
(1987) 05 GUJ CK 0003
In the Gujarat High Court

Jitendra R. Sukhadua

APPELLANT

Vs

Alembic Chemical Works Company Ltd.

RESPONDENT

Date of Decision : 01-05-1987

Acts Referred:

Companies Act, 1956 — Section 205, 393(1)

Citation : (1988) 64 CompCas 206 : (1988) 2 GLR 1252

Hon'ble Judges : R.C. Mankad, J;P.M. Chauhan, J

Bench : Division Bench

Advocate : K.B. Pujara, for the Appellant; G.N. Desai, B.J. Shelat, N.J. Mehta, H.S. Munshaw, M.M. Singhi, P.G. Desai, R.P. Bhatt and S.R. Shah, for the Respondent

Judgement

Mankad, J.—This appeal is directed against the judgment and order dated September 12, 1986, passed by the learned company judge in

Company Petition No. 30 of 1986 (Alembic Chemical Works Co. Ltd., In re : Neomer Ltd., Alembic Chemical Works Co. Ltd. Neomer Ltd.,

sanctioning the scheme of amalgamation . of Neomer Ltd. ("Neomer" for short with Alembic Chemical Works Co. Ltd., respondent No. 1 -

company ("respondent company" for short). The appellants are the shareholders of the respondent company. Some of them are also employees of the respondent company.

2. The authorised capital of the respondent company is Rs. 8,00,00,000 decided into 7,90,000 equity shares of Rs. 100 each, and 10,000 9%

rememable cumulative preference share of Rs. 100 each. The issued any subscribed capital of the respondent company is Rs. 3,46,92,000

decided into 3,46,920 equity shares of Rs. 100 each fully paid - up and 2,000 9% redeemable cumulative preference shares of Rs. 100 each fully

paid up. The respondent company is engaged in manufacture and sale of pharmaceutical and chemical products. It is also authorised by its object

clause to undertake manufacture, produce, use, buy, sale and other - wise deal or traffic in natural, man - made and synthetic yarns, staple fibres,

mono - filaments, multi - filaments, etc. The respondent company had promoted Neomer which is engaged in manufacture of poly-propylene staple

fiber (PSF for short). Neomer is also authorised by its objects clause to manufacture, produce, used buy, sell and otherwise by its objects clause to

manufactures, produce, use, buy, sell and otherwise deal or traffic in natural, man - made and synthetic yarns, staple fibres, mono - filaments,

multi - filaments, etc. it is also authorised to amalgamate itself with any other company. The authorised to amalgamate itself with any other

company. The authorised capital of Neomer is Rs. 5,00,00,000 decided into 30,00,000 equity shares of Rs. 10 each and 20,00,000 unclassified

shares of Rs. 10 each. The issued and subscribed capital of Neomer is Rs. 2,95,77,500 divided into 29,57,750 equity shares of Rs. 10 each fully

paid up and a sum of Rs. 1,42,875 being the amount of the forfeited shares aggregating to Rs. 2,97,20,375. Neomer had, in accordance with the

policy of the Government of India, set up a factory to manufacture PSF in a backward area at village Panvel, district Panchmahals, which is a

notified backward district in the Gujarat State. It appears that Neomer had to face a number of difficulties and the production of PSF could be

commenced only in early 1977. The concept of Neomer was to introduce PSF having a very low process, to place wool and shoddy yarn

products. However, with the steep increase in prices of petroleum products (basic raw materials) during the subsequent years, the expectation of

sales and profitability could not materialise. It is stated that at the same time, the Indian market was fully oriented to the use of well - established

fibres, like nylon, polyester and acrylic. The production of Neomer remained at a low level on account of the aforesaid circumstances and it has

incurred heavy losses. The financial position of Neomer became very adverse due to continuous losses suffered by it. The large cash losses

affected its liquidity position. As on May 31, 1985, its liabilities were 720.82 lakhs of rupees as against the tangible assets of Rs. 537.01 lakhs,

