

In Re: Teck-men Tools (P.) Ltd.

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Court : Andhra Pradesh

Decided On : Jul-25-2008

Reported in : [2009]150CompCas800(AP); [2009]92SCL59(AP)

Judge : Ramesh Ranganathan, J.

Acts : [Companies Act, 1956](#) - Sections 235 to 251 and 391 to 396; Companies (Court) Rules, 1959 - Rules 80 to 83

Appeal No. : Company Petition Nos. 6 to 8 of 2008 and Company Application Nos. 2238 to 2240 of 2007

Appellant : In Re: Teck-men Tools (P.) Ltd.

Advocate for Pet/Ap. : L.V.V. Iyer, Adv.;M. Anil Kumar, Adv.;A. Rajasekhara Reddy, Adv.

Judgement :

ORDER

Ramesh Ranganathan, J.

1. These three petitions are filed seeking sanction of this Court to the proposed Scheme of arrangement between the transferor company Teck-men Tools (P.) Ltd., (hereinafter referred to as 'TTPL'), the Transferee company Mold-Tek Technologies Ltd., (hereinafter referred to as 'MTL'), and the resulting company

Mold-Tek Plastics Ltd., (hereinafter referred to as 'MPL') and their respective shareholders for amalgamation from the appointed date i.e., 1-10-2006 and for demerger from 1-4-2007.

2. TTPL was incorporated under the [Companies Act, 1956](#) on 27-8-1990 and its registered office is situated at Hyderabad. Its authorized capital is Rs. 48,00,000 divided into 4,80,000 equity shares of Rs. 10 each. Its issued, subscribed and paid-up capital is Rs. 24,00,000 consisting of 2,40,000 equity shares of Rs. 10 each. The objects for which TTPL was incorporated is to manufacture, prepare, process, represent, buy and sell, resell, export and market, deal in all kinds of plastics and plastic goods, plastic process and ancillary machinery, tools, moulds, dies, to carry out job works of all types, etc.

3. MTL was originally incorporated on 4-7-1995 under the name and style of Mold-Tek Plastics Private Limited. The said company was converted into a public limited company under the name and style of Mold-Tek Plastics Limited with effect from 24-12-1992. Strongpet Polymers-Private Limited was amalgamated with the said company with effect from 1-11-1995 by order of this Court dated 6-2-1997 and its name was changed to Mold-Tek Technologies Limited with effect from 17-2-2000. The registered office of MTL is also situated at Hyderabad. Its authorized capital is Rs. 13,00,00,000 divided into 1,30,00,000 equity shares of Rs. 10 each. Its issued, subscribed and paid-up capital is Rs. 10,52,24,457. The objects for which MTL was incorporated is to manufacture, process, export, import and deal in all kinds of plastic goods including injection moulded, blow moulded items for industrial and domestic requirements and to manufacture, market, buy, sell, export, import and deal with plastic processing and ancillary machinery, tools, moulds, dies, their components etc. Its objects include promoting, developing and trading in various software services in India and abroad to individuals/organizations using various programmes, languages and tools, export of software packages, programmes etc.

4. MPL was originally incorporated, under the [Companies Act, 1956](#), on 28-2-1997 under the name and style of Treasure Paks Private Limited. This company was converted into a public limited company called Treasure Paks Limited on 10-8-2007. Its name was changed to Moldtek Plastics Limited with effect from 20-8-

2007. Its registered office is also situated at Hyderabad. The authorized capital of MPL is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each. Its issued, subscribed and paid-up capital is Rs. 5,00,000 consisting of 50,000 equity shares of Rs. 10 each. Pursuant to a resolution passed in the extraordinary general meeting of the members of the company on 25-1-2008, the authorized capital of MPL was increased to Rs. 9,00,00,000 divided into 90,00,000 equity shares of Rs. 10 each. The objects for which MPL was incorporated are to manufacture, process, export, import or otherwise deal in all kinds of card board packing, plastic packing, polythene packing, gunny bags, containers, etc., and to carry on the business of manufacturing, fabricating, processing, laminating, moulding and otherwise dealing in all kinds of packing and packaging material. They also include manufacturing and dealing in plastic processing and ancillary machinery, tools, moulds, dies, components etc.

5. The Board of Directors of TTPL, in their meeting held on 27-8-2007, resolved to approve the scheme of arrangement made by it with MTL and MPL. It also resolved to file an appropriate application seeking approval of the High Court. Similar resolutions were passed by the Board of Directors of MTL and MPL.

6. Under Section 391 of the Companies Act, where a compromise or arrangement is proposed between a Company and its members, the Court may, on the application of the company or of any creditor or member of the company, 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. Sub-section (2) provides that, if a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the said compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors and all the members of the Company, as the case may be. The proviso to Section 391(2) requires the Court to be satisfied that the Company, which has made an application under Sub-section (1), has disclosed to the Court, by affidavit or otherwise, all material facts relating to the Company, such as the latest financial position of the Company, the latest auditors report on the accounts

of the Company or pendency of any investigation proceedings in relation to the Company under Sections 235 - 251 and the like before sanctioning any compromise or arrangement. Under Sub-section (3), an order made by the Court shall have no effect until a certified copy of the Order has been filed with the Registrar.

7. On an application being filed to dispense with the meeting of the members of the company this Court, by its order dated 26-12-2007, noted that TTPL had only 12 members who held the entire paid-up share capital, that all the members had given their written consent to the proposed scheme of arrangement by way of individual affidavits affirming their consent and it was, therefore, a fit case to dispense with the meeting of the members of the company. Accordingly, convening of the meeting of the members of TTPL was dispensed with by this Court. On the very same day, similar orders were passed in respect of MPL also.

