

(2004) 04 BOM CK 0095

In the Bombay High Court

Case No : Company Petition No. 121 of 2004 and Company Application No. 566 of 2003

In Re: Ultratech Cemco Ltd.

Date of Decision : 22-04-2004

Acts Referred:

Companies Act, 1956 — Section 391

Citation : (2005) 3 CompLJ 110 : (2004) 54 SCL 256

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : I. M. Chhagla, B.B. Saraf, R.S. Kothari, Kamlesh Kharade and Purvi Shah, V.M. Raste, for the Appellant;

Judgement

Anoop V. Mohta, J.—Petitioner-company viz., Ultra Tech Chemical Company Limited (for short "petitioner-company", "resulting company" or "CemCo") has invoked the provisions of Sections 391 to 394 of the Companies Act to obtain sanction to their Scheme of Arrangement between Larsen and Toubro Limited (for short "L&T" or "de-merged company") and their respective shareholders and creditors and Grasim Industries Limited (for short "Grasim") as a shareholder of Land and Larsen and Toubro Employees Foundation (for short "Trust"). It may be noted that the petitioner-company is a wholly owned subsidiary of the de-merged company (L&T).

2. CemCo, in the present Petition, provided details of its capital structure and also provided capital structure of the de-merged company, based on the last audited Balance Sheet of the company as on 31st March, 2003.

3. After considering the proposal from the concerning companies and after due deliberation from all aspects, a draft Scheme of Arrangement and a draft restructuring agreement was placed before the Board of Directors of the petitioner-company and the de-merged-company on September 24, 2003, which was later on approved. On November 3, 2003, therefore, restructuring agreement was executed between the de-merged-company, Grasim, Samruddhi, and the petitioner-company as also the Larsen and Toubro Employees Foundation

Trust.

4. The principle objective of the proposed restructuring and the acquisition of the management control and concurrent therewith the exit of Grasim and Samruddhi from the de-merged company. The said Scheme in question provides for demerger of the cement business of the de-merged-company to the petitioner-company upon the effectiveness of which the de-merged-company would hold 20% of the equity of the petitioner-company and the balance 80% would be held by the shareholders of the de-merged-company in proportion to their holding in the de-merged-company. The Scheme also provides for the acquisition of shares of the petitioner-company from the de-merged company by Grasim and its associates. The acquisition of shares of the petitioner-company from the other shareholders of the petitioner-company by Grasim by way of an Open Offer in accordance with the terms thereof with a view to acquire management, control of the petitioner-company and the concurrent exit of Grasim and its subsidiary company from the de-merged-company, by way of sale of the shares held by them in the de-merged company to the Trust. The rationale for the Scheme, as envisaged by the de-merged company as set out in the Petition and elaborated and explained by the learned senior counsel Mr. I.M. Chhagla, appearing on behalf of the petitioner-company. The Scheme provides basically enhancement of shareholders value, size, scale, integration and financial strength, considering the global competitiveness and business strategy of the existing cement business. Various other factors which are requisite and relevant for the success and purpose of such Scheme have been elaborated with great details.

5. The Bombay Stock Exchange and the National Stock Exchange have also issued No Objection letters to the de-merged company on November 19, 2003, and November 25, 2003, respectively.

6. Petitioner-company, therefore, had filed Company Application No. 566 of 2003 wherein, by an order dated 17th December, 2003, the Hon'ble High Court was pleased to dispense with the meetings of the equity shareholders and unsecured creditors of the petitioner-company in view of the letters of consent dated 12th December, 2003, submitted by all the equity shareholders of the petitioner-company and the letter of consent dated 13th December, 2003, submitted by the unsecured creditors of the petitioner-company in support of the said application. There has been no material changes in the creditors of the petitioner-company. It may be mentioned here that the de-merged company (L&T) had also filed Company Petition No. 540 of 2003 in which orders dated 12th December, 2003, and 18th December, 2003, were passed for convening and holding the meetings of its secured creditors, unsecured creditors and equity shareholders on 3rd February, 2004. In the said meeting of L&T, the Scheme of Arrangement in question was approved by an overwhelming majority by shareholders and unanimously by secured and unsecured creditors. The Chairman of the said meeting therefore, has filed his Report and in the result of the said meeting in the High Court as per law. The demerge company ie., L&T has filed company

Petition No. 120 of 2004 for sanction of the said Scheme of Arrangement. By a separate reasoned order, the said Scheme of Arrangement has been sanctioned. The facts and reasons of the Company Petition No. 120 of 2004 be treated as part and parcel of the present petition for all the purposes including decision on objectors' objection.