Thus, the liabilities of Neomer far outweighed its assets. It became evident that production of PSF alone cannot sustain Neomer and because of

its poor financial position, Neomer was neither able to borrow funds nor able to raise on its own the necessary funds to modify and / or diversify

able to raise on its own the necessary funds to modify and /or diversify its activities. Under the circumstances the financial institutions who were

secured creditors of Neomer submitted a proposal for amalgamating Neomer with the respondent company. It was suggested that the proposed

amalgamation would not only provide necessary support financially, but also result in certain concessions and reliefs. It was hoped that

amalgamation would revive Neomer by better utilisation of production facilities of existing product lines and additional product lines like poly-

propylene, multi - filament yarn and poly-propylene non - woven products. It was noticed that there was a wide application of poly- propylene

filament yarn. The respondent company which is engaged in pharmaceutical line, was in need of some deliver satisfaction for improving long - term

profitability. It was hoped that required diversification would be provided by Neomer pursuant to the amalgamation. With the amalgamation, the

respondent company would be able to use the present infrastructure of Neomer for both existing and new product lines and it was felt that resultant

production would be more economical. The respondent company would also be able to use the infrastructure for its own propose. The financial

institutions also agreed that if the proposed amalgamation ultimately went through, certain other concessions like waiving of compound and penal

interest and phased out repayment of term loans can be provided to the respondent company. If the amalgamation was approved to the respondent

company. If the amalgamation was approved u/s 72A of the Income - tax Act, the respondent company would get the benefit of carried forward

losses. It was in the aforesaid background that the board of directors of the respondent company and Neomer decided to amalgamate Neomer

with the respondent company with effect from January 1, 1983, and framed the scheme of proposed amalgamation. The specified authority

accorded its approval to the proposed amalgamation u/s 72A of the Income tax Act. The Central Government also approved the amalgamation

scheme u/s 23(2) of the Monopolies and Restrictive Trade Practices Act.

3. By an order dated December 6, 1985, passed in Company Application No. 321 of 1985, the learned company judge directed the respondent

company to consignee meeting of equity shareholder, preference share - holders, depositors, trade creditors,, debenture - holders and secured

creditors of the respondent company for the purpose of considering the aforesaid scheme of amalgamation. Notices of the meetings were served

individually to the members of each of the above class together with copy of the scheme of amalgamation and explanatory statement as required by

section 393 of the Companies Act. Notices of the meetings were also advertised as directed by the court by advertisement dated December 23,

1985. Meeting were held on January 23, 1986, and the chairman, Mr. R. B. Amin, submitted his report of the meetings to this court on January

31, 1986. The scheme of amalgamation was approved at the meeting of equity shareholders by a majority. 1,240 equity shareholders of the

respondent company including proxies holding 2,04,739 equity shares voted in favour of the proposed scheme of amalgamation being adopted and

carried into effect. 174 equity shareholders including proxies holding 452 equity shares voted against the proposed scheme of amalgamation. It

would thus appear that 87.90% of the equity shareholders present and voting had voted in favour of the scheme and the votes cast in favour of the

scheme was 99.77% of the total votes cast. 12.1% of the equity share holders present and voting had voted against the scheme and the votes cast

against the scheme was 0.22% of the total votes cast. A meeting of the preference shareholders of the respondent company unanimously approved

the scheme of amalgamation. The scheme of amalgamation was approved by the majority of deposits who were present at the meeting. Out of 785

depositors who were present at the meeting, 779 voted in favour of the scheme of amalgamation, while 6 voted against. Meetings of trade

creditors, debenture - holders and secured creditors unanimously approved the scheme of amalgamation.

4. It is not disputed that similar meetings of creditors and members of class of members of Neomer were also held under the direction of this court

and at these meetings, the scheme of amalgamation was approved. Thereafter, both the respondent] company and Neomer filed a petition u/s 394

read with section 391 of the Companies Act for amalgamating Neomer with the respondent company. In other words, petitions were filed to this

court for sanctioning the aforesaid scheme of amalgamation. The learned company judge has by his impugned judgment an order sanctioned the

scheme of amalgamation. Being aggrieved by the judgment and order passed by the learned company judge, the appellants have preferred this appeal.

5. The appellants' learned counsel, Mr. K. B. Pujara, raised the following contentions opposing the amalgamation of Neomer with the respondent company:

(1) The explanatory statement u/s 393 of the Companies Act sent along with the notice did not disclose sufficient particulars which would have

influenced the judgment of the shareholders and creditors in supporting or appearing the scheme of amalgamation.

(2) There was no fair and adequate representation at the meeting of the shareholders, creditors, etc.

