

In Re: Nav Chrome Ltd.

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Court : Andhra Pradesh

Decided On : Dec-30-1996

Reported in : [1997]89CompCas285(AP)

Judge : S. Dasaradharama Reddy, J.

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

Appeal No. : Company Petitioner Nos. 92 and 93 of 1996

Appellant : In Re: Nav Chrome Ltd.;In Re: Nava Bharat Ferro Alloys Ltd.

Respondent : ;

Advocate for Pet/Ap. : C. Kodandaram, Adv. and ;P. Innayya Reddy, Adv. for
;Central Government

Judgement :

S. Dasaradha Rama Reddy, J.

1. The petitioner in Company Petition No. 92 of 1996 is the transferor company while the petitioner in Company Petition No. 93 of 1996 is the transferee company. The main objects of the transferor company are to carry on the business of manufacturing ferrous and non-ferrous metals, alloy steels, special steels, ferro alloys, ferro chrome, etc., and to manufacture electro-chemical and electro metallurgical products etc. It is at present engaged in sale and manufacture of

minerals, charcoal, machinery, etc. The main objects of the transferee company are manufacture of manganese, calcium carbide, etc. It is at present engaged in manufacture and sale of ferro alloys, sugar and machine building. The transferor company seeks to amalgamate with the transferee company as the result of amalgamation will benefit their optimum utilisation of raw materials, high value spares, consumables, high rate of electrical equipment, etc., resulting in saving of considerable amounts and helping expeditious and economical implementation of expansion projects. In the connected Company Applications Nos. 173 and 174 of 1996, this court directed convening of the meetings of the shareholders. The respective chairpersons have filed their reports showing that the shareholders approved the scheme. As per the scheme, the appointed date is April 1, 1996. As per para 8 of the scheme, the transferee company shall allot to the shareholders of the transferor company four equity shares of the face value of Rs. 10 each for five equity shares of the face value of Rs. 10 each held in the latter company. The transferor company holds 2,25,450 equity shares of Rs. 10 each fully paid and 3,60,800 equity shares of Rs. 10 each partly paid, i.e., Rs. 2.50 per share in the transferee company. On the scheme being effective, the said shares shall not be cancelled but shall be transferred to and vested in a trustee to be appointed by the board of directors of the transferee company who shall sell the same and pay the net proceeds to the transferee company.

2. Notice was issued to the official liquidator and the Company Law Board, Southern Region, Madras.

3. The official liquidator has filed his report stating that the affairs of the transferor company do not appear to have been conducted in any manner prejudicial to the interests of its members or that of public interest. It is also submitted that while the average quoted value of shares of both the companies is Rs. 46 and Rs. 30, respectively, the intrinsic value of shares is about Rs. 47 and Rs. 46, respectively, and hence the share exchange ratio has to be modified. He has also stated that no provision was made as regards the residual lock-in period in respect of 6,07,900 shares of the transferor company which was a condition stipulated by the Securities and Exchange Board of India at the time of issue of shares to the public by the transferor company through the prospectus. Another objection is that

consent of the secured and unsecured creditors of the transferor company has not been obtained.

4. The Registrar of Companies has filed a counter raising only one objection, viz., that the scheme is silent as regards the fair price at which the shares of the transferor company held in the transferee company will be disposed of.

5. The transferor company filed a reply to this, giving the particulars of the outstanding dues to the creditors, viz., State Bank of India, Industrial Development Bank of India, SCICI Ltd., Lloyds Finance Ltd., and Ind Bank Merchant Banking Services Ltd., totalling Rs. 12,15,10,180 and an amount of Rs. 2.10 crores due to unsecured creditors as on March 31, 1996. It is stated in the affidavit that the consent of creditors need not be obtained and that in any event as the transferor company is getting amalgamated with a financially much stronger company, with net assets of Rs. 42.85 crores, no prejudice whatsoever is caused to the creditors of the transferor company. Regarding the lock-in period, it is stated that the public issue was made in the year 1993-94 and the lock-in period contemplated is no longer material and relevant and hence no provision is made.