With regards MTL, this Court, in its order in C.A. No. 2239 of 2007, dated 26-12-2007, directed that a meeting of the members be held and appointed an advocate as the Chairman to conduct the meeting and submit his report. Accordingly, a meeting of the members of MTL was held and the Chairman, in his report, informed this Court that 66 shareholders attended the meeting in person and 27 by proxy holding in all 62,06,655 shares of Rs. 10 each for Rs. 6,20,66,550, that while shareholders, holding 62,06,528 shares of Rs. 10 each for Rs. 6,20,65,280, had voted in favour of the resolution, shareholders, holding 95 equity shares had voted against the resolution and shareholders holding 32 equity shares had neither voted in favour or against the resolution. The percentage of votes cast in favour of the resolution is 99.99 per cent of the members present and voting either in person or by proxy.

8. In the cases on hand, no meeting of the creditors of any of the three companies, involved in the Scheme of arrangement, has been held. Sri L.V.V. Iyer, Learned Counsel for the petitioners, would submit that, where the scheme of arrangement is between the company and its members, all that Sub-section (2) of Section 391 requires is that a meeting of the members of the company be held and, in the absence of any Scheme of arrangement between the company and its creditors, it

is not necessary that a meeting of the creditors, of any of the three companies, be convened.

9. The question which calls for examination is whether, in a Scheme of arrangement between a company and its members, a meeting of the creditors of the company is statutorily mandated, and is invariably required to be held?

10. On this question, one view is that the creditors are not entitled, as of right, to participate in the process of consideration of sanction of the Scheme, as the [Companies Act, 1956](#) does not contain a specific provision for a notice being given to the creditors at any stage either prior to the making of the order or subsequent thereto, except insofar as the creditors may have notice of it by public advertisement, [Union of India v. Asia Udyog (P.) Ltd. : [1974]95ITR229(Delhi)] that, under Section 391 of the Act, a compromise or arrangement is either between a company and its creditors or between a company and its members, that 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, that there is 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, Nav Chrome Ltd. In re [1997] 89 Comp. Cas. 285 : 14 SCL 267 (AP); Mafatlal Industries Ltd. In re [1995] 84 Comp. Cas. 231 : 3 SCL 69 (Guj.); Coimbatore Cotton Mills Ltd. & Lakshmi Mills Co. Ltd. In re [1980] 50 Comp. Cas. 623 (Mad.) and Telesound India Ltd. In re [1983] 53 Comp. Cas. 927 (Delhi), that where the proposed arrangement is one between the company and its members, a meeting of the creditors is not necessary under the Act, that no meeting of any class which is not involved in the proposed scheme is required, that a meeting should be convened only of the class which is affected (Shackleton on 'Law and Practice of Meetings') and that it is not necessary to issue a notice to every creditor of the company nor is it the primary intent of Section 394 that he should be personally heard before an order is made. [Vijaya Durga Cotton Trading Ltd. In re .

11. A different view was taken in *ICICI Ltd. In re* [2002] 36 SCL 682 (Bom.) and while doubting the view that the creditors had no right to participate in the process of consideration of the Scheme of arrangement between the Company and its members, the Bombay High Court observed that Section 391(1) gave a discretion to the Court to convene a meeting of the creditors or any class of them. However, even the Bombay High Court did not read any mandatory requirement, of holding such a meeting of the creditors, into Section 391 and merely rested its conclusions on the discretionary powers of the Court.

12. The expression 'as the case may be' is found both in sub-sections (1) and (2) of Section 391 of the Companies Act. If the words 'as the case may be' in Section 391(1) is construed as requiring the Court to order a meeting of only the members, in a scheme of arrangement between the company and its members, and only a meeting of the creditors in a scheme of arrangement between the company and its creditors, then the expression 'as the case may be' in Section 391(2) can only be held to bind the members where a meeting of the members is held and the creditors where a meeting of the creditors is held and the safeguard in the provision, of 3/4 of the members or creditors in value voting in the meeting to approve the Scheme, would only mean that the wishes of a substantial majority of the class should prevail, and the dissenting minority of 1/4th or less of the class should not be permitted to derail the Scheme of arrangement unless, of course, the Court, on examining the Scheme, finds that the objection of the minority is justified. If Section 391(1) is so construed, and no meeting of the creditors is required to be held, in a Scheme of arrangement between the company and its members, then, in the absence of ascertaining whether a substantial number of creditors approve the scheme or not, would the Court be justified in statutorily imposing such a Scheme of arrangement on the creditors, even though their consent has not been obtained or their decision ascertained? If, on the other hand, the view, that a meeting of the creditors/members must necessarily be held in all cases irrespective of whether the Scheme of arrangement is between the company and its members or the creditors, is accepted would that not render the words 'as the case may be' in Section 391(1) mere surplusage?

13. Sri L.V.V. Iyer, Learned Counsel for the petitioners, would submit that the words 'as the case may be', as found both in Sub-section (1) and Sub-section (2) of Section 391, should be given the same meaning and, when so read, would mean that where the Scheme of arrangement is only between the company and its members, and not between the company and its creditors, no meeting of the creditors of any of three companies is statutorily mandated either under Sub-section (1) or Sub-section (2) of Section 391. Learned Counsel would further submit that the Scheme of arrangement between the company and its members, when approved by the requisite number prescribed in Sub-section (2), would bind the dissenting members but not the creditors who are not directly involved in the arrangement. He would contend that once the Scheme, which prescribes the manner in which the interests of the creditors, employees and others are required to be dealt with, is approved by the Court, it would then bind the creditors, employees and others even if they have not directly participated in such a Scheme of arrangement.