(3) The exchange ratio of the shares of 40:1 was unrealistic unfair to the shareholders of the respondent company and favorable to shareholder of Neomer.

(4) The scheme of amalgamation is not legal inasmuch as it provides for payment of dividend to the shareholders of Neomer with retrospective effect in violation of section 205 of the Companies Act.

(5) The scheme of amalgamation is against the interest of the workmen of the respondent company.

6. So far as the first ground of challenge to the scheme of amalgamation was concerned, Mr. Pujara submitted that there was non - compliance

with the provisions of section 393 of the Companies Act inasmuch as the statement which was required to be sent along with the notice, as

required by clause (a) of sub - section (1) of the said section , did not explain the effect of the terms of amalgamation. Mr. Purkara submitted that

the statement sent along with the notice, it was necessary to state all the relevant and material facts having a bearing upon the scheme of

amalgamation, so that the creditors and members would be in a position to apply their mind intelligently to the true merits or demerits of the scheme

of amalgamation. IN the instant case, submitted Mr. Pujara, the following material particulars were not disclosed in the statement:

(i) Financial particulars, assets and liabilities of Beomer as on January 1, 1983 (appointed date).

(ii) Financial particulars, assets and liabilities of Neomer as on the date of last

audited balance - sheet, i.e., May 31, 1985.

(iii) The loss or profit incurred or made by neomer after January 1, 1983, (appointed dated), till the date of meeting or at least up to the date of last

audited balance - sheet , i.e., May 31, 1985.

(iv) Contingent liabilities of Neomer as on May 31, 1985, for future payment of gratuity amounting to Rs. 2,00,448 not provided for in the books

of account.

(v) Contingent liabilities of Neomer as on May 31, 1985, for important duty payable on stock in bonded warehouse amounting to Rs. 2,59,448,

not provided for in the books of account.

(vi) Total number of shares of Alembic required to be issued to the members of Neomer of amount of dividend at 15% there payable for the year

ended on December 31, 1983.

(vii) Alembic's commitment to discharge the huge liabilities Neomer of the financial institutions amounting to Rs. 266.56 lakhs as on December 31,

1984, for the term loan, repayable in 8 equal half yearly installments between the first half of 1985 and the second half of 1989, that is to say,

repayment of Rs. 71.64 lakhs each year from 1986 to 1989.

(viii) Alembic's commitment to discharge Neomer's liability of interest on term loans upto December 31, 1984, amounting to Rs. 166.88 lakhs

which is to be repaid by payment of 50%, that is to say, Rs. 82.79 lakhs, on the date of receipt of approval from the High Court and by paying the

balance of 50% in the following year.

(ix) Alembic's agreement to write off its investment of 2,81,400 equity shares in Neomer having a face value of Rs. 28.14 lakhs.

(x) Alembic's agreement to write off the loan amount of Rs. 10 lakhs given to Neomer.

(xi) Condition imposed by the Central Government in its order dated September 20, 1985, granting approval u/s 23(2) of the Monopolies and

Restrictive Trade Practices Act, 1968, and the tax savings arising out of amalgamation during the financial years 1988 shall be utilised by Alembic

for the revival of the undertaking of Neomer.

xii) The details as to how the share exchange ratio of 1 share of Rs. 100 of Alembic for 40 shares of Rs. 10 each of neomer was arrived at.

7. Out of these 12 "material particulars", Mr. Purkara laid emphasis only on the non - disclosure of material particulars or details regarding share

exchange ratio of one share of Rs. 100 each of the the respondent company for 40 shares of Rsa. 10 each of Neomer. According to Me. Purkara,

it was not sufficient to state early the exchange ratio was arrived at on the basis of the report of M/s. Dalal and Shah, chartered accounts of

Bombay Since this report did not disclose as to how the ratio was actually worked out, the respondent company, with the consent of the

appellants, was directed to file an affidavit of the chartered accountant explaining as to how the ratio was worked out. Mr. Yogendra C. Amin,

partner of M/s Dalal and Shah, chartered accountants, has, in compliance with the above direction, filed his affidavit wherein he has explained as to

how the ratio was worked out. The working sheet from the file of the chartered accountants has also been filed along with the affidavit. Mr., Pujara

submitted that this affidavit of Mr. Amin and the working sheet do not satisfactorily explain as to how the ratio was arrived at. Mr. Pukara

submitted that different yardsticks were applied for working out the value of the share of the respondent company and that of Neomer. Me.

