
(2000) 02 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 14 of 2000

Rama Petrochemicals Ltd.

APPELLANT

Vs

In Re

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

COMPANIES ACT, 1956 — Section 391, 393, 394

Citation : (2000) 100 CompCas 807

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : L.M. Suri and Deepak Suri, for the Appellant;

Judgement

V.S. Aggarwal, J.—This is a petition filed by Rainbow Denim Limited u/s 391 read with section 393 of the Companies Act, 1956 (for short "the Act"), in the matter of scheme of arrangement between Rama Petrochemicals Limited, a company incorporated under the Act, and the transferee-company - Rainbow Denim Limited.

2. The facts alleged are that the objects for which the transferee-company was formed had been set out in the memorandum and articles of association. It includes to carry on the business of spinning, weaving or manufacturing or dealing in cotton or other fibrous substances or denim/jeans and to carry on all or any of the business of denim/jeans merchants, cotton spinners and doublers, etc. The authorised share capital of the transferee-company was stated to be Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each. So far as the transferor-company Rama Petrochemicals Limited is concerned, it was incorporated on January 28, 1985, by the Registrar of Companies, Maharashtra. The objects of the transferor-company set out in the memorandum and articles of association have been stated to be to manufacture, synthesize, produce, prepare, process and finish, manipulate, improve, import or buy certain articles. It has been pointed out that the transferor-company manufactures methanol, a chemical intermediate, mainly used for the manufacture of several products like

dimethy terephthalate (DMT), etc.

3. It has been pointed out that the transferor-company and the transferee-company intend to enter into the arrangement whereby the Chandigarh Denim Division of the transferor-company will be hived off to the transferee-company. The said scheme of arrangement has been approved by the board of directors of the transferee-company. The rationale has been given to be to have a clearer focus on the Denim business, to enhance share-holder value and to integrate the operations of the respective companies. It is proposed to develop the Denim Division on a bigger scale.

4. It has been proposed that by separation of Chandigarh Denim Division under the scheme of arrangement, the entire Chandigarh Denim Division of the applicant-company, without any further act, instrument or deed, shall stand transferred to the transferee-company.

5. The short question that comes up for consideration is as to whether the permission is to be granted by this court for holding of the meeting of the members holding equity share of the applicant-company for the purpose of considering and if thought fit approving with or without modification the scheme of arrangement so proposed and whether convening and holding of the meeting of the secured creditors of the transferee-company for the purpose of considering the scheme of arrangement proposed to be made between the two companies shall be dispensed with.

6. Section 391 of the Act empowers the court to order a meeting of the creditors or class of creditors to be called, held and conducted before the scheme of arrangement can be approved. Sub-section (1) to section 391 of the Act reads as under :

"391. (1) Where a compromise or arrangement is proposed, -

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them;

6. the court may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the court directs."

7. In this regard, reference with advantage must also be made to sub-section (1) of section 394 of the Act, the relevant portion of which reads as under :

"394. (1) Where an application is made to the court u/s 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court, -

(a) that the compromise or arrangement has been proposed for the purposes of,

or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as the "transferor-company") is to be transferred to another company (in this section referred to as "the transferee-company")."

8. On the strength of the relevant provisions of section (1) of section 394 of the Act, on behalf of the applicant, it was urged that the court can even permit amalgamation and reconstruction of one company with part of the other company.

9. The principles of law in this regard are not much in controversy. By and large, while considering as to whether necessary approval has to be given for holding of the meetings of the shareholders, creditors (secured or unsecured) or subsequently permission is to be granted for amalgamation of the company or scheme of arrangement, the jurisdiction of this court primarily is supervisory. The court is not a rubber stamp. Under the supervisory jurisdiction with a limited scope, the court can see the actual transfer proposed to be effected. The well known doctrine of lifting of veil can be applied. The court can also see whether the scheme is fair and not set up with an object to defeat any provisions of law.

10. In *Bhagwan Singh and Sons P. Ltd. Vs. Kalawati and others*, , the Delhi High Court rejected the scheme which was primarily motivated to defeat the claims of certain creditors who had obtained decrees. Similarly, in *N.A.P. Alagiri Raja and Company Vs. N. Guruswamy and Others*, , the Madras High Court had held that the court must consider the feasibility of the proposed scheme and the bona fides of the applicant. The Supreme Court in *Hindustan Lever Employees' Union Vs. Hindustan Lever Limited and others*, , also dealt with the scope of the powers of the court in such a matter. Of course, as at present, this court is not concerned with the share value but the Supreme Court did conclude that what is determined should not be contrary to law or public interest.

11. That being the position, one can revert back to the contents of the proposed scheme, copy of which has been placed on the record as annexure P-6. Under the scheme of arrangement between the two companies, it has been provided as under :

"(a) All properties and assets (leased or otherwise), movable and immovable, real and personal, corporeal and incorporeal, in possession, present and contingent or whatsoever nature, wheresoever situated, as on the transfer date of RPL pertaining to the transferred division, and also such, additional assets pertaining to such transferred division acquired since November 1, 1999;

(b) All permits, quotas, rights, industrial and other licences tenancies, offices and depots, trade marks, patents, copyrights, privileges : and benefits of all contracts including the rights of supplies of rate contracts with Government departments,

agreements and all other rights including lease, leave and licences, and/or any other licences, process and facilities of every kind."

12. It has further been provided that without prejudice to the fact that all the employees of the transferor-company engaged in and for the business of the transferred division on the transfer date shall become the employees of the transferee-company, still the transferred division, namely, all the business and undertakings pertaining to the Chandigarh Denim Division, shall include freehold land situated in District Patiala; plant and machinery besides receivables, loans and advances, etc. This aspect clearly reveals that though in a given case a part of the company could be allowed to be amalgamated under the scheme of arrangement but herein the transferor-company and the transferee-company were doing different business. By the said scheme, certain properties are being transferred to the transferee-company. It is patently a device adopted to transfer certain assets including immovable property without due process of the law. No consideration is being passed nor any transfer deed executed. This must be taken to be a device thus adopted to defeat the normal provisions of law. Secondly, despite the limited jurisdiction of this court, when on the face of it the scheme does not appear to be in public interest and is defeating the provisions of law, no useful purpose would be served by giving permission for calling of the meetings of the shareholders and the creditors.

13. As an off-shoot of the reasoning, necessarily the company petition must fail and is hereby dismissed.