14. The meaning of the expression 'as the case may be' is what the expression says, i.e., as the situation may be. (Subramaniam Shanmugham v. M.L. Rajendran : [1987]3SCR1146) and can only mean 'whichever the case may be' i.e., either one or the other. (Shri Balaganesan Metals v. M.N. Shanmugham Chetty AIR 1987 SC 1668). The said expression envisages two situations and does not permit the application of the same alternative to both the contingencies or vice versa. It is implicit in the use of this phrase that one out of the various alternatives would apply to one out of the various situations and not the other. (Khan Chand Tiloka Ram v. State of Punjab).

15. The words 'as the case may be', as found in Section 391(1), can only mean that where the Scheme of arrangement is between a company and its members then the Court may order a meeting of the members, and in a case where the Scheme of arrangement is between the company and its creditors then the Court may order a meeting of the creditors. The same words 'as the case may be' are also found in Sub-section (2) of Section 391. It is a sound rule of construction to give the same meaning to the same words occurring in different parts of a Statute. It has been justly remarked that, when precision is required, no safer rule can be

followed than always to call the same thing by the same name. It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act. (Maxwell - The Interpretation of Statutes, 12th Edition, page 278).

16. The same expression, if it appears more than once in the same statute or for that matter in the same provision, should receive the same meaning unless, the context suggests otherwise, (Suresh Chand v. Gulam Chisti : [1990]1SCR186 ; K.N. Guruswamy v. State of Mysore : [1955]1SCR305 ; N.T. Veluswami Thevar v. G. Raja Nainar : AIR 1959 SC422 ; Raghu Bans Narain Singh v. Uttar Pradesh Government AIR 1967 SC 465; Lal Chand v. Radha Kishan : [1977]2SCR522 , i.e., unless there is clear indication in the statute itself to show that the Legislature has used the words and phrases with different meanings, or where uniform construction of the words and phrases will lead to absurd conclusions and results.

17. Ordinarily, a word or expression used at several places in one enactment should be assigned the same meaning so as to avoid a 'head-on-clash' between two meanings assigned to the same word or expression occurring at two places in the same enactment. A more correct statement of the rule is, as held by the House of Lords in Farrell v. Alexander [1976] 2 ALL ER 721, 'where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning'. (Central Bank of India v. Ravindra : AIR 2001 SC3095 ; Bhogilal Chunnilal Pandya v. State of Bombay : 1959 CriLJ389 .

18. Since there is nothing in Section 391(1) and (2) to the contrary, it must be held that the words 'as the case may be' used in Sub-section (2) of Section 391 carries the same meaning as is given to the said expression in Sub-section (1) of Section 391. When so read, Sub-section (2) would mean that if, in a Scheme of arrangement between the company and its members, a meeting of the members is held and 3/4th of those present and voting in the said meeting approve the Scheme it would then bind the dissenting minority of members. Similarly, in a Scheme of arrangement between the company and its creditors, where the Court directs that a meeting of the creditors be held and in case 3/4th of the creditors present and voting approve the Scheme of arrangement then the Scheme would

bind the dissenting minority of the creditors.

19. It is evident, therefore, that Section 391 does not mandate holding of a meeting of the creditors in a Scheme of arrangement between the company and its members and similarly a meeting of the members in a Scheme of arrangement between the company and its creditors. It follows therefrom that, even if the Scheme of arrangement between a company and its members is approved by 3/4th of the members present and voting in the meeting, it would not automatically bind the creditors and, similarly, in a Scheme of arrangement between the company and its creditors mere approval of the Scheme by 3/4th of the creditors would not, by itself, bind the members of the company. As a necessary corollary thereto, it must be held that it is only on its being sanctioned by the Court would a Scheme of arrangement between the Company and its members bind the creditors of the company also. Ordinarily, a Scheme of arrangement, more particularly a Scheme of amalgamation including the Scheme in the present cases, provide for the manner in which the interests of creditors, employees etc., are secured. A heavy burden is thus placed on Courts to ensure that the Scheme does not prejudicially affect the various groups including the creditors of the company.

20. Section 394(1) empowers the Court either by the order sanctioning the Scheme of compromise or arrangement, or by a subsequent order, to make provision for matters enumerated therein including the continuance by or against the transferee company of any legal proceedings pending by or against any transferor and provision to be made for any person who, within such time and such manner as the Court directs, does not consent to the compromise or arrangement. In a given case, where legal proceedings have been instituted by the creditors against the transferor, the Court, while according its sanction, may require the Scheme to make a provision for such proceedings to be continued against the transferee. Similarly where a Scheme is dissented to by a minority of the class for whom the Scheme is meant, the Court may make adequate provision for such persons who have dissented from the compromise or arrangement. Under Section 392(1), even after the Scheme is approved, the Court would still remain vested with the power to supervise the carrying out of the compromise or arrangement

and it may, at the time of making of such an order, or at any time thereafter, give such direction in regard to any matter or make such modification in the proposed Scheme of compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

