

In Re: Pmp Auto Industries Ltd.

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Court : Mumbai

Decided On : Dec-12-1991

Reported in : 1991(4)BomCR387; [1994]80CompCas289(Bom)

Judge : B.N. Srikrishna, J.

Acts : [Companies Act, 1956](#) - Sections 10F, 17, 19, 43A, 391, 392, 393, 394, 394(1) and 394A

Appeal No. : Company Petitions Nos. 428, 515 and 516 of 1991, connected with Company Applications Nos. 192 to 194

Appellant : In Re: Pmp Auto Industries Ltd.;In Re: S. S. Miranda Ltd.;In Re: Morarjee Goculdas Spg. and Wvg. Co.

Respondent : ; ;

Advocate for Pet/Ap. : Mr. Kapadia

Judgement :

B.N. Srikrishna, J.

1. These three company petitions pertain to the sanctioning of schemes of amalgamation under which the PMP Auto Industries Ltd. (petitioners in Company Petition No. 428 of 1991) is to be amalgamated in the company, S. S. Miranda Ltd. (petitioners in Company Petition No. 515 of 1991), and immediately thereafter S.

S. Miranda Ltd. is to be amalgamated in the company known as the Morarjee Goculdas Spinning and Weaving Co. Ltd. (petitioners in Company Petition No. 516 of 1991).

2. In the facts and circumstances, it would be convenient to decide the three company petitions, under section 391 of the Companies Act, by a common judgment and order.

3. PMP Auto Industries Ltd. was incorporated on October 18, 1969, as a private company and became a deemed public limited company on September 9, 1981, pursuant to the provisions of section 43A of the Companies Act. The main objects of this company, inter alia, are as follows :

'(a) To carry on business as manufacturers, designers, assemblers, contractors, dealers, exporters and importers of all kinds of automotive parts and accessories, equipment and fittings, including voltage regulators, horn relays, stop-light switches, oil pressure switches, all panel and other switches, flashers, dynamo armatures, starter armatures, commutators, field coils, wiper motors, wiper blades and arms, ignition coils, indicators, lamps of all types, dynamos, generators, starters, alternators, magnetos, trafficators, fans, lighters, electric horns, air horns, fuel pumps, electric bulbs, sealed beams, carbon and starter brushes, regulator points and resistances, horn points, distributors and parts thereof, heaters, cigar lighters, air-conditioners, ammeters, volt meters, ohm meters, fuel gauges, etc., and components of all these abovementioned items and all parts for motor cars, motor trucks, station wagons, omnibuses, coaches, tractors, trailers, motor cycles, motor bicycles, scooters, railways and other auto-motive vehicles and also for any other means of conveyance or transport or any kind of engines or prime movers.

(b) To carry on the business of a leasing and hire purchase finance company and to provide on lease or on hire purchase all types of industrial and office plant, equipment, machinery, vehicles and buildings.

(c) To carry on the business of financing industrial enterprises relating to textile engineering, chemicals, automobiles, pharmaceuticals industries and also in respect of the objects of the company.

(d) To act in conjunction with, unite or amalgamate with, create or constitute, assist in creating or constituting any other company or association of a kind similar wholly or partially to this company for the purpose of acquiring all or any of the properties, rights and liabilities of the company or for any other purpose which may see directly or indirectly calculated to benefit this company, and to but up or absorb all or any part of the business or property of any such company or association and to acquire and secure membership, seat or privilege in and of any association, exchange, market or institution in India or any part of the world.'

4. S. S. Miranda Ltd. was incorporated on March 3, 1975, as a public limited company under the [Companies Act, 1956](#). It was originally incorporated under the name 'Peninsular Investments Ltd.' Its name was changed to the present name by an order of this court on June 13, 1978, made in Company Petition No. 288 of 1978, while sanctioning the scheme of amalgamation of S. S. Miranda Ltd. and Mirabel Tools and Machines P. Ltd. with Peninsular Investments Ltd. With effect from July 31, 1978, the name of said Peninsular Investments Ltd. was changed to S. S. Miranda Ltd. The objects of S. S. Miranda Ltd. are as follows :

'(a) To carry on business a manufacturers, sellers, importers, exporters, selling agents, consultants and designers, of bi/tri metal bearings, bushes, ball bearings, roller bearings and needle bearings.

