

In Re: Duphar-interfran Ltd.

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Court : Mumbai

Decided On : Nov-29-2000

Reported in : [2001]104CompCas629(Bom)

Judge : K.K. Baam, J.

Acts : [Companies Act, 1956](#) - Sections 391 and 394

Appeal No. : Company Petition No. 267 of 2000 connected with Company Application No. 57 of 2000

Appellant : In Re: Duphar-interfran Ltd.

Advocate for Def. : Shyam Mehta, Adv., i/b., Udwardia, ;Udeshi and ;Berjor, Advs. for ;Vijay Kumar Datla, Adv., ;B.R. Parmar, Adv., i/b., ;Colin Gonsalves, Adv. for ;Sarva Shramik Sangh Trade Union and ;C.J. Joy and ;M.M.

Advocate for Pet/Ap. : Virendra Tulzapurkar, ;Virag Tulzapurkar and ;S.H. Parikh, Advs., i/b., Amarchand and ;Mangaldas and Suresh A. Shroff and Co.;F.E. Devitre, Adv., i/b., ;Mahimkar and Co.

Judgement :

K.K. Baam, J.

1. The petitioners herein Duphar-Interfran Limited have filed this petition seeking sanction to the scheme of arrangement for demerger between Duphar-Interfran

Limited and Duphar Pharma India Limited. This sanction is sought as the pharmaceutical division of the petitioner-Duphar Interfran Limited is sought to be demerged to Duphar Pharma India Limited.

2. Notice of this petition has been published in the newspapers. Notice of the same has also been sent to the Regional Director. Shri Joy, who has appeared on behalf of the Regional Director, has stated that the Regional Director has no objection to the sanction of the arrangement embodied in the scheme of arrangement.

3. However, an application is made on behalf of the shareholder Renuka Datla seeking to oppose the sanction of the scheme. It is the case of the shareholders that the scheme is designed to benefit a group of shareholders, namely, Vasant Kumar and his family and the foreign collaborators group consisting of Solvay BV.

4. It is contended on behalf of the interveners that by presenting the scheme, a fraud is perpetrated on the petitioner-company and its shareholders, the same is unfair, unjust and is sought to be pushed through by reason of brute majority voting power.

5. It is also urged on behalf of the interveners that the meeting of members that was convened and held for the purpose of considering the said scheme was illegal and improper as different classes of members, namely, the shareholders on the one hand and the Vasant Kumar and family group and the Solvay BV group, which constituted another class of members, could not participate in the same meeting as a meeting of different classes of members was combined though the interest was not common and were, in fact, in opposition to each other.

6. It is urged on behalf of the interveners that if this scheme is sanctioned, Vasant Kumar and his family and the Solvay BV group will acquire controlling interest in their respective companies.

7. It is also urged on behalf of the interveners that the valuation report on the basis of which the share exchange ratio is purported to be made is fully unacceptable and mala fide. It is urged on behalf of the applicants that by this scheme, an

attempt is made to transfer unspecified properties of the petitioner-company relating' to its most valuable division, that is to say, the pharmaceutical division to Solvay BV and apart from that the pharmaceutical products, namely, 'Vertin' and 'Colospa' are transferred to Duphar Pharma India Limited as part of the demerger and that these products originally belonged to the petitioner.

8. It is therefore, urged on behalf of the applicants that these products are included in the scheme and are required to be transferred as part of the deal which were originally belonging to Duphar-Interfran. Reliance is sought to be placed upon a strip of 'Colospa' tablets which reflects manufactured and marketed by the registered trade mark owner Dupen Laboratories Pvt. Ltd. in collaboration with Duphar-Interfran Limited. It is, therefore, urged on behalf of the interveners that the petitioners have a right in this product which is sought to be sold to Solvay BV and thereby the petitioner-company is deprived of valuable consideration.

9. It is also urged on behalf of these applicants that the applicant and another shareholder, namely, the husband of the applicant have registered their objection in the meeting which was not taken cognizance of. Whilst appreciating the objection raised on behalf of the shareholders, it is necessary to note that so far as the petitioners are concerned, they have complied with the formalities that are required to be complied with under Sections 391 to 394 of the [Companies Act, 1956](#). A meeting of the shareholders was held and at the said meeting, 98 equity shareholders of the applicant-company attended the meeting. The unsecured creditors also attended the meeting and have voted in favour of the scheme. It is also urged on behalf of the petitioner-company that the three-fourths of majority of shareholders present in number were aware of the objection raised by the applicants and having full knowledge of the objection raised by the applicants have given their sanction and approval to the scheme.

10. The main bone of contention which is raised on behalf of the interveners is that by virtue of this, an attempt is made to transfer the unspecified and valuable properties of the company relating to its most valuable business, namely, the pharmaceuticals for a song.