21. Rule 80 of the Companies (Court) Rules, 1959 requires the Court to fix a date for hearing of the petition and for notice of hearing to be advertised in the newspapers not less than 10 days before the date fixed for the hearing. The very purpose of publication of the notice in newspapers, as stipulated in Rule 80, is to inform the creditors that the petitions filed in the High Court by the companies concerned, seeking sanction of the Scheme of arrangement, is being taken up for hearing and that they are entitled to put forth their objections thereto. Under Rule 81, where the Court sanctions the compromise or arrangement, the order shall include such directions in regard to any matter, and such modifications in the compromise or arrangement, as the Judge may think fit to make for the proper working of the compromise or arrangement. Under Rule 82, where the arrangement is in connection with a Scheme of reconstruction or amalgamation, and the matter involved cannot be dealt with on the petition for sanction of the arrangement, an application may be made to the Court under Section 394 for its directions as to the proceedings to be taken. Rule 83 confers powers on the Court to make such orders, or give such directions, as it may think fit, as to the proceedings to be taken for the purpose of reconstruction or amalgamation, as the case may be, including, where necessary, an inquiry as to the creditors of the transferor company and the securing of the debts and claims of any of the dissenting creditors in such manner as the Court considers just.

22. On a conjoint reading of Sections 391 and 394 of the [Companies Act, 1956](#), and Rules 80 to 83 of the Companies (Courts) Rules, 1959, it is evident that, while no specific provision has been made for ascertaining the wishes of the creditors in a Scheme of arrangement between the company and its members, the Legislature, and the Supreme Court, have, by necessary implication, entrusted the Court with the duty to ascertain whether the Scheme affects the interests of the creditors to such an extent that holding of their meeting is essential and, if the Court were of the view that the interest of the creditors are adversely affected, it

could refuse to sanction the Scheme unless their consent has been obtained. [Ansal Properties & Industries Ltd. In re : 1977RLR179]. What importance should be given to the fact that the creditors are likely to be affected will vary from case to case but the Company Judge would certainly treat, whether the creditors are adversely affected or not, as a relevant circumstance. (ICICI Ltd.'s case (supra)).

23. The question which then arises for consideration is as to how the Court, in a Scheme of arrangement between the company and its members, would ascertain whether, or not, the interests of the creditors are adversely affected and whether it should direct that a meeting of the creditors be held to ascertain how they perceive the Scheme.

24. According to Sri L.V.V. Iyer, Learned Counsel for the petitioners, this Court has wide and extensive powers under Sections 391 and 394 and, on examination of the Scheme presented for its sanction, it may take an appropriate decision whether or not a meeting of the creditors of the respective companies should be held. According to the Learned Counsel, in an appropriate case, and for just and valid reasons, this Court could well direct that a meeting of the creditors be held before it puts its seal of approval on the Scheme of arrangement. Learned Counsel would rely on Vijaya Durga Cotton Trading Ltd.'s case (supra), to submit that if, on an overall consideration of the entire picture, the court's conscience is satisfied that an amalgamation would benefit not only the amalgamating company but the company with which amalgamation is made, and it is in the mutual interests of both the companies that such a Scheme should be sanctioned, the court should not hesitate to sanction the compromise and should not falter in giving effect to the genuine and bona fide Scheme chalked out by the companies involved.

25. A creditor, who has a debt due from the transferor company, would, on the Scheme of arrangement being sanctioned, be required to look not to the transferor company for repayment of his dues but to the transferee company with Whom he neither had any dealings in the past nor privity of contract prior to its substitution in the place of the transferor company. In a given case, the transferee company may have negative assets or may not have sufficient liquidity to repay the creditor, as

per the original terms agreed between him and the transferor company. Whether the creditor would be adversely affected by being required to deal with the transferee company, in substitution of the transferor company, is a matter of perception of the creditor. (Zee Interactive Multi Media Ltd. In re [2002] 3 Comp. Cas. 733 : 39 SCL 534 (Bom.); Mayfair Ltd. In re [2003] 4 Com. L.J. 102 : 46 SCL 672 (Bom.); Asia Udyog (P.) Ltd.'s case (supra).

26. Is it open to the Court, on a bare perusal of the audited financial statements placed before it, to determine whether or not the interests of the creditors are safeguarded and decide whether or not a meeting of the Creditors should be held, in a Scheme of arrangement between the Company and its members? Would that not amount to usurping the rights of the creditors to decide for themselves whether or not they are prejudicially affected by the Scheme?

27. In the light of the settled legal position that the Court has no power to usurp the rights of the class of members or creditors to decide for themselves whether or not to approve the Scheme, even if it considers that they would have approved the Scheme, (Palmer's Company Law), would the Court be justified in examining the Scheme and recording its satisfaction that the interests of the creditors are not affected, when these are matters which the creditors should have been permitted to examine and decide for themselves in a meeting to be called for this purpose?

28. If the jurisdiction of the Company Court, in examining a Scheme of arrangement, is peripheral, supervisory and not appellate, since it does not have the expertise to delve deep into the commercial wisdom of the members who have ratified the scheme by the prescribed majority, (Miheer H. Mafatlal v. Mafatlal Industries Ltd. : AIR 1997 SC506), on what basis would the Court decide that, in the facts and circumstances of a given case, a meeting of the creditors or a class of them should or should not be held to ascertain whether they are adversely affected by the scheme or not?