Purkara submitted that the same yardstick should have been applied for working out the value of the share of the respondent company and that of

Neomer; and unless that was done, the ratio which was worked out could not be said to be fair or reasonable. Under the circumstances, there was

material commission in the statement annexed to the notice as required by section 393 of the Companies Act. Mr. Pujara urged that on account of

failure to disclose the manner in which the share exchange ratio was worked out, the creditor and shareholders could not have arrived at an

informed or intelligent decision regarding the scheme of amalgamation.

8. Section 393(1)(a), in so far as it is relevant to the context in which Mr. PUrkara had made the aforesaid submissions. reads as under:

393(1) Where a meeting of creditors or any class of creditors, of a members or any class of members, is called u/s 391,-

(a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth thee terms of the

compromise or arrangement and explaining its effect,....

9. It will be seen that the aforesaid provision on which reliance is placed by Mr.

Pujara provides that the notice calling for the meeting must contain two things:

- (i) a statement setting forth the terms of the compromise or arrangement; and
- (ii) explaining its effect. There is no dispute that along with the notice,

a statement setting forth the terms of the scheme was sent. The contention of Mr. Pukara, however, is that the provision has not been complied

with on account of failure to explain the effect of the scheme in the statement.

10. The question whether the details as to how the share exchange ratio had been arrived at were required to be stated in the statement sent along

with the notice u/s 393(1) of the Companies Act had come up for consideration before N. M. Nuabhoj J. (as he then was) in Sidhpur Mills Co.

Ltd., In Re: Sidhpur Mills Co. Ltd., . Dealing with the contention similar to the one which was raised by Mr. Purkara, the learned judge observed

that the first part of clause (a) of section 393(1) requires not only that the terms of the scheme must be stated, but also it further requires that the

effect of the scheme must be explained. Therefore, observed the learned judge, the statement must contain not only the terms of the scheme, but

also further explain as to what its effect would be. The clause does not state in terms as to the effect on what has got to be mentioned in the

statement. Broadly speaking, however, it is quite clear that what has got to be explained are not the details of the scheme, but the effect, which the

scheme will have obviously on such matters as to the welfare of the company and the welfare of its shareholders of=r to the welfare of the

company and the welfare of its shareholder or creditors with whose interests the scheme purports to deal. The learned creditors with whose

interests the scheme purport to deal. The learned judge went on to observe that ""effect"" means consequence, a condition which arises as a result of

a certain course of action. If there is anything in the scheme, companies or arrangement which is not quite obvious to a person reasonable;y

acquainted with the facts of a case by merely to a person reasonably acquainted with the facts of a case by merely reading the terms of the

scheme, then a duty is cast upon the person reading the terms of the scheme, then, a duty is cast upon the persons reading the terms of the

scheme, then, a duty is cast upon the persons concerned to mention what the consequence will be if the scheme is approved of. In other words it is

only the consequences or the result which had got to be explained which would arise on account of the approval of the scheme. If something is

implied in the scheme which is not obvious, the same must be brought to the notice of the shareholders. In the case before the learned judge, the

statement had mentioned that the shareholders of one company (Bombay company) would be given 1 3/4% equity shares of another company

(Sidhpur Mills Company) for each share held in the former company (Bombay company). The learned judge observed that that matter was self -

evident and would be known to any one who cared to read the statement. It was observed that no further explanation on that particular point was

called for. The details as to the way in which the ratio was arrived at is not a matter relating to the effect of the scheme. That was a matter of detail

and pertained to things required to be considered for fixing the ratio.

11. With respect, we are in full agreement with the view of N. M. Miabhoy J. (as he then was). The dictionary meaning of the word "effect" sp. far

as it is relevant for our purpose given in The Random House Dictionary of the English Language is as follows: "...: result; consequence..." "Effect";

means consequence (s); result; this has reference to something produced by action or cause". In other words, effect is that which is produced and

as observed by Miabhoy J. a condition which arises as a result of certain course of action. The aforesaid clause (a) of section 393(1) does not lay

down as to the effect on which has got to be mentioned in the statement. When it speaks of explaining the scheme's effect. consequence or result

which would follow the scheme. The requirement is to state and explain the effect and not the details or particulars of the consequence or result. In

other words, the basis of working on which certain consequence or result of the scheme would flow from the scheme is not required to be stated.