11. On behalf of the interveners, there is a serious challenge raised to clauses 5.8, 5.9 and 9.3 of the scheme of arrangement.- It is these clauses which are seriously objected to as it is contended on behalf of the applicants that by virtue of these clauses, the foreign collaborators are required to transfer 9,80,000 equity shares of Duphar-Interfran in favour of the Vasant Kumar family or their nominees in lieu of the Vasant Kumar family transferring 10,98,978 equity shares of DPIL and assigning two brands, namely, 'Vertin' and 'Colospa', presently owned by Dupen Laboratories Private Limited, a company wholly owned by the Vasant Kumar family in favour of the foreign collaborators or its nominees by a separate deed of assignment. The above transfers will be subject to obtaining the necessary regulatory approvals.

12. Clause 5.9 of the scheme of arrangement records that Duphar-Interfran and DPIL shall do all such acts, deeds, matters and things they may require in order to give effect to the provision of Clause 5.8 herein.

13. Clause 9.3 of the scheme of arrangement deals with the approval of the Foreign Investment Promotion Board and/or the Reserve Bank of India under the Foreign Exchange Regulation Act, 1973, being obtained in relation to various matters referred to in terms of the scheme for which such approval is necessary, including allotment or transfer of equity shares in favour of non-residents pursuant to Clause 5.1 and Clause 5.8 of the scheme of arrangement.

14. It is in respect of these transfers of shares that principally an objection is raised on behalf of the applicants who also claim to be members of the Raju family and apparently claim an interest in the shareholding to be acquired by the Vasant Kumar family.

15. So far as Clause 5.8 of the scheme of arrangement is concerned, the same becomes operative as post-sanction of the scheme and that is apparent from a perusal of Clause 5.8 of the scheme of arrangement which becomes effective only after the scheme comes into effect and the demerger takes place. It is this clause which is challenged principally as it is contended that the meeting held for sanctioning the scheme of arrangement, the two classes of members were involved, one was the shareholders of the petitioner-company and the other being

the Vasant Kumar family and Solvay BV who by virtue of this clause sought to acquire absolute rights in the two companies. It is contended on behalf of the petitioner-company that this shall form part of the scheme, but the allotment of the shares was to come into operation after the scheme was sanctioned and this clause was incorporated only with a view to make the shareholders aware of the fact that the Vasant Kumar family was taking over the shares of Duphar-Interfran ; whereas Solvay BV was to take over the control of Duphar Pharma India Limited. Even so far as the two brands namely, 'Vertin' and 'Colospa' are concerned, it is urged on behalf of the petitioners that the same were owned by Dupen Laboratories Private Limited-a company wholly owned by the Vasant Kumar family. Though Shri Shekhar Desai has in the affidavit filed in support of Dr. Renuka Datla contended that 'Vertin' and 'Colospa' are manufactured by the petitioner-company, Shri Desai attended the shareholders meeting of Duphar-Interfran Limited, has voted in favour of the scheme and the same is borne out by the affidavit of Shri Keshav Kashid, Chief Executive Officer of the petitioner-company, to which no rejoinder has been filed by Shri Shekhar Desai. The affidavit of Shri Keshav Kashid reflects that at the meeting of the shareholders, Shri Shekhar Desai did not address the shareholders on this issue as regards the brand names 'Vertin' and 'Colospa' belonging to Duphar-Interfran Limited and not to Dupen Laboratories Private Limited.

16. In support of the contention that the brand names 'Vertin' and 'Colospa' belong to Dupen Laboratories Private Limited, reliance is placed upon the certificate issued by the Registrar of Trade Marks, which reflects that both these brand names were registered under the name of Rama Pharma Laboratories Pvt. Limited, which was the original name of Dupen Laboratories Pvt. Limited. As regards the contention of the petitioners that the strip bears the name of the petitioner, it is contended on behalf of the petitioners herein that marketing agreements were entered into in 1978 and 1983 which were valid for five years and under the said marketing agreements, Duphar-Interfran Limited agreed to purchase the products from Dupen Laboratories Pvt. Limited on a principal to principal basis and marketed the same. Though this agreement expired in 1988, it is contended that the same has not been renewed. However, the applicants have produced a strip at the stage of their arguments to which the petitioners have

contended that the same has been manufactured and marketed by Dupen Laboratories India Limited in collaboration with Duphar-Interfran Limited. However, the manufacture and marketing of the products is that of Dupen Laboratories India Limited. The trademark registration is of Dupen Laboratories India Limited. It, therefore, does not lie in the mouth of the applicants to contend that these two brand names are the products of the petitioners which are sought to be sold to the Solvay BV group.

17. As regards the transfer of shares which forms part of Clause 5.8 of the Scheme of arrangement, it is relevant to note that Dr. Renuka Datla had filed a suit in the court at Hyderabad against Solvay Pharmaceutical BV, Duphar-Interfran Limited, Dr. Vasant Kumar and Duphar Pharma India Limited, seeking an order of injunction restraining Solvay BV and Vasant Kumar and family from transferring/exchanging their shareholding in Duphar-Interfran Limited and Duphar Pharma India Limited (DPIL) pending hearing and final disposal of this suit. In the said suit, an application was made and an order was passed on July 7, 2000, by which the petition filed by Renuka Datla was dismissed and the interim injunction granted was vacated. It transpires that so far as the petitioner and her husband, who are having shareholding in the petitioner-company to the extent of 4.91 per cent, are concerned, they are seeking to hold up the scheme when the same has been approved by the majority of the shareholders. The scheme that is set for approval by the petitioners is not dependent upon the agreement incorporated in Clause 5.8 as the same comes into effect only after the scheme of demerger is sanctioned.