6. As regards the objection to the share exchange ratio, raised by the official liquidator, it is well settled that the official liquidator has no say in the matter, when the shareholders of the companies have approved of it. The second objection raised by the official liquidator regarding the lock-in period has to be equally rejected as that condition was stipulated at the time of public issue and is no longer relevant. The third objection raised by the official liquidator is that the consent of the secured creditors has not been obtained. Apart from the fact that the official liquidator is only concerned with certifying under the proviso to section 394 of the Companies Act that the affairs of the transferor company do not appear to have been conducted in any manner prejudicial to the interests of its members or that of public interest, even on the merits, the Companies Act does not require any notice to the creditors of the transferor company. The proposal of amalgamation is widely advertised in newspapers and no creditor either secured or unsecured has filed any objection in this court. Further, the creditors of the transferor company will not be prejudiced in any way as they will have a financially

stronger company as their debtor.

7. Mr. C. Kodandaram relied on Coimbatore Cotton Mills Ltd. and Lakshmi Mills Co. Ltd., In re [1980] 50 Comp Cas 623 (Mad); Telesound India Ltd., In re [1983] 53 Comp Cas 927 (Delhi) and Mafatlal Industries Ltd., In re [1995] 84 Comp Cas 231 (Guj).

8. In Coimbatore Cotton Mills Ltd. and Lakshmi Mills Co. Ltd., In re [1980] 50 Comp Cas 623 (Mad), a similar objection was overruled by a single judge of the Madras High Court holding as follows (at page 644) :

'Yet another ground of objection raised by Mr. Swamidurai, though feebly, was that notice should have been given to the creditors of the two companies. It is not disputed by learned standing counsel for the Central Government that the petitions had been widely advertised in Fort St. George Gazette on May 3, 1978, in Nava India on May 4, 1978, and in The Hindu on May 5, 1978. Despite the fact that the petitions have been widely advertised no shareholder or creditor of the company had come and objected to the sanction being accorded to the proposed scheme of amalgamation. It is stated on behalf of the petitioners that the Central Bank of India is a major creditor of the transferee company. It is significant that this bank has not come forward to oppose the application. It is further stated in the additional reply affidavit and that is not controverted by learned standing counsel for the Central Government that persons to whom moneys are due under deferred payment have consented to the scheme. Further, all the creditors, secured and unsecured, become creditors of the transferee company which is admittedly a stronger company from the financial point of view. Learned counsel was not able to convince the court in what manner the scheme of amalgamation will be prejudicial to the creditors of the company. Rightly, therefore, Mr. Swamidurai did not pursue this contention further.'

9. To the same effect is the decision of the Delhi High Court in Telesound India Ltd., In re [1983] 53 Comp Cas 927, 938 which reads as follows :

'Whether the creditors of a transferor company and any other persons having interest in the transferor company, or interested in its business assets or any

contract with it, other than the members of it, were entitled to vote on a scheme for its amalgamation with another, by virtue of the fact that on amalgamation, their interest may in some way be affected, in that on amalgamation they would all be compelled to deal, in substitution of the transferee company, with the amalgamated company, and in the case of formation of a new company on amalgamation of two companies with the new entity. This contention which was raised on behalf of the landlord and to an extent, on behalf of Sondhi, has to be answered in the negative. A bare reading of section 391 of the Act leaves little doubt that a compromise or arrangement is either between a company or its creditors or between a company and its members. An arrangement in the nature of amalgamation is the result of an agreement between the amalgamating company and its members, as well as a corresponding agreement between the transferee company and its members, and there is, therefore, no provision for the participation of persons other than the members of the two companies to vote on an arrangement of amalgamation proposed between a company and its members. In the case of *Union of India v. Asia Udyog Pvt. Ltd.* [1974] 44 Comp Cas 359 (Delhi), I had an occasion to consider the scheme of the provisions of the Act of 1913, corresponding to sections 391 - 394 of the present Act, in a slightly different context and had pointed out that although the provisions contained in Chapter V of the present Act, inter alia, with regard to compromise or arrangement and reconstruction of companies were a considerable improvement on the corresponding provisions in the previous Act and a number of safeguards have been provided, notably by the provisions of sections 392 and 394A, an anomaly appears to exist in the Act inasmuch as the creditors of the transferor company which is being amalgamated, were not entitled as of right at any stage to participate in the process of the consideration or the sanction of any compromise or arrangement proposed between the company and its members, which may eventually result in the amalgamation of the company by its absorption in the other or by merger of the two to create the third. There is no provision of notice to the creditors of any such proceedings at any stage, either prior to the making of the order or subsequent thereto, except in so far as the creditors may have notice of it by public advertisement, although the creditors of a company, which is sought to be merged in any other, and completely absorbed in the transferee company

