

**(1999) 02 P&H CK 0088**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Company Petition No. 136 of 1996 and 12 of 1997

In The Matter of

APPELLANT

Vs

Highway Cycle Industries and Sunbeam Auto Ltd.

RESPONDENT

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**Date of Decision :** 10-02-1999

**Acts Referred:**

Companies Act, 1956 — Section 391, 391(2), 394, 394(3)

**Citation :** (1999) 121 PLR 531 : (1999) 2 RCR(Civil) 541

**Hon'ble Judges :** Swatanter Kumar, J

**Bench :** Single Bench

**Advocate :** Virender Ganda and Adarsh Jain, for the Appellant; H.S. Bawa, for the Respondent

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## **Judgement**

Swatanter Kumar, J.—Vide two different orders of the same date, i.e., 3 October, 1996, passed in Company Petition No. 112 of 1996 and Company Petition No. 113 of 1996, M/s. Highway Cycle Industries was permitted to put to its shareholders and creditors the scheme of arrangement in furtherance of the provisions of sections. 391 and 394 of the Companies Act, 1956 (hereinafter referred to as "the Act"). The scheme of arrangement as proposed provided that as a measure of corporate reconstruction and to provide the base for further growth and with an object to carry on the business with focused attention and more profitably, it was decided to transfer the unit of Sunbeam Castings of M/s. Highway Cycle Industries Limited (hereinafter referred to as "the transferor-company") to M/s. Sunbeam Auto Limited, a growing concern (hereinafter referred to as the "transferee-company"). The detailed terms and conditions of the proposal were specified in Annexures E/5 to the respective petitions. In accordance with the order, dated 3 October, 1996, the transferor and transferee companies were permitted to hold and conduct the meetings of its shareholders and creditors (secured and unsecured) for the purpose of considering and approving the scheme of arrangement, as proposed, in accordance with the terms and conditions and further subject to the directions contained in the said order.

2. Resultantly, Company Petition No. 112 of 1996 and Company Petition No. 113 of 1996 were disposed of vide identical orders. The meeting was held as per schedule and after notice, the respective Chairmen filed their report. Affidavits on behalf of the Regional Director (Northern Region), Department of Company Affairs, were also filed.

3. The transferor and transferee companies, aforesaid, therefore, have filed Company Petition No. 136 of 1996 and Company Petition No. 12 of 1997, respectively, for the sanction or approval of the scheme under the provisions of sections. 391, 391(3)(4) and 394 of the Act. Notice of these company petitions was issued vide orders, dated 5 December, 1996 and 30 January, 1997. Notice of the petition was published in the Tribune, Jansatta and also in the official gazette of the State of Haryana. Along with affidavit a set each of copies of publications including the copy of the official gazette has also been filed by the petitioners. The reports of the respective Chairman who presided over the meetings of the creditors and the shareholders have been filed along with these petitions as Annexures L and P-10, respectively. The affidavit in both the petitions of Shri S. B. Malhar, Regional Director (Northern Region), Department of Company Affairs, Kanpur, has also been filed. It has been stated by the Regional Director that the affairs of the company do not appear to have been conducted in a manner prejudicial to the interests of the members or to public interest. It has further been suggested in the affidavit that proportionate equity shares be allotted by the transferee company to the transferor company while making transfer of the unit. However, in the meeting of the creditors and shareholders of the company, the proposed scheme was approved unanimously. The relevant extract of the Chairman's report as annexed to Company Petition No. 112 of 1996, reads as under :

"That the proposed scheme of arrangement was read out and explained to the members present and the question submitted to the said meeting was whether the members/shareholders of the said company approved the scheme of arrangement unconditionally.

5. That all the members/shareholders were of the unanimous opinion that the scheme of arrangement should be approved and agreed to. The polling slips in indicating the approval of the proposed scheme of arrangement is being attached as Annexure V. No member/shareholder opposed or objected to the proposed scheme of arrangement."

4. Similar report has been submitted on behalf of the other company. The unit of the transferor company is being transferred to the transferee company. The scheme as proposed was approved by the Board of directors of, the respective companies. The report of the chartered accountants of the respective companies had also been filed, on record, copy annexed to this petition as well. Along with the balance sheet of the company as on 31 March, 1996, the Bank of Baroda, the lead bank in relation to the affairs of the companies, has issued a "no-objection certificate" for the implementation of the proposed scheme. It is true that

consideration in cash is not being paid for transfer of the unit but for this purpose the scheme has to be construed and read in its entirety. The scheme already stands approved by the shareholders as well as secured and unsecured creditors of the respective companies. It is a settled principle of law that internal management and running of the business is primarily a matter which falls in the domain of management for internal affairs of the company. Unless and until such scheme is impermissible in law or bad in law and/or opposed to public policies, the court would not interfere in sanctioning of such scheme. It has been certified that the proposed scheme is not opposed to public policy and does not offend the interests of the shareholders/members/creditors of the company and that it is not opposed to the public at large. Growth, expansion and profitability appear to be the objects of both the companies without infringing the rights of all concerned.

5. The function of the court while considering the scheme within the purview of sections 391 and 394 of the companies Act as more supervisory in nature. The court certainly has to record its satisfaction that all relevant material as required under the proviso to section 391(2) has been placed on record and the attempt of the scheme is not to work for the benefit of some particular interested person. The proposed scheme need not satisfy the basic ingredients of a contract. Cash consideration, per se, would not frustrate or invalidate the proposed scheme.

6. Despite public notice, no objection has been filed by any person interested or from the public at large. In other words, there appears to be no objection to the acceptance of the scheme. The concerned financial institutions have consented to the arrangements.

7. For the reasons aforesaid and in view of the report of the Chairmen and due certification by Regional Director (Northern Region), Department of Company Affairs, I have no hesitation in sanctioning the scheme Annexure "E" to these petitions within the purview and scope of sections 391 and 394 of the Act. Consequently, the scheme annexed to these petitions as annexures "E" and "5", respectively is hereby approved and sanctioned. The control of the unit Sunbeam Casting of the transferor company shall vest in terms of the scheme, in the transferee company from the date indicated in the scheme. It is further directed that the scheme as sanctioned shall be binding on all the creditors/members/shareholders/contributors of the company.

8. The petitioner companies in both the petitions are directed to comply with the provisions of sections 391(4) and 394(3) of the Companies Act within the stipulated period. The order shall be duly notified/published in accordance with rules. The publication shall be effected in Indian Express and the Tribune by the concerned companies.

9. Resultantly, both the above petitions are allowed. The scheme as proposed is sanctioned to the extent afore-indicated.