

---

**(2001) 03 CAL CK 0014**

**In the Calcutta High Court**

**Case No : A.P.O. No. 515 of 1990 and C.A. No. 60 of 1988**

Maddi Lakshmaiah and Others

APPELLANT

Vs

Duncan Agro Industries Ltd. and Others

RESPONDENT

---

**Date of Decision : 02-03-2001**

**Acts Referred:**

Companies Act, 1956 — Section 391, 391(1), 392

**Citation : (2001) 105 CompCas 771**

**Hon'ble Judges : Ashok Kumar Mathur, C.J;Ronojit Kumar Mitra, J**

**Bench : Division Bench**

**Advocate : Salil Kumar Mukherjee, for the Appellant;Khaitan and Co. and Fox and Mondal and Anirudha Bagchi, for the Respondent**

**Final Decision : Dismissed**

---

## **Judgement**

Ronojit Kumar Mitra, J.—This appeal has been preferred against an order dated September 13, 1990. It falls for this court to decide whether the direction sought for by the appellants in an application made u/s 392 of the Companies Act, 1956, was sustainable. In the present circumstances it would appear to me, that appellants Nos. 1, 2 and 3 have supplied tobacco to National Tobacco Limited. Duncan Agro Industries Limited and National Tobacco Limited referred to as DAIL and NTC in the judgment were amalgamated, by a scheme of merger which had been duly sanctioned by an order dated January 18, 1978, of the court. Thereafter, the appellants supplied tobacco to one TABAC impleaded in the petition and DAIL, on the understanding or arrangement according to the appellants that DAIL would be responsible for payment for the supplies, though invoices would be raised upon TABAC or the Tobacco Division of DAIL. A sum of Rs. 60,24,689.32 it had been contended by the appellants had become due and payable by DAIL to the appellants after giving credit for all earlier payments. Refusal, failure and neglect by DAIL to pay in spite of repeated demands led the appellants to make an application u/s 392 of the Companies Act in this court and pray for a direction on DAIL to pay the dues of the appellants and in default an

order be made to wind up the business of DAIL. The hon"ble judge in his order, dated September 13, 1990, from which this appeal has been preferred, has recorded in detail the submissions of counsel for the parties, and considered the law applicable in the matter, together with a decision of the Supreme Court which had been cited before him.

2. Admittedly, the reason for the appellants to come to the court was to obtain payment of their alleged claim. The appellants had also alleged that since the amalgamation, they had supplied tobacco to TABAC or DAIL on the basis of an "understanding or arrangement" that DAIL would be responsible for payment for the supplies. It was not obviously an admitted position. In other words, it would be necessary for the appellants to prove their alleged claim. Section 392 of the Companies Act, 1956, provides :

"(1) Where a High Court makes an order u/s 391 sanctioning a compromise or an arrangement in respect of a company, it-

(a) shall have power to supervise the carrying out of the compromise or arrangement ; and

(b) may at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the court aforesaid is satisfied that a compromise or arrangement sanctioned u/s 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made u/s 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act u/s 153 of the Indian Companies Act, 1913 (7 of 1913), sanctioning a compromise or an arrangement."

3. In the case of S.K. Gupta and Another Vs. K.P. Jain and Another, the Supreme Court held (page 351) :

"The purpose underlying Section 392 is to provide for effective working of the compromise and/or arrangement once sanctioned and over which the court must exercise continuous supervision (Section 392(1)), and if over a period there may arise obstacles, difficulties or impediments, to remove them again not for any other purpose but for the proper working of the compromise and/or arrangement. This power either to give directions to overcome the difficulties or if the provisions of the scheme themselves create an impediment, to modify the provision to the extent necessary can only be exercised so as to provide for smooth working of the compromise and/or arrangement. To effectuate this purpose, the power of widest amplitude has been conferred on the High Court

and this is a basic departure from the scheme of the U.K. Act in which provision analogous to Section 392 is absent. The sponsors of the scheme u/s 206 of the U.K. Act have tried to get over the difficulty by taking power in the scheme of compromise or arrangement to make alterations and modifications as proposed by the court. But the Legislature foreseeing that a complex or complicated scheme of compromise or arrangement spread over a long period may face unforeseen and unanticipated obstacles, has conferred power of widest amplitude on the court to give directions and, if necessary, to modify the scheme for the proper working of the compromise or arrangement. The only limitation on the power of the court, as already mentioned, is that all such directions that the court may consider appropriate to give or make such modifications in the scheme, must be for the proper working of the compromise and/or arrangement."

4. Clearly, therefore, the provisions of Section 392 could be invoked strictly to ensure effective working" of the compromise and/or arrangement. Indeed the High Court has been conferred "power of widest amplitude", to monitor and effect the purpose. It is significant that there was no allegation by the appellant that the sanctioned scheme was not properly working, or that the scheme should be set aside. The appellants have merely sought, in these proceedings, to realise an alleged debt, attempting to use the provisions of Section 392 of the Act as a lever, which I am inclined to hold was futile and frivolous.

5. For those reasons I entirely agree with the findings of the hon"ble judge as contained in his judgment, from which this appeal has been preferred. The appeal is dismissed. There shall however, be no order as to costs.

6. Parties shall be at liberty to obtain a xerox copy of this order, duly counter-signed by the court officer of this court, upon an undertaking by the respective advocates-on-record to obtain a certified xerox copy of this order at the earliest.