would, by the process of amalgamation, be compelled to deal with and become the creditors of another company, whether the existing company or a new company, that may come into existence, even though the creditors or some of them may have had no dealings with such new entity and may have, therefore, no confidence in its management. I still hold that view.'

10. In *Mafatlal Industries Ltd., In re* [1995] 84 Comp Cas 231 (Guj), the Gujarat High Court held at page 424 as follows :

'By this objection, Miheer has submitted that the proposed scheme of amalgamation of MF with MIL vitally affects the secured and unsecured creditors of MIL and in view of the fact that the necessary meeting of such class of creditors has not been called, this court should not grant sanction to the scheme of amalgamation. Under the proposed scheme of amalgamation, MF (transferor company) is to be amalgamated with MIL (transferee company). On such an amalgamation the transferor company shall stand dissolved. On amalgamation being sanctioned the entire undertaking of the transferor company including all its properties, i.e., movable and immovable, tangible and intangible, property rights, claims and powers as provided under the scheme of amalgamation shall stand transferred to and vested in the transferee company (MIL). Similarly all debts, liabilities, duties and obligations of the transferor company, on the scheme of amalgamation being sanctioned, shall stand transferred to and vested in the transferee company. In fact, by the proposed scheme of amalgamation the properties, movable or immovable, tangible and intangible, of the transferee company are not going to be affected. The creditors of the transferee company are not, in any way, going to be affected by the proposed scheme of amalgamation as the proposed scheme would result in the increase of all movable and immovable assets of the transferee company and it would not in any way result in transferring or vesting any of the properties of MIL to anyone else. As such, by the proposed scheme of amalgamation the class of creditors of the petitioner company is not going to be affected at all. Under section 391, on an application being made to the court, the court passes appropriate orders to call, hold and conduct the meeting. Since in a petition for sanction to the scheme of amalgamation the properties of the transferee company are not to be adversely affected and since they are

available to the class of creditors, ordinarily, their meeting is not required to be convened. Shackleton on Law and Practice of Meetings notes that 'where the proposed arrangement is one between one company and its members, meetings of creditors are not necessary under section 206 of the English Act. No meeting of any class which is not involved in the proposed scheme is required. A meeting should be convened of any class which is affected'. Since the creditors of the transferee company (MIL) are not going to be affected adversely, in any manner, their meeting is not required to be convened. In the directions issued by Y.B. Bhatt J. on December 22, 1993, no direction was given to convene a separate meeting of creditors of the transferee company and in my opinion rightly so, as such meeting is not stipulated by section 391.'

11. In view of these decisions, I uphold the contention of Mr. C. Kodandaram. Lastly, coming to the objection of the Registrar of Companies that the scheme is silent as to the selling value of the shares by the trustee, Mr. Kodandaram learned counsel for the transferor company says that the trustee will sell the shares at a fair price after obtaining a valuation report.

12. Accordingly para 8(2) of the scheme shall be modified to the effect that the trustee will sell the shares at a fair price after obtaining the valuation report.

13. With the above modification, the scheme is sanctioned and the petitions are ordered accordingly. Certified copy of the order shall be delivered to the Registrar of Companies within 30 days to take all consequential actions in respect of dissolution of the transferor company. A copy of the scheme of the amalgamation order shall be attached to this order. The office will draft the order in Form No. 42. Parties to the scheme or any other person interested shall be at liberty to approach this court for any other direction that may be required for carrying out the scheme of amalgamation.