29. The Court should, ordinarily, exercise its discretion, in favour of convening a meeting of the creditors, even in a Scheme of arrangement between the company and its members for the safest way of ascertaining, whether or not the creditors are adversely affected by the Scheme, would be in a meeting of the creditors

themselves, which the Court, undoubtedly is entitled to convene under Sub-section (1) of Section 391. Dispensing with the holding of a meeting of the creditors should be an exception and not the norm. Among the exceptional circumstances would fall cases where the creditors of a class, either in their entirety or by a substantial majority, have given their letters of consent to the Scheme of arrangement obviating the need of holding a meeting of that class, as holding a meeting, in such an eventuality, would merely be an empty ritual and a useless formality. Even in exceptional cases, where the Court is satisfied that a meeting of the creditors need not be held, it should record its reasons in arriving at such a decision. In cases where a meeting of the creditors is held, the Court would ascertain their wishes looking not only at the resolutions passed in their meeting but also at the report of the Chairman of the meeting which would contain details of the proceedings in brief and the views expressed by the creditors in the meeting. (ICICI Ltd.'s case (supra)).

30. Now the question whether, in the facts and circumstances a direction should be given that a meeting of the creditors of all, or any of, the three companies should be convened. The Scheme, as presented to this Court for its sanction, provides, in clause 3.1(c) in Part II of section A under the head 'Amalgamation', that the transfer/vesting shall be subject to existing charges/hypothecation/mortgage, (if any as may be subsisting), over or in respect of the assets or any part thereof. Clause 3.2 relates to transfer of liabilities and, under Sub-clause (i) thereunder, with effect from the appointed date and upon the Scheme becoming effective, all debts, (whether secured or unsecured), liabilities, (including contingent liabilities, whether disclosed or undisclosed), taxes, duties and obligations of every kind, nature and description of the transferor company along with any charge, encumbrance, lien or security thereon shall also stand transferred to and be deemed to be vested in the transferee company without any further act, or instrument or deed pursuant to the Scheme being sanctioned by the High Court under Section 394(2) of the Act so as to become the debts, liabilities, duties and obligations of the transferee company from the appointed date. Under clause 5, on and from the appointed date and upon the Scheme becoming effective, all suits, actions and other legal proceedings by or against the transferor company under any statute or otherwise, whether pending or arising before the

appointed date, shall be continued and enforced by or against the transferee company.

31. Section-B of the Scheme relates to 'Demerger' and clause 10 to the transfer of the demerged undertaking. Under clause 11, upon the coming into effect of the scheme, the loans, debts, liabilities and obligations which arose out of the activities or operations of the demerged undertaking and the specific loans or borrowings raised, incurred and utilized solely for the activities or operations of the demerged undertaking as on the appointed date, and being a part of the demerged undertaking, shall, without any further act or deed, stand transferred to and be deemed to be transferred to the resulting company to the extent that they are outstanding as on the effective date and shall become the loans, debts, liabilities, duties and obligations of the resulting company which shall meet, discharge and satisfy them on the same terms and conditions as are applicable to the demerged company.

32. The Scheme provides for the transfer of the debts and liabilities of the transferor to the transferee and of the demerged undertaking to the resulting company. It must also be borne in mind that, pursuant to the notice published in the newspapers, under Rule 80 of the Companies (Court) Rules, 1959, no creditor of anyone of the three companies, (either secured or unsecured), has approached this Court raising any objection to the Scheme presented for its sanction. No application has also been filed by any of the creditors requesting this Court to protect their interests or that the Scheme, as placed before the Court, be modified accordingly.

33. The Balance Sheet of TTPL, as at 31-3-2007, would show that the company had obtained a term loan from APSFC for Rs. 36,19,500 and from Canara Bank of Rs. 23,90,822. While unsecured loans are for Rs. 11,37,721, the unsecured loans from promoters is for Rs. 9,58,049. Under the head 'Current liabilities', in Schedule VIII to the Balance Sheet, creditors for goods are for Rs. 41,10,424. Sri M. Srinivas, a Director of TTPL, has, in his affidavit dated 24-6-2008, stated that TTPL owed Rs. 11,37,721.41 to the transferee company MTL.

34. APSFC, in its letter addressed to TTPL on 17-11 -2007, has expressed its no objection to the merger of TTPL with MTL and, thereafter, demerger of the plastics division with MPL subject to the condition that the existing securities for the loans availed from it be continued, that the Directors of MTL shall, in their individual capacity, guarantee the loans availed by the transferor company and that a certificate of no objection to the scheme of amalgamation obtained by MTL from their bankers/financial institutions shall be submitted to the corporation, that the no objection letter from Canara Bank, in whose favour the Corporation had ceded second charge of the fixed assets of TTPL, should be submitted as also a copy of the order of the High Court giving its sanction to the Scheme of amalgamation and the conditions put forth should be complied with. Sri L.V.V. Iyer, Learned Counsel for the petitioner, submits that the petitioner companies would comply with the conditions stipulated by APSFC in its letter dated 17-11-2007 and that this Court may make its approval of the Scheme of amalgamation conditional on compliance of the conditions stipulated by APSFC.

35. Along with his affidavit dated 19-6-2008, Sri M. Srinivas, a Director of TTPL has enclosed a copy of the letter addressed by Canara Bank to the petitioner company on 16-6-2008 wherein they affirmed that they had no objection to the Scheme of amalgamation, that the company had satisfied the charge of State Bank of India, Jeedimetla branch and that the company should repay its dues to Canara Bank within 30 days of obtaining a certified copy of the High Court's order sanctioning the Scheme. Sri L.V.V. Iyer, Learned Counsel for the petitioner, would state that the petitioner company would comply with the conditions stipulated by Canara Bank in its letter dated 16-6-2008 and compliance of these conditions may also be made a condition for grant of approval to the Scheme of amalgamation.

