

In Re: Dena Bank Ltd.

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Court : Mumbai

Decided On : Apr-06-1975

Reported in : [1976]46CompCas541(Bom)

Judge : J.R. Vimadalal, J.

Acts : Companies Act, 1956, Sections 39(1), 145, 391, 392(1), 394 and 394(1)

Appeal No. : Company Petition No. 584 of 1975 connected with Company Application No. 121 of 1975

Appellant : In Re: Dena Bank Ltd.

Advocate for Pet/Ap. : K.H. Bhabha, ;A.B. Divan, ;P.H. Talyarkhan, ;P.M. Amin and ;A.R. Motishaw, Advs.

Judgement :

Vimadalal, J.

1. This is a petition by a transferor-company under section 391 read with section 394 of the Companies Act for sanctioning a scheme of amalgamation under which the property, assets and liabilities of the petitioner-bank, the registered office of which is in Bombay, are to be transferred to a company, named Straw Products Ltd., registered in Orissa. The facts necessary for the purpose of the present judgment are that the issued, subscribed and paid up capital of the petitioner-

company is Rs. 1,25,00,000 divided into 2,50,000 shares of Rs. 50 each fully paid. The principal object of the company was to conduct banking business, but the undertaking of the said company was taken over by the Central Government some time in July, 1969, under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, consequent on the nationalisation of certain banks in this country, and the petitioner-company received compensation amounting to Rs. 3.60 crores in respect of the same. As in the case of some of the other banks which were also nationalised, a scheme has now been proposed for the amalgamation of the petitioner-company with another company, viz., Straw Products Ltd., and it is that scheme which has now come up before me for sanction after being approved by 99.06% of the shareholders of the petitioner-company. The scheme of amalgamation is annexed as annexure 'A' to the petition. In clause 8 of the scheme is set out what may be called the value of the package per share of the petitioner-company to be allotted in respect of the shares convertible and non-convertible and debentures of the transferor-company. It is unnecessary to set out the details thereof in this judgment. Suffice it to say, the undisputed position is that the value of the package per share of the petitioner-company computed in the manner stated in clause 8 of the scheme works out to Rs. 145. In clause 10 of the scheme, it is proposed that a sum of Rs. 110 per share be paid to the holder of every equity share who elects to exercise the cash option provided for therein in lieu of the entitlements provided for in clause 8 of the scheme.

2. At the meeting of the shareholders, which was held pursuant to the directions of the court on the 15th of November, 1975, which was presided over by an officer of the court who has made his report, 751 shareholders holding 1,68,437 shares of the value of Rs. 84,21,850 voted in favour of the resolution approving the proposal, and 7 shareholders holding 666 shares of the value of Rs. 33,300 voted against it. The votes of 2 shareholders were, however, declared invalid, and the position, therefore, is that the said resolution has been carried by well over the requisite statutory majority. The total number of shareholders of the petitioner-company is 2,802, out of which 472 shareholders elected for the cash option of Rs. 110 per share provided in clause 10 of the scheme. It may also be mentioned that the five financial institutions listed at serial numbers 1, 2, 3, 4, and 5 in schedule No. 1 annexed to the report of the chairman of the meeting which was

held on the 15th November, 1975, holding between them 47.92% of the shares of the petitioner-company have supported the scheme. The deputy official liquidator has made a report which complies with the second proviso to section 394(1) of the Companies Act, 1956.

3. When this petition for sanctioning the scheme came up for hearing before me, two shareholders were permitted to appear in person and oppose the scheme, and they were permitted to appear in person and oppose the scheme, and they were one A. R. Motishaw and one Dhirajlal Maganlal. Both these persons have filed statements, and were heard by me in support of the same. The said Motishaw raised various contentions which may be summarised as follows :

(1) In view of the present credit squeeze, cash resources are not being fully awarded to the transferor-bank and its shareholders under the proposed scheme.

(2) Straw Products Ltd., which is the transferee-company, will be utilising the funds of the transferor-company not for its own expansion but with a view to invest the same to the extent of Rs. 2 crores in a company called J. K. Industries Ltd. which has been floated for the manufacture of tyres, an industry which is suffering from severe recession, and which cannot declare a dividend for 8 or 10 years more, with the result that the investments of Straw Products Ltd. will also prove unremunerative.

(3) The working reports of Straw Products Ltd. placed before the shareholders do not reflect its correct financial position, in view of the fact that the paper industry, which is its main business, is also suffering from recession.