It is only the result effect of the scheme which is required to be stated. As observed in In Re: Sidhpur Mills Co. Ltd., , if there is any thing in the

scheme of compromise or arrangement which is not obvious to a person reasonably acquainted with the facts of the case by merely reading the terms

of the scheme, then, with the facts of the case by merely reading the terms of the scheme, then, a duty is cast upon the persons concerned to

mention what the consequence will be if the scheme is approved of. If something is implied in the scheme which is not obvious, it must be brought

to the notice of the creditor and shareholders. In the instant case, the share exchange ratio is clearly mentioned in the scheme. In other words, it is made clear that is clearly mentioned in the scheme. In the other words, it is made clear that in case the amalgamation of Neomer with the respondent company is approved the shareholders of Neomer would be entitled to one share of the respondent company in exchange for 40 shares of Neomer. In what manner this exchange ratio was worked out is not a matter which was required to be stated in the statement contemplated u/s 303(1)(a). This effect of the scheme, namely, that the shareholders of Beinerm would, as result of the amalgamation, get one share of the respondent company in exchange for 40 shares of aNeomner was vested, there was sufficient explanation of the effect of the scheme to the shareholders of the respondent company so far as the share exchange ratio is concerned. How the share exchange ratio was worked out was not the ""effect"" of the scheme; but a detail, which was not required to be stated in the statement. Once the share exchange ratio was clearly stated, the shareholders of both the companies, that is the respondent company and Neomer, would be put on alert, if they had any doubt regarding the share exchange ratio and the working thereof. Once the effect of the scheme is explained, the duty cast under clause (a) of section 393(1) is discharged and nothing more was required to be done for complying with the said provision. We, therefore, find ourselves unable to accept Mr. Pujara's contention that in the absence of details regarding working of the share exchange ratio in the statement, there was failure on the part of the persons concerned to Comp with the provisions of clause (a) of section 393(1) of the Companies Act; and, consequently, the shareholders of the respondent company could not arrive at an informed decision whether or not to approve the scheme of amalgamation.

12. As pointed out above, Mr. Pujara, though he had referred to non - disclosure of servile particulars enumerated above, in the statement sent along with the notice u/s 393(1)(a), his main challenge to the statement was confirmed to the ground that the failure to state details as to how the share exchange ratio was worked out resulted in non - compliance with the said provision. In other words, besides enumerating non - disclosure of particulars mentioned above in the statement, Mr. Pukara did not elaborate as to how the failure to mention the above particulars would render the

statement not in comcormity with the provisions of clause (a) of section 393(1). We have already dealt with the main contention of Mr. Pukara

with regard to the details of the share exchange ratio and in our opinion, for the reasons which we have already set out above, it was not necessary

to state or disclose particulars which are enumerated hereinbefore in the statement. The requirement of the said provision is to sent alone with the

notice a statement setting forth the terms of the scheme and explaining its effect. The terms of the scheme are set out in the statement in question

and the effect of the scheme had also been explained. The financial particulars of the assets and liabilities present or contingent of Neomer, etc.,

were not required to be stated in setting forth the terms of the scheme or in explaining the effect of the scheme. The statement clearly brings out that

Neomer had incurred heavy losses and its financial position had become very acute. It is also stated that it has not given any returns to its

shareholders from its petition. These were the material facts which were disclosed in the statement and the shareholders and creditors of the

respondent company could have called for more details about the financial position of Neomer, if they thought that such details were necessary to

arrive at a decision regarding the scheme of amalgamation. It was stated before us that the financial particulars, assets and liabilities of Neomer and

balance - sheets of Neomer were kept open for inspection of the shareholders and creditors. It is not the case of the appellants that they were

prevented from making an inspection of the balance - sheets of that the details of the financial position of Neomer which they had asked for were

not supplied to them. The only grievance which is made before us is that particulars regarding financial position, etc., were required to be stated in

the statement sent along with the notice as required by section 393(1)(a) and in the absence of these particulars in the statement, there was failure

to comply with the said provision, We are unable to asset this contention. This disposes of Mr. Pujara's contention regarding financial particulars,

particulars regarding the assets and liabilities of Neomer, liability it pay dividend to the shareholders of Neomer and the respondent company's

commitment to discharge liabilities of Neomer covered by particulars (i) and (viii) enumerated hereinbefore. We also do not see any substance in