(b) To carry on business as manufacturers, sellers, importers, exporters, selling agents, consultants, and designers of ferrous and nonferrous powders and powders metal sintered components such as tools, blanks, billets and structural sintered parts and bushings.

(c) To carry on business as manufacturers, dealers and to act as agents of electronic instruments, electronic and electric equipment, electric components, magnetic tapes, ferrite rods, hard and soft ferrites, capacitors, connectors, micro switches electronic, switching equipment, power diodes, rectifiers, integrated circuits, resistors, reed relays and switches, printed circuit boards, keyboards and computers, mini-computers and micro-processor based systems.

(d) To acquire, to provide on lease or to provide on hire purchase basis industrial and office plant and equipment, machinery, vehicles, buildings and real estate.

(e) To manufacture, buy, sell, refine, manipulate, purchase distribute, import export or otherwise deal in all kinds of glass, glassware, glass bottles, vials, glass containers and acrylic substitutes of such bottles, vials and the like of all descriptions, kinds and forms.

(f) To carry on business as manufacturers, designers, assemblers, contractors, dealers, exporters and importers of all kinds of automotive parts and accessories.

(g) To carry on business as manufacturers and dealers of all kinds of electronic and electrical components.

(h) To amalgamate with any other similar company or companies.'

5. The Morarjee Goculdas Spg. and Wvg. Co. Ltd. is a company registered under the Act No. X of 1866 of the Legislative Council of India on August 10, 1871, and deemed to be registered under the [Companies Act, 1956](#). The objects of this company, inter alia, are as under :

'(a) To carry on all or any of the business following in Bombay or elsewhere, namely, the business of silk and cotton spinners, weavers and doublers, flax, hemp and jute spinners, linen manufacturers, flax, hemp, jute and wool merchants, wool combers, worsted spinners, yarn merchants, worsted stuff manufacturers, bleachers and dyers, ginner and pressers and makers of vitroil, bleaching and dyeing materials, and to purchase, comb, prepare, spin, dye and deal in cotton, flax, hemp, jute, wool, silk and other fibrous substances and products, and to weave or otherwise manufacture, buy, sell and deal in raw cotton, yarn, silk, wool, jute flax, hemp and other fibrous substances and products, and in linen, cloth and other goods, fabrics and materials, and to gin and press cotton any to employ agents, sub-agents, brokers and dealers for any of the purposes of the company.

(b) To buy, in Bombay or elsewhere, for the purpose of manufacture, raw cotton, silk, wool, jute, hemp and other fibres and all materials and things useful or necessary for dyeing, bleaching and printing purposes, to spin, weave,

manufacture, dye, bleach and print and otherwise utilise the same, and to sell in Bombay for cash or on credit, or to contract for the sale and future delivery of, or to send for sale in any part of India or elsewhere the yarn, cloth and other commodities so manufactured or prepared.

(c) To purchase in Bombay or in any part of India or elsewhere any machinery, plant stores and other articles and things for all or any of the objects or purposes of the company, and to pay for the same either in cash or delivery or to make advances on them.

(d) To purchase, buy, take on lease, or otherwise acquire any land (whether freehold or leasehold), houses buildings or other property with or without machinery in Bombay, and to erect, construct and build any warehouses, engine houses, factories, ill or other buildings, which may be considered expedient or desirable for the object or purposes of the company or any of the, and to pay for the same lands, buildings, and other property, whether purchased or acquired or built or constructed by the company, either in cash, or to make advances on them or any of them.

(e) To act in conjunction with, unite or amalgamate with, create or constitute, or assist in creating or constituting any other company or association of kind similar, wholly or partially, to this company, and to buy up or absorb all or any part of the business or property of any such company or association.'

