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**(1999) 10 AP CK 0040**

**In the Andhra Pradesh High Court**

**Case No : CP No. 109 of 1999 and CA No. 263 of 1999**

**Raasi Cement Limited In re**

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**Date of Decision : 07-10-1999**

**Acts Referred:**

Companies (Court) Rules, 1959 — Rule 85  
Companies Act, 1956 — Section 100, 173, 391, 393, 394

**Citation : (2000) 1 ALD 65**

**Hon'ble Judges : Krishna Saran Shrivastav, J**

**Bench : Single Bench**

**Advocate : Mr. C. Trivikrama Rao, for the Appellant; Mr. B. Adinarayana Rao, SC for CG for the Registrar of Companies, for the Respondent**

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## **Judgement**

1. This is an application u/s 391 read with Section 394 of the Indian Companies Act, 1956 for approving the scheme of arrangement through which the cement division of the petitioner company namely M/s. Raasi Cement Limited (for short, "RCL") is proposed to be transferred and merged with M/s. India Cements Limited (for short, "ICL") which is holding along with its subsidiaries and associates more than ninety per cent of the share capital of RCL as also for reduction of the share capital.

2. The authorised capital of RCL is 25,000 11 per cent cumulative redeemable preference shares of Rs.100/- each and 1,80,00,000 equity shares of Rs.10/- each, that is to say total Rs.1825 lakhs. The issued, subscribed and paid up capital is 1,65,42,774 equity shares of Rs.10/- each less call in arrears of Rs.0.05 lakhs, that is total Rs. 1654.23 lakhs.

3. RCL has been incorporated on 15-4-1978. The object of RCL has been more particularly set up in its memorandum of association. The main object of RCL is to produce, manufacture, refine, prepare, import, export, purchase, sell and generally to deal in all kinds of Portland cement (Portland Pozzolana cement, Portland slag cement, Portland rapid hardening cement) etc., etc., to carry on trades and business of the survey, prospecting and proving of cement grade lime stone deposits, asbestos and of manufacturers of cement and building materials

etc, RCL is also engaged in the business of manufacture and sale of ceramic and paper products. ICL together with its subsidiaries and associates holds more than 90 per cent share capital in RCL. The capacity of RCL to produce cement is of about 1.60 million tonnes per year and the cement produced is marketed under the brand name of Raasi in the southern States. ICL has cement plants operating in the States of Tamilnadu and Andhra Pradesh and has a combined capacity of 3.9 million tonnes per year for the manufacture of cement. ICL enjoys a market of 25 per cent in the southern part of the country. RCL and ICL have agreed that the Cement Division of RCL be transferred to and vested in ICL so that there would be synergy in marketing and distribution of cement resulting in optimisation of realisation. ICL shall pay to the other shareholders Rs.300/- per equity share in RCL while continuing to retain their stake in RCL. Annexure "B" is the scheme of arrangement. With the approval of this arrangement, all assets of RCL excluding the assets of other divisions as specified in Schedule "A" of the scheme of arrangement, relating to its cement division, as also of the liabilities shall stand transferred to and vested in ICL. The shareholders of RCL other than ICL shall be entitled to receive from ICL Rs.300/- per equity share held by them in RCL being the settlement price and they shall cease to have any interest in the said cement division. The other business of RCL shall continue to be vested in RCL. The Arrangement shall not in any manner affect or modify the service conditions of the employees of the cement division of RCL. All the employees of RCL engaged in and for the business of the Cement Division of RCL on the Effective Date shall become the employees of ICL without any break or interruption in service on the same terms and conditions on which they are engaged as on the effective date and their services shall not be treated as having been broken or interrupted for the purpose of provident fund or gratuity or superannuation or other statutory purposes and for all purposes will be reckoned from the date of their respective appointments in RCL.