Mr. Pujara's argument that the statement should have specifically mentioned that as a result of the amalgamation, the respondent company would

case to hold 2,81,400 shares in Neomer and that the loan of Rs. 10 lakhs given to Beomer would stand written off. These would be the obvious consequences of the amalgamation. The respondent company cannot own its own shares nor can it be its own creditor. We also do not think that it was necessary to state in the statement that the Central Government had, while according approval u/s 23(2) of the Monopolies and Restrictive Trade Practices Act, directed that tax savings arising out of amalgamation during the financial years 1984 to 1988 shall be utilised by the respondent company for revival of the undertaking of Neomer. The requirement of the said provision (section 393(1)(a)) do not go so far as to cast a duty on the persons concerned to state particulars as argued on behalf of the appellants in the aforesaid statement. We, therefore, reject Mr. Pujara's contention that it was necessary to state the aforesaid particulars in the statement and the failure to do so results in non-compliance with the aforesaid provision contained in section 393(1)(a) of the Companies Act. With respect, we do not agree with the learned judge of the Calcutta High Court in the matter of Carron Tea Co. Ltd. [1966] 2 Comp LJ 278 on which reliance was placed by Mr. Pujara that in the absence of details regarding working of the exchange ratio of share, the explanatory statement could not be said to conform to the requirements of clause (a) of section 393(1) of the Companies Act.

13. The next contention of Mr. Pujara was that there was no fair representation of the shareholders and different classes of creditors at the meetings held under the direction given by this court on December 6, 1985, in Company Application No. 231 of 1985. This argument is based on the failure to disclose particulars of the share exchange ratio referred to above in the statement sent along with notice u/s 393(1)(a) of the Companies Act. The argument is that had the particulars and the detail of the share exchange ratio been specified in the statement, more shareholders and creditors would have come forward to attend the meetings. Failure to state particulars and details of the share exchange ratio in the statement has resulted in the absence of many shareholders and creditors who otherwise would have attended the meetings and therefore, the meetings could not be held to be truly representative. As already held by us above, it was not necessary to state of particulars and the details

regarding the share exchange ratio in the statement. The statement contained the terms of the scheme and it has also explained the effect of the scheme. There was, therefore, urged that on account of non-compliance with the said provisions, the meetings were not "truly, fairly or adequately represented". The report of the chairman of the meeting reveals that equity shareholders of the respondent company holding 2,04,739 out of 3,44,930 equity shares voted in favour of the proposed scheme of amalgamation. 87.9% of the equity shareholders present and voting voted in favour of the scheme and the votes cast in favour of the proposed scheme of amalgamation were 99.78% of the total votes cast. So far as the preference shares are concerned, the shareholders holding 391 preference shares out of 2,000 such shares, unanimously voted in favour of the proposed scheme of amalgamation. The depositors, trade, creditors and secured creditors also unanimously voted in favour of the scheme of amalgamation. We, therefore, do not find any substance in the contention that meetings of various classes of members and creditors were not adequately, fairly or truly represented.

14. It was next urged that the share exchange ratio was unrealistic and unfair to the respondent company and favorable to the shareholders of

Neomer. It was submitted that the chartered accountant who had determined the exchange ratio had not given adequate and convincing reasons

for the manner in which the ratio had not given adequate and convincing reasons for the manner in which the ratio was worked out and the

chartered accountant had not worked out the value of the share of the respondent company and the value of the share of Neomer by the same

yardstick. In other words, according to Mr. Pujara, different methods were adopted for valuing the shares of the respondent company and that of

Neomer and consequently the share exchange ratio was not fairly worked out. In support of this contention, Mr. Pujara relied on a decision of the

Rajasthan High Court in Cotton Agents (Rajasthan) Ltd., In re AIR 12968 Raj 311 : [1969] 39 Comp Cas 663.