6. The official liquidator has made his report dated November 15, 1991, pertaining to PMP Auto Industries Ltd. and reported that the investigations made by the investigating auditors do not show that the affairs of the company have generally been conducted in a manner prejudicial to the interest of their members or to public interest. He, therefore, submitted by his report that this company may be dissolved without winding up in terms of second proviso to section 394(1) of the [Companies Act, 1956](#).

7. By his report dated November 19, 1991, the official liquidator has, on the basis of the opinion of the investigating auditors, submitted that the affairs of S. S. Miranda Limited have not been conducted in a manner prejudicial to the interest of

its members or the public and that this company may be dissolved without winding up in terms of second proviso to section 394(1) of the [Companies Act, 1956](#).

8. By an order dated August 7, 1991, made by the company judge, notice to the creditors (secured and unsecured) and notice to the shareholders of PMP Auto Industries Ltd. was dispensed with. A direction made for publication of advertisement in newspapers and the Government Gazette was also dispensed with and it was directed that the notice be given to the regional director, Company Law Board and the official liquidator. Similar orders were passed in the other two petitions pertaining to S. S. Miranda Ltd. and the Morarjee Goculdas Spg. and Wvg. Co. Ltd.

9. Pursuant to the notice issued to the Company Law Board under section 394A, the Company Law Board has appeared and raised objections to the sanction of the integrated and composite scheme of amalgamation of the PMP Auto Industries Ltd. with S. S. Miranda Ltd. and S. S. Miranda Ltd. with the Morarjee Goculdas Spg. and Wvg. Co. Ltd. The objections are identical in the three cases. The objection is that the memorandum of association of the transferee company, namely, the Morarjee Goculdas Spg. and Wvg. Co. Ltd. shows that it does not have power to carry on the business activities as carried out by the two transferor companies, namely, PMP Auto Industries Ltd. and S. S. Miranda Ltd. The scheme of amalgamation itself provides that, from the effective date, the memorandum of association of the transferee company shall stand amended by addition of 10 sub-clauses as detailed therein. The Company Law Board contends that for effecting amendments in the objects clause of the memorandum of association of the transferee company, the transferee company should follow the procedure prescribed under sections 17 and 19 of the Act and get the alteration confirmed by the Company Law Board which is an independent quasi-judicial authority. It is contended that this court cannot direct alteration in the memorandum of association as incidental to an order sanctioning the scheme of amalgamation and thereby usurp the powers conferred by law upon another quasi-judicial authority.

10. Mr. Kapadia, learned counsel for the petitioner, urged that sections 391 to 394 of the Companies Act constitute a complete code, the object of which is to

eliminate frequent applications being made to the court in order effectively to implement a scheme of amalgamation which the court sanctions in exercise of its powers under section 394 of the Act. He further submits that there is nothing in section 394 of the Act which requires that there should be identity of objects of the transferor and transferee companies before an amalgamation could be sanctioned. Such identity of objects is neither required by statute nor precedent, urges the learned counsel. So far as the merits of the scheme are concerned, it is pointed out by learned counsel that all the three companies are under the same management. The Morarjee Goculdas Spg. and Wvg. Co. Ltd. has an all-India operation and for effectively carrying on its business it has a well established sales net-work. Further, in the opinion of the board of directors, the business of the Morarjee Goculdas Spg. and Wvg. Co. Ltd. could be most conveniently carried out in conjunction with the business being carried out by PMP Auto Industries Ltd. and S. S. Miranda Ltd., by effectively utilising the expertise and sales net-work established by the Morarjee Goculdas Spg. and Wvg. Co. Ltd. It is further pointed out that there is no objection whatsoever to the proposed integrated and composite scheme of amalgamation, from either the shareholders, or the creditor - secured or unsecured. The commercial viability of the scheme is a matter for the judgment of the persons who are well versed in the business and, inasmuch as the persons connected with the three companies have, after examination of the merits of the scheme of amalgamation, not raised any objection thereto, the court must sanction the scheme of amalgamation unless it is contrary to any provision of law, or unless the court discerns something fundamentally objectionable thereto. In his submission, apart from the somewhat legalistic and technical argument raised by the Company Law Board, there is no other conceivable objection to sanctioning the scheme and therefore the petitions should be allowed and the integrated and composite scheme of amalgamation be sanctioned.