(4) The convertible bonds of Straw Products Ltd. which are to be allotted under clause 8 of the scheme would be converted into equity shares at Rs. 20 per share against the present market value of the shares of Straw Products Ltd. of Rs. 17 to 18 per share.

(5) The benefit of non-liability to capital gains tax will not be made available to the shareholders of the transferor-bank, but the entire benefit thereof would stand transferred to Straw Products Ltd. and its shareholders; and

(6) The dissenting shareholders are being paid an unfairly low amount of Rs. 110 per share only, which is Rs. 35 per share lower than the then market value of the package per share, viz., Rs. 145 which those who opt for the scheme will get. It may be mentioned that as far as Dhirajlal Maganlal is concerned, he has stated in clear terms that, according to him, the amalgamation of the transferor-bank with the transferee-company is beneficial to the shareholders of the transferor-bank, but that his only objection is that the sum of Rs. 110 per share, which those who elect for the cash option will get, is an amount which is most unfair. In other words, the said Dhirajlal Maganlal has supported Motishaw only in the last of his six contentions.

4. As far as the first five contentions of the said Motishaw are concerned, the same may conveniently be dealt with together. As is well-settled, where a very large majority of the shareholders of the transferor-company, in this case over 99% of them, consider the scheme to be beneficial to the shareholders of that company, the cause is fairly and squarely on the dissentients to show that that view is erroneous and that the offer is unfair and not one which should be accepted, and indeed, it has been laid down that that burden is 'a heavy one'. Reference may be made in that connection to the observations made in the judgment in the case of *In re Grierson, Oldham & Adams Ltd.* decided by a single judge sitting in the Chancery Division of the High Court of Justice in England. Bearing that principle in mind, I may refer to the answer that is furnished to these contentions of Motishaw by the affidavit of Sumantrai Shah, a shareholder of the petitioner company, dated 26th March, 1976, in paragraph 4(d) to 4(g) of which he has pointed out that the funds to be received by Straw Products Ltd. on amalgamation with the petitioner-company are to be utilised for setting up a new plant for manufacturing packaging paper and based paper for which a licence has been granted to it by the Government of India, that the reserves and surplus of Straw Products Ltd. as at 31st December, 1974, were over Rs. 7,52,00,000, that the Straw Products Ltd. is obviously a prospering company which has been able to build up huge reserves and surplus for the benefit of its shareholders which will be available to the shareholders of the petitioner-company on the scheme of amalgamation being sanctioned by the court, and that the amalgamation would ensure a fair and steady return to the shareholders of the petitioner-company. In that connection, it

was further pointed out in the said affidavit of Sumantrai Shah that before the scheme of amalgamation was announced, the value of the equity shares of the petitioner-company was quoted in the Bombay Stock Exchange at Rs. 84 and that when the said scheme of amalgamation of the petitioner-company with Straw Products Ltd. was announced, there was a big spurt in the share quotation on the stock exchange and the value of the share of the petitioner-company went up from Rs. 84 to over Rs. 100 which, according to the said Sumantrai Shah, clearly shows that the said scheme of amalgamation has popular approval and the future prospects of Straw Products Ltd. were considered by investors to be very bright. There is also the affidavit of Radhey Shyam Agrawal, the Central Manager of straw products Ltd. dated 23rd March, 1976, in paragraphs 3, 4, and 6 which facts and figures similar to those set out in the affidavit of the said Sumantrai Shah have been affirmed in order to show that the said scheme of amalgamation would be considerably for the benefit of the shareholders of the petitioner-company. In view of these facts and figures, in my opinion, there is no substance in the first five contentions of the said Motishaw, and I do not accept the same.

5. That leaves for my consideration only the sixth and the last contention in which, in my opinion, there is some substance, and in regard to which the scheme put up before me for sanction will need to be modified in exercise of my powers under section 392(1)(b) of the Companies Act. It is true that the power of modification is usually exercised by the court with the consent of the companys I had myself done in the case of Bank of India v. Ahmedabad Mfg. and Calico printing Co. It may be pointed out that clause 14 of the scheme proposed in the present case empowers the petitioner-company as well as the transferee-company by their respective directors to assent to any modification of the scheme that may be suggested by the court, but both the transferor-bank as well as the transferee-company have made it clear to me in the course of the figure of Rs. 110 per share which those who elect for the cash option would receive under clause 10 of the Scheme, and indeed, they have strenuously opposed the same. Section 394(1)(v) of the Companies Act empowers the court, inter alia, by the order sanctioning a scheme, to make provision for any person who dissents from that scheme. It is true that the said clause (v) of section 394(1) does not use the word 'fair' in regard to such a provision, but the court cannot be expected to make an order which is unfair of any