36. With regards unsecured loans from promoters of Rs. 9,58,049, Sri L.V.V. Iyer, Learned Counsel for the petitioner, would contend that this amount represents the margin money for facilities granted by APSFC and that this amount, shown as unsecured loans from promoters, would continue till repayment of the dues of APSFC. Learned Counsel would state that this could also be made a condition for sanctioning the Scheme of arrangement.

37. As both the secured creditors i.e., APSFC and Canara Bank have given their consent to the Scheme of arrangement subject to certain conditions, and as the Scheme is being approved subject to the fulfilment of these conditions, holding a meeting of the secured creditors, to ascertain whether or not they have any objection to the Scheme, is unnecessary. The unsecured loans for Rs. 11,37,721.41 represents the amount due to the transferee company MTL. With regards the unsecured loans from promoters of Rs. 9,58,049 since its continuance till the dues of APSFC are repaid is being made conditional for the sanction of the Scheme, holding of a meeting of this class of creditors, (unsecured loans), is also unnecessary.

38. With regards creditors for goods of Rs. 41,10,424, a copy of the certificate from the statutory auditors M/s. Praturi & Sriram, Chartered Accountants, is filed along with the affidavit dated 19-6-2008. It is stated therein that creditors for goods of Rs. 38,29,058, representing 93.15 per cent in value of the creditors for goods of Rs. 41,10,424, had given their letters of consent to the scheme of amalgamation. The letters of consent have also been filed along with the said certificate. Since a substantial number of more than 90 per cent of the creditors for goods have given their consent to the scheme of amalgamation, it is wholly unnecessary for this Court to direct that a meeting of this class of creditors, (creditors for goods), be held.

39. A perusal of the Balance Sheet of the transferee company MTL as at 31-3-2007 would show that ICICI Bank has advanced a cash credit loan for Rs. 9,76,49,000 and a term loan for Rs. 9,75,00,000. ICICI Bank, vide their letter dated 23-11-2007, conveyed their 'no objection' to the Scheme of arrangement. Since the sole secured creditor ICICI Bank has given its 'no objection' to the Scheme of arrangement, holding of a meeting of the secured creditors of MTL is unnecessary. The unsecured loans detailed therein represent deferred sales tax collections of Rs. 10,73,64,000, and hire purchase finance of Rs. 22,03,000. Creditors, under the head 'Current Liabilities', as detailed in Schedule IX, are for Rs. 10,55,64,000. Letters of consent have been obtained from creditors of this class representing Rs. 8,50,21,351 in value i.e., 86.73 per cent of the unsecured creditors shown under Schedule DC While it is true that letters of consent have not been obtained from

creditors for hire purchase finance of Rs. 22,03,000, even if this figure is added to the dues of unsecured creditors under the head 'Current Liabilities' in Schedule DC for Rs. 10,55,64,301, since letters of consent have been obtained from unsecured creditors for Rs. 8,50,21,351, the percentage in value of such consenting creditors exceeds 75 per cent. As letters of consent from a substantial number of the unsecured creditors in excess of 75 per cent have been obtained, it would obviate the need of holding a meeting of such a class of the creditors.

40. A perusal of the Balance Sheet of the resulting company MPL, as at 31-3-2007, would show that its secured loans as on that date was for Rs. 3,50,000. Its unsecured loans was for Rs. 5,04,373 and its creditors, under Schedule VII, were for Rs. 13,34,769. The secured loan of Rs. 3,50,000 is the cash credit and accrued interest due to State Bank of Bikaner and Jaipur. Sri L.V.V. Iyer, Learned Counsel for the petitioner, would refer to the certificate issued by State Bank of Bikaner and Jaipur dated 18-8-2007 that there were no dues to the bank from the company as on 18-8-2007. The letter from Adarsh Bank, filed along with the affidavit dated 24-6-2008 of Sri P. Appa Rao, Director of MPL, shows that the petitioner had repaid the term loan availed from the Bank, that the account was closed and that there were no dues. This letter of Adarsh Cooperative Urban Bank Ltd. dated 23-6-2008 also discloses that the petitioner had repaid unsecured loans, in Schedule IV to the Balance Sheet, for Rs. 1,54,373. Along with the very same affidavit, the letter addressed by Sri P.V. Rao is enclosed wherein it is stated that Rs. 3,50,000 is on account of the unsecured loan given by him to the petitioner and that he was conveying his consent to the Scheme of arrangement. From out of the unsecured loans of Rs. 5,04,373, Rs. 1,54,373 has been repaid subsequently and for the balance Rs. 3,50,000 letter of consent to the Scheme of amalgamation has been obtained. Holding of a meeting of this class of creditors is, therefore, wholly unnecessary. The certificate of M/s. Praturu & Sriram, Chartered Accountants, dated 6-6-2008 is placed before this Court wherein it is stated that, from out of the sundry creditors for Rs. 13,34,769, all of them had given their letters of consent. It is necessary to note that the entire amount of Rs. 13,34,769 is due from MPL to MTL and MTL, in their letter dated 23-5-2008, had given their consent to the Scheme of arrangement, Since the dues of the secured and unsecured creditors of MPL have either been satisfied, or their consent to the Scheme of

amalgamation has been obtained, holding of a meeting of the creditors of MPL, or a class of them, is unnecessary.