4. As per the scheme of arrangement, the nominal and the paid up amount of each of the issued and subscribed equity shares of RCL shall stand reduced and modified as under:

(i) In respect of each of the 1,65,42,774 fully paid up equity shares each of the paid up value of Rs.10/-, the nominal value and the paid up amount shall both stand reduced from Rs.10/- to Re.0,50 per share.

(ii) The unissued capital represented by 14,57,226 equity shares shall remain unaltered.

(iii) The unissued 25000 11 per cent cumulative redeemable preference shares of Rs.100/- each shall remain unaltered.

(iv) The equity shares after the reduction as above shall stand consolidated into 8,27,138 equity shares with a nominal and paid up value of Rs.10/- per equity share and any fraction less than one share shall stand allotted to a trustee and proceeds of sale thereof shall be equitably distributed. Accordingly, the share

capital of RCL shall revised as follows:

Authorised Capital (Rs. in lacs)

25,000 11% cumulative redeemable preference shares of Rs.100/- each 25.00

1,80,00,000 equity shares of Rs.10/- each 1800.00

Issued, Subscribed and Paid-up Capital 8,27,138 equity shares of Rs.10/- each 82.71

The memorandum of association and articles of association shall accordingly stand altered.

5. In CA No.263 of 1999, dated 25-6-1999, RCL was directed to convene a meeting of the equity shareholders for the purpose of considering and approving the scheme of arrangement. Shri P. Badri Premnath, Advocate, had been appointed as the Chairman to convene the meeting and report the result. Notice of the meeting was sent individually to the members of RCL under certificate of posting on 2-7-1999 with a copy of the scheme of arrangement and statement required by Section 393 of the Companies Act as also the form of proxy. The explanatory statement had been annexed with the notice. Notice of the meeting was duly advertised in Deccan Chronicle and Eenadu on 3-7-1999 and on 4-7-1999 accordingly. On 26-7-1999 the meeting of the share holders of RCL was convened and Shri P. Badri Premnath, Chairman, has submitted his report on 10-8-1999. 86 equity shareholders including representatives of six limited companies and 17 equity shareholders by proxy, in all 103 share holders had attended the meeting. The total value of their shares is Rs.15,25,53,270/- equity shares of face value of Rs.10/- each. The scheme of arrangement for vesting of the cement division of RCL in ICL, the consequent reorganisation and reduction of share capital of RCL has been approved by a majority of 1,52,54,140 votes as against one vote opposing the said scheme of arrangement.

6. The convening of the meeting of the creditors had been ordered to be dispensed with subject to their submitting consent letters to the arrangement. State Bank of India which is the lead bank in the consortium of banks has given its consent letter dated 18-6-1999 on condition that RCL should fulfil the legal formalities. IDBI is the lead institution acting on behalf of the other financial institutions and has given a consent letter on 6-8-1999 subject to four conditions. The first condition that ICL should provide corporate guarantee for the term loans of the shipping division (which would be transferred to the new company) does not appear to be relevant for the present. The condition (b) that ICL should clear the over dues with UTI has been complied with as it has paid an amount of Rs.2,82,922/-through demand draft towards the balance amount of interest payable on UTN of Rs.500.00 lacs. Similarly, part of the condition No.(c) relating to the private placement of preference shares to the extent of Rs.25 crores by ICL has been completed by allotment of the preference shares on 15-7-1999 and 23-8-1999 and has undertaken to comply the remaining part of

this condition regarding the private placement of equity shares of Rs.40 crores within a period of four months from today and has also undertaken to comply the condition No.(d) relating to the obtaining of all the statutory approvals.

7. The Regional Director of Department of Company Law Affairs, Chennai, had been noticed and it has decided that no representation is to be filed by the Central Government either to support or to oppose the petition vide Registrar of Companies dated 15-9-1999.

8. The effective date is 1-4-1998. The admission of the petition was duly advertised in one issue of Deccan Chronicle, an English daily, one issue of Eenadu, a Tclugu daily, as per rules.