of the parties concerned in such a scheme and the view which I take, therefore, is that the notion of fairness is necessarily implicit in the said clause (v) of section 39(1). In the present case, the amount of Rs. 110 per share which is offered to the dissenting shareholders is a little over 24 per cent. less than the amount of Rs. 145 which is the value of the package per share which the shareholder of the petitioner-bank who accept the scheme would receive. At the conclusion the hearing before me, I called for a statement which would show what amount have been awarded to dissenting shareholders in similar schemes in respect of other nationalised banks, and I have carefully scrutinised that statement. That statement shows that in the schemes relating shareholders were paid a little over 22 per cent. less than the value of the package per share, but in the scheme relating to the Central Bank of India Ltd. dissenting shareholders were paid over 18 per cent. and in the case of the Bank of Baroda Ltd. they were paid a little over 12 per cent. than the value of the package per share. It is true that since the dissenting shareholders in schemes get spot cash which these days can be utilised in the investments at a high rate of return they must get substantially less than the value of the package per share which those who accept the schemes would get. The amount which the dissenting shareholders get per share must, however, have some correlation to what those who accept the scheme would get. In the present case, it is no doubt true that the amount of Rs. 110 per share which the dissentients would get under the scheme before me is well over of what was the market value of the share before the scheme was announced, but that, in my opinion, cannot be the sole criterion. Dhirajlal Maganlal, who is a leading share-broker of Bombay, has stated before me that the dissenting shareholders should, in his opinion, get only about 10 per cent. less than what those who accept the scheme would get by way of the appeared bath for the petitioner-company as well as for the transferee-company have stated that if the dissenting shareholders are given substantially more than the amount of Rs. 110 per share proposed in the scheme put up before me, a large number of shareholders might elect to exercise that cash option in which case the scheme may not yield the expansion of its business pursuant to the scheme, and the scheme would not be practicable nor worthwhile for the transferee-company. Though I have referred to the percentages appearing from the statement which I called for and which was placed before me

in respect of recent schemes of a similar nature relating to other banks, I must state at once that this is a matter which is not capable of a mathematical calculation. But must also be governed by business considerations. Without laying down a hard and fast rule, I think, in the present circumstances, an amount somewhere between 15% and 20% less than Rs. 145 which is the value of the package per share which those who accept the schemes relating to other nationalised banks, I would consider Rs. 120 per share, which works out to a little over 17% less than the amount of Rs. 145 per share which those who accept the scheme would receive, as the fair amount to be paid to the dissenting shareholders sanction the scheme with a modification to that effect in clause 10 of the scheme. I make the petition absolute in terms of prayers (a), (b), (c), (d) and (f) of the petition substituting for clause 10 of the scheme the following clause :

10. (i) A member of the transferor company shall be entitled, at his option in lieu of his entitlements as provided for in clause 8 hereof, to receive from the transferor-company payment in cash at the rate of Rs. 120 (Rupees one hundred and twenty) for every equity share held by him in the transferor-company.

(ii) Such option shall only be exercised by a notice in writing accompanied by the relevant share certificates sent to the transferee-company at its administrative office at Nehru House, 4, Bahadurshah Zafar Marg, New Delhi, 110001, and received by the transferee-company within 30 days from the date of this order sanctioning the scheme of amalgamation under section 391 of the Companies Act, 1956, and the Rules made thereunder.

(iii) The transferee-company may, in its discretion and within 45 days of the receipt of such notice by the transferee-company, require any member who has exercised such option as is referred to in the preceding sub-clause, to transfer the shares in the transferor-company to a person or persons appointed by the transferor-company in consultation with the transferee-company at or for the price of Rs. 120 for each such equity share.

(iv) The cash payment of Rs. 120 in terms of sub-clause (i) hereof shall, in the case of the transfer of the shares to the person or persons appointed date, and in cases where the share or shares are not required to be so transferred, such

payment shall also be made within 30 days of the effective date.

6. This modification will, of course, apply also to those who have already exercised the option and received Rs. 110 per share. As stated in clause 16 of the scheme before me, this order will be subject to the sanction of the appropriate High Court being obtained under sections 391 and 394 of the Companies Act by the transferee-company. Under rule 81 of the Companies (Court) Rules, 1959, I direct that a certified copy of this order must be filed with the Registrar of Companies within 4 weeks from the date of signing of the judgment.

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