11. In *W. A. Beardsell and Co. (P.) Ltd. and Mettur Industries Ltd., In re* [1968] 38 Comp Cas 197, the Madras High Court pointed out that the primary object of amalgamation of one company with another is to facilitate reconstruction of the amalgamating companies and this is a matter which is entirely left to the body of shareholders of the company which offers or intends to amalgamate with another. As a consequence of amalgamation there is an absorption by the company with

which it is amalgamated. Further, it is essentially an affair relating to the transferor company. Though the unanimous decision of the body of shareholders ought not to be lightly interfered with by the court, public interest should not be totally ignored and further to enable amalgamation between two companies, it is not necessary that there should be unison on the objects of the two companies. That the objects of the two transferor companies are different from those of the transferee company, therefore, cannot, per se, be a fetter to the sanctioning of the scheme of amalgamation.

12. In *Katni Cement and Industrial Co. Ltd., In re* [1937] 7 Comp Cas 348 it was pointed out by this court (per Rangnekar J.) that the court under section 153 of the Companies Act, 1913 (corresponding to the present section 394 of the [Companies Act, 1956](#)), can sanction a scheme, even though it involves acts which, apart from such provisions, would be ultra vires the company; but that this rule is subject to the limitation that if the Companies Act contains express provision enabling the doing of any act in a particular way, the provisions of that enabling section, and not those of section 153, must be followed. This was a judgment under the Old Act, i.e. 1913 Act. Under the 1956 Act, in my view, the postulated limitation to the general rule may not be applicable, for reasons which I shall shortly adumbrate.

13. In *Maneckchowk and Ahmedabad Mfg. Co. Ltd., In re* [1970] 40 Comp Cas 819, a case which arose before the Gujarat High Court, a scheme of amalgamation was put forward before the court for sanction under section 394 of the Act. The proposed scheme itself envisaged reorganisation of share capital including the reduction of the share capital. An objection was raised that inasmuch as a distinct and different procedure has to be adopted for reduction and increase of share capital under the Companies Act, it was not permissible for the court to sanction a scheme involving reduction and increase of share capital while exercising its powers under section 394 of the Act. The Gujarat High Court rejected this contention by holding that section 391 of the Companies Act was a complete code which provided for a scheme of reconstruction and amalgamation of companies which could conceivably include a reorganisation of the share capital of the company by consolidation of shares of different classes or by division of shares or by both these methods. The Gujarat High Court referred to rule 85 of the

Companies (Court) Rules, 1959, which specifically provides that where a proposed compromise arose involving the share capital of the company, the procedure prescribed by the Act and the Rules relating to the reduction of capital and the requirements of the Act and the Rules and Regulations thereto shall have to be complied with before the compromise or arrangement, so far as it relates to the reduction of capital, is sanctioned. From this rule, the Gujarat High Court deduced (at page 854) :

'If section 391 were not to be treated as a complete code and if it is intended that various things that can be done by way of a scheme of compromise and arrangement, if they were to fall under different provisions of the Companies Act which prescribe certain procedure for doing the same and that procedure has to be gone through, it was not necessary to provide specifically that if the scheme of compromise and arrangement includes reduction of capital special procedure in respect of reduction of capital must be gone through before it could be sanctioned as part of the scheme of compromise and arrangement. There seems to be good reason for making such a provision in rule 85 ...'