9. In the case of Novopan India Limited, (1997) 88 596, while sending notice to the shareholders of the meeting, a statement as required u/s 393 of the Companies Act, a copy of the scheme of amalgamation of the transferor company with the transferee company and arrangement between the transferee company with its member had also been sent and sufficient material was available with the shareholders before they attended the meeting. The sole purpose of calling the meeting is to consider the scheme of amalgamation. There was no other item of business to be transacted at that meeting. The scheme of amalgamation and arrangement was read over and explained to the shareholders present at the meeting and a unanimous resolution approving the scheme of amalgamation and restricting the capital of the transferee company by way of reduction and consolidation of share capital was passed. The creditors have given their no objection to the proposed amalgamation. Under these circumstances Shri Justice D.H. Nasir (as he then was) opined that there was substantial compliance of provisions of Section 173 of the Companies Act as also Rule 85 of the Companies (Court) Rules and it was not necessary for the transferee or the transferor company to report compliance with the requirement of Section 102 of the Companies Act.

10. Relying on the case of Novopan, (supra), it has been held in the case of Sumitra Pharmaceuticals and Chemicals Lid (1997) 88 CC 619, that the requirement of setting out the intention to move a resolution as special resolution for reduction of the share capital cannot be said to be a mandatory requirement though passing special resolution is mandatory. When the resolution has been approved by the shareholders and it has been intimated to the Registrar of Companies with the requisite fees, the major secured creditors had also agreed to the proposed reduction of share capital and the transferee company is prepared to take over the liabilities of the transferor company, the interests of the creditors of the transferor company were protected, the objection that the prescribed procedure u/s 100 of the Companies Act has not been followed, is not sustainable.

11. From a perusal of the record, it appears that the requisite statutory procedure has been substantially complied with, that the scheme of arrangement

and the reduction of share capital and restructure of RCL have been duly approved by the overwhelming majority votes of the equity shareholders, that the secured creditors have given their consent for the proposed arrangement and reduction of share capital as their integrity has been preserved. The majority decision of the concerned class appears to be just and fair to the class as a whole. It does not appear that the proposed scheme of arrangement, reconstruction of RCL and the reduction of share capital are violative of any provisions of law and it does not appear contrary to public policy. The whole scheme of arrangement appears to be just, fair and reasonable from the point of view of a prudent man of business. I see no impediment in confirming the resolution of RCL regarding the scheme of arrangement in question, the restricting of RCL and the reduction of its share capital. Therefore, the application deserves to be allowed.

12. In the result, it is ordered that the cement division of RCL be transferred to and vested with its shareholder ICL with effect from 1-4-1998 in accordance with the proposed scheme of arrangement annexed with the petition, with the consequential reliefs as sought in the petition and consequently all the rights, liabilities and duties of the cement division of RCL shall stand transferred to and vested in ICL and without any further act or deed. ICL shall comply the part of the condition No.(c) mentioned in the letter of IDBI dated 8-6-1999 by doing private placement of the equity shares to the extent of Rs.40 crores positively within a period of four months from today and RCL as well as ICL shall obtain all the statutory approvals. A copy of the scheme of arrangement shall be attached to this order. RCL is directed to file a copy of this order with the Registrar of Companies within a period of thirty days and the Registrar of Companies shall treat the cement division of RCL as merged with ICL with effect from 1-4-1998. The Registrar of Companies shall take all necessary consequential action in respect of the scheme of arrangement. It is also directed that Form 30 be issued confirming the reduction of share capital and approving the scheme of arrangement. The scheme of arrangement as approved by this Court shall be published in two newspapers, that is Deccan Chronicle, an English daily, and Eenadu, a Telugu daily, within four weeks from the date of filing the scheme before the Registrar of Companies. It is made clear that any person interested shall be entitled to apply to this Court for any appropriate direction that may be necessary. The petition is thus allowed.