15. The share exchange ratio was determined by M/s. Dalal and Shah, Chartered Accounts of Bombay. In their report dated December 27,

1983, the chartered accountant have stated the principles which they have followed in determining the value of the share of the respondent

company and Neomer, and in determining the share exchange ratio. It appears from the report that the valuation of the shares which was made on the basis of a standard method of calculation having due regard to the value of the shares of both the companies as a quoted on the stock exchange was not stated in the report, and with the consequent of parties, the chartered accountant were directed to give details regarding the working of the share exchange ratio. In compliance with the directions given by this court, Mr. Yogendra C. Amin, part be do M/s. Dalal and Shah, chartered accountants, filed his affidavit with regard to the valuation of the shares. It appears that the shares were valued by Mr. Amin. The affidavit of Mr. Amin discloses that the share of the respondent company was valued both on the basis of the field method and break - up method and the average value was worked out on the basis of the valuation arrived at by the two methods. The average value worked out to Rs. 200 per share. The value of the share of Neomer was also worked out on the basis of yield and break - up methods but in the absence of maintainable profits and having regard to the liabilities, the value of the equator share of Neomer was worked out at ""nil"" under both the methods. However, having regard to the reasonable recompense"" to pass on the benefit to the extent of 50% of the tax saving to the shareholders, the value of the share of Neomer was worked out at Rs. 5 per share. As already adverted to above in arriving at the valuation of thee share, the chartered accountant had given due regard to the values of the shares of both the companies as quoted on the stick exchange. The stock exchange quotations in regard to the shares of the respondent company and Neomer at about the relevant time are placed on record. It appears that on December 23, 1982, the equity share of Neomer was quoted at Rs. 5.25 while the equity share of the respondent company was quoted at Rs.121 on December 21, 1982. It may be recalled that the scheme of amalgamation comes into effect from January 1, 1983, and, therefore, the aforesaid quotations would have relevance in valuing the share of not the companies. If the quotation of Rs. 5.25 for equity share of Neomer as on December 23, 1982, is taken into account, the value of its share at Rs. 5 5 made by the chartered accountant does not appear to be unfair or unreasonable. It may also be mentioned hat the equity share of Neromer was quoted at Rs. 4.50 as on January 3, 1983. This also shows that the valuation of equity shares of Neomer made by

the chartered accountants was not unfair or unreasonable. It also cannot be said that different yardsticks were applied for valuing the share of the respondent company and that of Neomer. As already pointed out above, the value of the shares of both the companies were worked out on the basis of yield method and break - up method. So far as Neomer was concerned, the value of its shares turned out to be ""nil"" under both these methods. However since the respondent company was going to get the benefit of carried forward losses of Neomer in payment of income tax, that factor and the quotation in the stock exchange were taken into account in working out the value of equity share of Neomer. However, for that reason, it could not be said that different yardsticks were applied in valuing the shares. It cannot be gainsaid that as a result of the amalgamation, the respondent company would acquire all the assets, such as buildings, factory, plant and machinery of Neomer. It is not disputed that the market value of these assets as on the effective date of amalgamation, that is, January 1, 1983, was high, though the actual working is not placed on record. Therefore, taking all the factors into consideration, we are not prepared to hold that the share exchange ratio determined by the chartered accounts is unfair or unreasonable.

16. It was next urged on behalf of the appellants that the shareholder of Neomer will get the benefit of dividend with effect from January 1, 1983, which is appointed as the date on which the scheme of amalgamation was to come into force. It was submitted that the scheme of amalgamation would not become effective unless it was sanctioned by the court. The scheme was sanctioned by the court on September 12, 1986, The shareholders of Neomer, however, will not be allowed to receive dividends with effect from January 1, 1983. Therefore, according to Mr. Pyjara, learned counsel for the appellants, the shareholders of Neomer will be paid dividend with retrospective effect. Mr. Pukara submitted that the dividend was declared at the annual general meetings held in 1983, 1984 and 1985, on the basis of the profits made in the relevant years. These dividends were declared keeping in view only the shareholders of the respondent company and not the shareholders of Neomer. The shareholders of Neomer, therefore, cannot be paid dividend with effect from January 1, 1983, and if they are paid such dividend, that would be in

violation of the provisions of section 205 of the Companies Act.