41. The first proviso to Section 391(2) requires the petitioner to disclose all material facts relating to the company such as its latest financial position, its latest auditors report on the accounts, pendency of investigation in relation to the company under Sections 235 - 251 etc. Since the audited balance sheets of the transferor, the transferee and the resulting companies as at 31-3-2007 have been placed before this Court, and it is represented by Sri L.V.V. Iyer that the Balance Sheets of these three companies as at 31-3-2008 has not as yet been approved by the respective shareholders, it is evident that the requirement of furnishing the latest financial position of the company, and its latest auditors report, is satisfied. In each of the three petitions, it is specifically stated that no investigation proceedings in relation to the petitioner company, under Sections 235 - 251 of the Companies Act, are pending. As such the requirement of the first proviso to Section 391(2) must be held to have been complied with.

42. The second proviso to Section 394(1) stipulates that no order, for the dissolution of the transferor company under Clause (iv), shall be made unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest. Section 394A requires the Court to give notice of every application made to it, under Section 391 or 394, to the Central Government and to take into consideration the representations, if any, made to it by the Government before passing any order.

43. Pursuant to the notice issued, both the Official Liquidator and the Central Government have filed their report/affidavit. A common affidavit is filed by the Registrar of Companies, on behalf of the Central Government, in respect of all the three companies to the effect that the Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai, being the competent authority on behalf of the Central Government, had conveyed to the Registrar of Companies that he had examined the scheme carefully with respect to the material made available to him and, upon such examination, it was decided not to make any objections to the

proposed Scheme.

44. The report of the Official Liquidator is confined only to the transferor company TTPL which, under Clause (iv) of Section 394(1), would stand dissolved without winding up upon an order being passed by this Court sanctioning the Scheme of arrangement. In his report dated 24-4-2008, the Official Liquidator states that he had called for the statutory books and other relevant information, that in response thereto the transferor company had furnished the statutory books and the information called for, that upon examining the same he had observed that consent letters of APSFC and Canara Bank were subject to compliance of certain conditions, that the consent of APSFC was subject to the personal guarantees to be provided by the Directors of the Transferor company and that the consent letter of Canara Bank dated 12-10-2007 spoke of the requirement of satisfaction of SBI, Jeedimetal Branch's charge, but no information had been furnished by the Transferor company.

45. With regards the objection of Canara Bank, in its letter dated 12-10-2007, it is evident from its subsequent letter dated 16-6-2008 that TTPL had satisfied the charge of S.B.I., Jeedimetal branch with the Registrar of Companies. Insofar as the conditions stipulated by APSFC and Canara Bank are concerned, including the condition specified by APSFC that personal guarantees should be given by the Directors of the Transferor company, it is made clear that sanction of the Scheme is subject to the condition that the aforesaid stipulations are fulfilled.

46. The Official Liquidator further submits that Rs. 9,58,049 represents the promoters margin towards the facilities granted by APSFC but the Scheme is silent as to how the said liability is to be treated subsequent to the merger. As noted above, it would suffice if the Scheme itself is made conditional on the promoters loans being continued as margin money for the term loan obtained from APSFC till the said loan from APSFC is satisfied or APSFC otherwise agrees to in writing. As noted hereinabove since consent letters have been subsequently filed before this Court, the objection of the Official Liquidator that the consent of the trade creditors for goods of Rs. 41,10,424 has not been obtained, does not survive.

47. In his further report dated 24-6-2008, the Official Liquidator submits that the Company's Board minutes, general ledger, sub-ledger for loans availed, sub-ledger for creditors for goods and services, sub-ledger for current and other liabilities and bank books for the last 3 years ending 31-3-2007 had been perused by him before he filed his report dated 23-4-2008, that he had also perused the Statutory Registers containing the particulars of directors, the particulars of contracts in which directors were interested and the Register of Charges maintained by the company. He also submits that he had obtained the Company's ledger account pertaining to loans from promoters, loans from MTL, sub-ledger copies of sundry creditors for goods etc., and had retained them in his office records for future reference.

48. Since the objections raised by the Official Liquidator have either been complied with, or their compliance has now been made conditional for approval of the Scheme of arrangement, the requirements of the proviso to Section 394(1) must also be held to have been satisfied.

49. The Balance Sheet of TTPL as at 31-3-2007 shows that its Reserves and Surplus are for Rs. 68,31,523 and that its profits before tax was Rs. 34,09,755 as compared to Rs. 10,12,803 for the previous year ending 31-3-2006. With regards MTL, its Balance Sheet as at 31-3-2007 would show that its Reserves and Surplus was Rs. 16,23,17,000 and that its Profits before tax was Rs. 8,62,99,000 as compared to the profits made by it in the previous year ending 31-3-2006 of Rs. 3,67,40,000. The Balance Sheet of MPL as at 31-3-2007 reveals that the company has no Reserves and Surplus as compared to its Reserves and Surplus for the earlier year ending 31-3-2006 of Rs. 1,38,777. MPL has incurred a loss of Rs. 16,88,224 for the year ending 31-3-2007 as against the profit it made in the previous year ending 31-3-2006 of Rs. 78,682. Sri L.V.V. Iyer, learned Counsel for the petitioner, would submit that, while MPL had done job works in the previous year ending 31-3-2006 for Rs. 10,86,920, it had not carried out any job works in the year 2006-07 and that its entire expenditure of Rs. 14,91,224, other than a small sum of Rs. 3,000 which the company had received by way of dividend, represents its losses. Learned Counsel would contend that it is only to make its business more viable was the plastics division of the amalgamated company being

transferred to MPL.