18. It was urged on behalf of the petitioners herein that the interveners carried the matter in appeal before the appellate court where the application was rejected. However, I am given to understand that the special leave petition has been filed and the order passed in the special leave petition is to the effect that if there is any transfer effected, the same is subject to the outcome of the special leave petition. However, no order of injunction is passed restraining the transfer. Hence so far as the transfer of the equity shares of Duphar-Interfran Limited in favour of the Vasant Kumar family and the transfer of Duphar Pharma India Limited (DPIL) shares in favour of the foreign collaborators with the two brand names which are owned by

the Dupen Laboratories Pvt. Limited wholly owned by Vasant Kumar family with regard to which the applicants herein are not concerned, the same being the subject-matter of the suit, the applicants cannot agitate this issue at this stage: However, Shri Tulzapurkar, who appears on behalf of the petitioners, has been very candid and has urged before the court that so far as Clauses 5.8, 5.9 and 9.3 of the scheme of arrangement are concerned, the same can be deleted from the scheme. To this, it is contended on behalf of the applicants that the scheme of arrangement is required to be rescheduled and a new scheme is once again required to be placed before the shareholders and their approval is required. So far as this argument is concerned, the same is unwarranted and deserves to be rejected as it is apparent that by following this procedure, the intention of the applicants is to delay the sanction of the scheme which has been sanctioned by a majority of the shareholders. Deletion of Clauses 5.8, 5.9 and 9.3 of the scheme of arrangement does not in any way alter, affect or prejudice the scheme of arrangement so as to direct the petitioner to recast the scheme of arrangement and place the same before the members. Therefore, so far as this argument is concerned, the same has no basis and deserves to be rejected.

19. The challenge is also made on behalf of the applicants to the report of Arthur Andersen and Associates, who have recommended the shareholding in the new company as it is contended on behalf of the interveners that the petitioners did not place before the accountants the share capital of Duphar Pharma Limited to enable the auditors to submit their report with regard to the share ratio of the shareholders in the new company Duphar Pharma Limited.

20. So far as the auditors are concerned, they have submitted their report. The shareholders of Duphar-Interfran did not lose their shareholding in the petitioner-company. On the contrary, they acquire two shares of Duphar Pharma India Limited. This ratio has also been approved by the Regional Director who, after the perusal of the documents placed before him, has given his no objection to this scheme of arrangement. Hence so far as the interveners are concerned, they are disgruntled because they have not been given the shares of the petitioner-company as per Clause 5.8 of the scheme of arrangement. Apparently they want to have interest in the shareholding of the petitioner-company by virtue of their

being members of the Vasant Kumar family group, which is the subject-matter of the suit. Their objection, at this stage, is not a bona fide one nor is it meant to protect the interest of the company or its shareholders, but is made to gain personal gains to themselves and acquire shareholding for themselves in the petitioner-company which personal motive cannot be employed to defeat the scheme approved by a majority shareholders and the Regional Director. Hence so far as this application is concerned, I am of the opinion that the same is not warranted and deserves to be rejected.

21. On behalf of the petitioners, reliance is sought to be placed upon the ruling in the case of *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* : AIR 1997 SC506 , with regard to the contention raised on behalf of the interveners that separate meetings were required to be held of separate classes of shareholders wherein it has been observed that a separate meeting of a sub-class of shareholders can be directed only where separate terms are laid out in the scheme in this regard. So far as the terms are concerned, the main purpose of the scheme was the demerger. It is only after the demerger that the shareholding is taken by Vasant Kumar and family on the one hand and Solvay BV on the other. So far as this shareholding is concerned, by virtue of the fact that the petitioners have withdrawn by Clauses 5.8, 5.9 and 9.3 to the extent of the shareholding of Vasant Kumar and Solvay BV from the scheme of arrangement, this argument is unwarranted.

22. Hence so far as this application is concerned, the same is not a bonafide one made with a view to protect the interest of the shareholders, as is sought to be contended, but made with an oblique motive to gain shareholding rights in Duphar Interfran Limited by virtue of the interveners contending to be members of Raju family in respect of which shareholding, proceedings have already been filed in the Hyderabad court and the matter is carried up to the Supreme Court in which the rights of the interveners to acquire the shareholding will be considered. Hence in view of the fact that the rights of the interveners have adequately been protected in the said proceedings, there is no need to prejudice the proceedings adopted in the company court with regard to the scheme of arrangement of demerger.

23. Hence so far as this application is concerned, the same stands rejected.