7. In the present Petition of CemCoresulting company, there are no investigation proceedings instituted or pending under Sections 235, 237, 239 and 247 of the Act against the petitioner-company. It is also averred that none of the Directors of the petitioner-company have any interest in the Scheme, save and except to the extent of their respective shareholding in the de-merged-company and the petitioner-company. By order dated 13th February, 2004, the present Petition was admitted and fixed for hearing on 18th March, 2000. Statutory notices have been directed to be issued which included advertisement, as well as, notice to the Regional Director u/s 394A of the Act.

8. By Affidavit dated 24th February, 2004, as well as, 18th March, 2004, publication of the notice, compliances of all the notices were placed on record.

9. By Affidavit dated 24th March, 2004, the Regional Director, Western Region, Department of Company Affairs, after examining the Report of the affairs of the company from the point of view of the shareholders' and creditors interest, basically has not opposed the Scheme of Arrangement excepting a suggestion to consider the objections raised by one Mr. Rasik S. Poladia and recommendations of Bombay Stock Exchange in reference to the letter dated 19th November, 2003, and National Stock Exchange letter dated 25th November, 2003, to list and trade on the Stock Exchange before the opening of the Open Offer proposed to be made by Grasim Industries Limited so as to enable the investing public to make informed investment decision. The additional objection was in reference to clause 33(b) of the Scheme regarding amendment to the capital clause of the Resulting Company as the same involves increase of authorised capital requiring payment of stamp duty and Central Government Registration Fee and compliances of the procedure stipulated u/s 31/97 of the Companies Act. It is, therefore, submitted that the Resulting Company may be directed to pay the requisite stamp duty, Central Government Registration Fee and file the required forms with the Registrar of Companies and comply with the provisions of the Companies Act. There is no positive averment to the effect that the Scheme is not in the interest of shareholders or creditors.

10. On record, one Mr. Vishwasrao Madhavrao Raaste, a shareholder and contemplative activist of Pune has raised objection to the Scheme of Arrangement in question. The detail objections, as well as, its respective reasoning have been given separately in Company Petition No. 120 of 2004. There is no specific Affidavit or objection raised by Mr. Raaste in the present Company Petition No. 121 of 2004. There are no other interveners or objectors on record. Mr. Raaste, in spite of repeated opportunity given, has not filed any written submission or arguments on record. The matter was closed for orders on

5th April, 2004. Parties have been directed to file their Written Submissions, if any. The last Written Submission was received in Company Petition No. 120 of 2004 on 7th April, 2004.

11. Considering the reasoning given in Company Petition No. 120 of 2004 and considering the merits of the Scheme, as read and referred and elaborated by senior counsel Mr. I.M. Chhagla in the present Petition, by referring to the statutory provisions of the Companies Act, as well as, the Rules thereunder and further pointed out that all the statutory provisions have been complied with, there is no breach of any mandatory provision of law. The Scheme is fair, just, sound and it is not against any public policy or public interest. All the shareholders, creditors by unanimous decision, considered all the significant aspects of the Scheme, based on all necessary, requisite and relevant material as required under the law. Therefore, in view of this, this is a fit case where the Scheme should be sanctioned.

12. In view of the above, the sanction of the Scheme, as prayed, is granted. The Company Petition No. 121 of 2004 is made absolute in terms of prayer clauses (a) to (h), with liberty. Parties to proceed in accordance with law.

13. Costs of Rs. 2,500 to the Regional Director, to be paid by the petitioner within a period of four weeks from today.

14. Insurance of drawn up order be expedited.