14. Though these observations were made by the Gujarat High Court in connection with reduction of capital and the special procedure to prescribe therefor, in my view these observations are equally applicable in so far as the special procedure prescribed for alteration of memorandum of association of a company is concerned. In fact, the reason why section 391 of the Act is to be treated as a complete code is postulated by the Gujarat High Court thus (at page 855) :

'If section 391 was subject to other provisions of the Act, every time the scheme of compromise and arrangement is put forth for the sanction of the Court, if it includes things for which specific provisions are made and that will have to be gone through before the scheme is sanctioned, it would result in unnecessary duplication of procedure and would be cumbersome. On the contrary, it appears that if the creditors and members of the company arrive at a certain compromise which the court considers fair, it can be sanctioned under section 391 despite the fact that for some of those things included in the compromise another procedure is

prescribed in the Companies Act and which has not been carried out. It, therefore, appears that section 391 is a complete code which provides for sanctioning of the scheme of compromise and arrangement . . . Therefore, it appears that the provisions contained in section 391 is a complete code.'

15. The decision of the Gujarat High Court in *Maneckchowk's case* [1970] 40 Comp Cas 819 was followed by this court in *Vasant Investment Corporation Ltd. v. Official Liquidator, Colaba Land and Mill Co. Ltd.* [1981] 51 Comp Cas 20. In this case the company was authorised by its memorandum to do business in buying and selling of land and also to run a textile mill. The company went into liquidation and after the contributors were paid it was found that there was a surplus. Some of the shareholders proposed a scheme by which the company could, utilising the surplus funds, carry on the business of manufacturing chemicals. The official liquidator objected to the same on the ground that sanctioning the scheme would be meaning that the company would be permitted to do something ultra vires the objects clause of the memorandum of association. This contention was negated by this court (per Mrs. Manohar J.) by pointing out that the scheme itself contemplated that the memorandum of association would be altered, if found necessary, by taking steps for amendment thereof. After referring with approval of the judgment of the Gujarat High Court in *Maneckchowk's case*, [1970] 40 Comp Cas 819 the learned judge went on to observe page 34 of 51 :

'Basically, the court is given wide powers section 391 of the Companies Act to frame a scheme for the revival of the company. Section 391 of the Companies Act is a complete code under which the court can sanction containing all the alterations required in the structure of the company for the purpose of carrying out the scheme, except reduction of share capital which requires a special procedure to be followed by virtue of rule 85 of the Companies (Court) Rules. In the absence of rule 85, procedure for alterations in the memorandum and articles of association of a company prescribed under other provisions of the Companies Act is not required to be followed before sanctioning a scheme involving such alterations. The whole purpose of section 391 is to reconstitute the company without the company being required to make a number of applications under the Companies Act for various alterations which may be required in its memorandum and articles

of association for functioning as a reconstituted company under the scheme.'

16. Thus the position in law appears to be clear. Section 391 invests the court with powers to approve or sanction a scheme of amalgamation/arrangement which is for the benefit of the company. In doing so, if there are any other things which, for effectuation, require a special procedure to be followed - except reduction of capital - then the court has powers to sanction the while sanctioning the scheme itself. It would not be necessary for the company to resort to other provisions of the Companies Act or to follow other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme which is sanctioned by the court. Not only is section 391 a complete code as held by the courts, but, in my view, it is intended to be in the nature of a 'Single window clearance' system to ensure that the parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated applications to the court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall fairness and feasibility has been judged by the court under section 394 of the Act.

17. It now remains to consider the observations of Justice Rangnekar in *Katni Cement and Industrial Co. Ltd. In re* [1937] 7 Com Cas 348 :

'... but this rule is subject to the limitation that if the Companies Act contains express provision enabling the doing of any act in a particular way, the provisions of that enabling section, and not those of section 153, must be followed.'

18. The limitation spelt out by these observations is no longer valid, in my judgment, for two reasons which have introduced qualitative changes in the legal matrix.

