. Further, as NIPL is taking over the liabilities of Sumitra Pharmaceuticals, the interests of the creditors of Sumitra Pharmaceuticals are protected and this objection accordingly has not force.

6. Regarding the third objection, it is obvious that delisting can be done with the approval of the stock exchanges and cannot be done by the petitioner company unilaterally. This is given only as information to the shareholders and is not a part of the scheme. Similarly, the fourth objection also regarding the purchase by the managing director of the shares is also more by way of information to the shareholders and is not an essential condition of the scheme. Thus, the third and fourth objections also fail.

7. In view of the approval of the scheme by an overwhelming majority of the shareholders of the petitioner company and of the major secured creditors, the proposed scheme is confirmed subject to confirmation by the Bombay High Court on the application filed by the NPIL. The effective date shall be April 1, 1995. A copy of the scheme shall be attached to this order. The parties to the scheme or any other person interested shall be at liberty to approach this court for any direction that may be required for carrying out the scheme. Both the transferor and transferee companies are directed to cause a certified copy of this order to be delivered to the Registrar of Companies within 30 days and on such certified copy being delivered, the Registrar of Companies shall take all necessary consequential action in respect of the transferor and transferee companies.

8. The company petition is accordingly allowed. No costs.