17. It is not disputed by Mr. Pukara that the scheme of amalgamation can be made effective from a particular date. Mr. Pukara also did not

dispute that, in the instant case, the amalgamation would be effective from January 1, 1983, and all the assets and liabilities of Neomer would vest

in the respondent company and the shareholders of Neomers would in accordance with the share exchange ratio, become shareholders of the

respondent company with effect from January 1, 1983. His contention, however, was that the shareholders of Neomer cannot be paid dividends

with effect from January 1, 1983, and if the shareholders of Neomer become the shareholders of the respondent company with effect from that

date, we fail to see how to see how they can be denied dividends payable to them as shareholders of the respondent company with effect from

January 1, 1983. It is true that unless the court sanctions the scheme, it would not become effective, but once the court accords its sanction, it

would become effective from the appointed date, if the court so directs. In the instant case, the court has directed that the scheme effective January

1, 1983. Consequently, the shareholders of Neomer would become shareholders of the respondent company with effect from January 1, 1983.

That being the position, they have to be paid dividends on the same basis on which the shareholders of the respondent company were paid

dividend with effect from January 1, 1983. They cannot be given discriminatory treatment once the shareholders of Neomer become the

shareholders of the respondent company. In other words, they cannot be treated differently from other shareholders of the respondent company. It

was stated before us that it is proposed to pay dividends to the former shareholders of Neomer with effect from January 1, 1983 from the

accumulated profits of the respondent company. It is disputed that it is permissible to pay dividend out of the accumulated profits. In our opinion,

there is, therefore, no breach of any provision of the Companies Act in making payment of the dividends to the shareholders of Neomer as stated

above. Dividend has not been paid to the shareholder of Neomer on account of interim relief granted by this court pending the hearing of this

appeal. There is no payment of dividend with retrospective effect as urged on behalf of the appellants. The former shareholder of Neomer will be

paid dividend not with retrospective effect, but with effect from the date on which they become shareholders of the respondent company. We,

therefore, reject the aforesaid contention of Mr.Pujara.

18. The last contention which was raised on behalf of the appellants was that as a result of the amalgamation of Neomer with the respondent

company, the interest of the workmen of the respondent company would be adversely affected. That was a lame argument to oppose the

amalgamation, since it was conceded that it is iopen to the workmen of the respondent company to oppose the amalgamation. The interest of the

workmen of the respondent company was said to be adversely affected on three counts, namely, (i) apprehended transfer of the employees of the

respondent company to Neomer; (ii) retrenchment of the employees of the respondent company as a result of amalgamation; and (iii) bonus. So far

as the transfer of the employees of the respondent company was concerned, it was categorically stated on behalf of the respondent com-pany that

no such transfer would be made. It was stated on behalf of the respondent company that it had intention of utilising the services of any of its

employees at the unit Neomer. It was also stated that no employee of the respondent company is going to be retrenched on account of

amalgamation. Therefore, so far as the first two counts are concerned, the apprehension of the appellants is not well-founded and even

Mr.Punjara, having regard to the statement made on behalf of the respondent com-pany, did not seriously challenge the amalgamation on the

ground that the interest of the workmen of the respondent company was likely to be adversely on the said counts. However, so far as the third

count was concerned, Mr. Punjara contained that the bonus paid to the workmen of the respondent would be substantially reduced as a result of

the amalgamation. It is disputed that all the workmen would be entitled to payment of minimum bonus under Payment of Bonus Act. The bonus in

excess of minimum bonus is not a matter of right and it would upon made by the respondent company. this position also was not disputed.

However, the mere fact that the profits of the respondent company are likely to be reduced as a result of the amalgamation scheme (sic. In fact, as

rightly conceded by Mr.Pujara, the workmen of the respondent company has no locus standi to challenge the amalgamation on the aforesaid three

counts. It was urged that the respondent company be directed to protect the bonus of the workmen of the respondent company on the same lines

in which their apprehension regarding transfer or retrenchment was allayed. We do not consider it necessary to give such direction. We have not

doubt that the workmen of the respondent company would be paid bonus in accordance with law.

19. No other ground was urged to assail the judgment and order passed by the learned company judge. Since we do not find substance in any of

the grounds urged before us, we see no reason to interfere with the order passed by the learned company judge sectioning the scheme of

amalgamation.

20. In the result, this appeal fails and is dismissed. Ad interim relief vacated. No order as to costs.

21. Mr. K.B. Pujara, learned counsel for the appellants, makes an oral application for certificate under article 134A read with article 133(1) of the

Constitution of India for preferring appeal to the Supreme Court. In our opinion, this case does not involve substantial question of law of general

importance which need s to be decided by the Supreme Court. We, therefore, reject the oral application made by Mr. Pujara