19. First, *Katni Cement's case* [1937] 7 Comp Cas 348 was decided under the 1913 Act. At the relevant time, there was no rule or procedure corresponding to rule 85 of the Companies (Court) Rules, 1959. The procedure was governed by the rules made on the original side of the High Court, which did not contain any parallel provisions. This is a vital distinction. The necessary corollary to the incorporation of rule 85 has been sufficiently highlighted by D. A. Desai J. (as he

then was) in Maneckchowk's case [1970] 40 Comp Cas 819 and reiterated by Mrs. Sujata Manohar J. in Vasant Investment's case [1981] 51 Com Cas 20. Inasmuch as rule 85 specifically enjoins the following of a special procedure prescribed for reduction of share capital, (if reduction of share capital results from implementation of the proposed scheme of amalgamation) it would be legitimate to take the view that, in respect of other changes or alterations it would not be necessary to make repeated applications under the different provisions of the Companies Act, and such changes or alterations could be sanctioned by the court sanctioning the scheme of amalgamation.

20. Secondly, sections 394A and 10F, introduced in the [Companies Act, 1956](#), make a change in the situation. The purpose of prescribing a special provision under section 17 for the alteration in the memorandum of association is that the shareholders of a company who had invested in the company with knowledge as to its legitimate sphere of business, as reflected in the objects clause of the memorandum, ought not to be left high and dry, if the company decides to change its sphere of business. To borrow the graphic language of Professor Gower, a shareholder who bought shares in a gold-mining company, ought not be left holding shares of a company selling fish and chips. To this effect, a public authority like the Central Government, originally, and now the Company Law Board, is required to approve the proposed alteration of the objects clause of the memorandum of association. At this stage, it is open to the quasi-judicial authority, namely, the Company Law Board, to consider the objections from the Company Registrar and, after consideration of all relevant issues including issues of general policy, to approve or disapprove of the amendments sought by the company. This was the situation prior to the introduction of section 394A. Conceivably, it could then have been argued that the separate procedure contemplated under section 17 ought to be followed if the scheme of amalgamation meant that the company was going into business which was not contemplated by the objects clause of its memorandum of association.

21. The introduction of section 394A, however, has made some change. It is now necessary for the court, before sanctioning any amalgamation, to issue notice to the Company Law Board of every application under section 391 or 394 and to take

into consideration the representation, if any, made to it by the Company Law Board before passing any order under either section. I see no reason why the Company Law Board cannot raise all its objections at this stage. The notice under this section appears to be treated as a mere formality. If the Company Law Board has any objection to the proposed scheme of amalgamation, they must come forward and state the while opposing the scheme of amalgamation. It would then be possible for the court to appreciate the objections, if any, and adjudicate thereupon. If the court is satisfied that the objection based on the alteration of the memorandum has no substance, the court itself can decide it then and there and sanction the scheme even if it means a consequential amendment of the memorandum of association. The order of the Company Law Board would also be appealable under section 10F of the Act just as the court's order is appealable. I see no reason for driving the company to resort to the procedure under section 17 of the Act because the Company Law Board is unable, unwilling or incapable of formulating its objections in reply to the notice under section 394A. This would reduce the notice under section 394A to an empty ritualistic formality and rob it of its true purpose.

22. Considering the matter from all perspectives, I am of the view, that it is permissible for this court to sanction a scheme under section 394 even if the scheme contemplates a consequential alteration in the objects clause of the memorandum of association of the company. The objection raised by the Company Law Board has no substance and is, therefore, rejected.

23. In the three petitions before me, the shareholders and the creditors have accepted the integrated scheme of amalgamation and the official liquidator has also reported that there is no objection from his side in the case of the two transferor companies.

24. On the merits of the scheme, there is no ground shown as to why the sanction of the proposed scheme of amalgamation should not be granted. The scheme appears to be a fair one. It makes detailed provision for protection of the interest of the creditors, shareholders and also of the staff and workmen of the two transferor companies. I discern no conceivable objection which would stand in the way of the

scheme being sanctioned. The petitions, therefore, deserve to be allowed.

25. In the result :

Company Petition No. 428 of 1991 is made absolute in terms of prayer (a).

Company Petition No. 515 of 1991 is made absolute in terms of prayers (a) to (1).

Company Petition No. 516 of 1991 is made absolute in terms of prayers (a) to (1).

Costs of the Company Law Board fixed at Rs. 500 in each of these three petitions.

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