50. The only question which remains to be examined is whether the Scheme is in public interest. In examining this question, the Court cannot abdicate its duty simply because the statutory majority has approved the Scheme of arrangement and there is no opposition to it in Court. It must scrutinize the Scheme to find out whether it is an arrangement which can, by reasonable people conversant with the subject, be regarded as beneficial to those who are likely to be affected by it. In pursuit of such an enquiry, the Court is not tied down by any rigid principles or strait jacket formulae. No enumeration contained in judicial decisions of the factors which can be taken into account, howsoever precise, can be treated as exhaustive so as to limit the scope of the inquiry which, having regard to varying circumstances, might differ from case to case. The burden lies on the petitioner-companies to show that the Scheme of arrangement is fair, reasonable, workable and is such that a man of business would reasonably approve. The Court would, of course, take into account the fact that it has been approved by a big majority vote, but it would not shirk its duty to scrutinize the Scheme. (Bank of Baroda Ltd. v. Mahindra Ugin Steel Co. Ltd. .

51. Sections 391 - 396 constitute a complete code and these provisions are in a way derogatory to the law of contract. When it exercises the power, conferred on it by Section 391(2) to sanction the Scheme of compromise or arrangement, the Court, by its act, is imposing the Scheme on the dissenting members of that class. Before taking such action, it is essential that the Court examines the Scheme. Even if all the statutory formalities are duly carried out, the Court has still the discretion either to sanction or refuse to sanction the Scheme. (Bank of Baroda Ltd. (supra) and Bengal Hotels (P.) Ltd. In re [1977] 47 Comp. Cas. 597 (Guj.).

52. The arrangement must fulfil some felt need, some purpose, some object and that must have some co-relation with public interest. The Court is charged with a duty to ascertain whether the affairs of the transferor, the transferee and the resulting companies have been carried on not only in a manner not prejudicial to its members but also that it is not against public interest. The expression 'public interest' must take its colour and content from the context in which it is used.

(Union of India v. Ambalal Sarabhai Enterprises Ltd. [1984] 55 Comp. Cas. 623 (Guj.)). The Indian law, a departure from the English law, enjoins a duty on the Court to examine objectively whether the merger/demerger is, or is not, violative of public interest. What would be in public interest is a dynamic concept which keeps on changing. It has been explained in Black's Law Dictionary as:

Something in which the public, the community at large, has some pecuniary interest, or some by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular locality which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government.

53. It is an expression of wide amplitude. A Scheme, valid and good, may yet be bad if it is against public interest. The basic principle of the satisfaction, that the Scheme is not contrary to public interest, is none other than the broad and general principles inherent in any compromise or settlement entered into between the parties that it should not be unfair or contrary to public policy or unconscionable. In amalgamation of companies, Courts have evolved the principle of 'prudent business management test' or that the Scheme should not be a device to evade the law. [Hindustan Lever Employees' Union v. Hindustan Lever Ltd. [1995] 83 Comp. Cas. 30 : [1994] 2 SCL 157 (SC)]. No court of law would ever countenance any Scheme of compromise or arrangement if it finds that it is an illegal Scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. The fairness of the Scheme, qua the disputing minority shareholders or creditors, also has to be kept in view by the Court while putting its seal of approval on the Scheme.

54. The Court should examine whether the proposed Scheme of compromise/arrangement is violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously x-ray the same. The Court has also to satisfy itself that the members or class of members or the creditors or class of creditors, as the case may be, were acting bona fide and

in good faith and were not coercing the minority in order to promote any interest adverse to them. It must also ensure that the Scheme as a whole is also just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant. (Miher H. Mafatlal's case (supra)). Unless the scheme is shown to be contrary to any law or is such as to shock the conscience of the court or is patently unfair to the members or creditors or any class of them, or is against public interest or against public policy, the court should not come in the way of business by rejecting a bona fide Scheme under Section 391. [Zee Interactive Multimedia Ltd.'s case (supra)].

55. The Scheme as filed in Court would show that it would benefit the transferor, the transferee, and the resulting companies and their respective shareholders and that the Scheme was drawn up to consolidate the plastics/packaging business and information technology KPO into two distinct entities i.e., the resulting company and the demerged company respectively, that the same would be distinctly advantageous to the shareholders of the company, that the Scheme, upon implementation, would result in creation of independent and financially strong entities having the necessary focus to pursue their individual growth strategies thereby resulting in enhancement of shareholder's value, that it would allow greater flexibility to the investor in their investment decisions in future, that the Scheme would provide the resulting company and the demerged company enhanced flexibility in their business operations, formulation of growth strategies and implementation of growth plans, that it was likely that the synergies of consolidating the plastics/packaging business and information technology KPO into distinct entities would lead to re-rating of the stock of the resulting company and the demerged company and value enhancement for the shareholders of both the companies and that the Scheme would also provide scope for independent growth and expansion. It is also stated that the Scheme would create enhanced value for the shareholders and allow focused strategy in operations which would be in the best interests of the company, the shareholders and all persons connected thereto. The Scheme provides for protection of the services of all the employees' who are to be continued on terms and conditions not less favourable than which were applicable to them earlier.

56. It cannot, therefore, said that the Scheme of amalgamation, if approved, would be against public interest. I consider it appropriate to sanction the Scheme of arrangement. It is made clear that sanction of the Scheme is subject to fulfilment of all the conditions referred to hereinabove, including those which Sri L.V.V. Iyer, Learned Counsel for the petitioners, had agreed to be made conditional for approval of the Scheme. As required under Section 394(3) of the Companies Act, read with Rule 81 of the Companies (Court) Rules, 1959, all the three companies shall file certified copies of the Order of this Court with the Registrar of Companies for its registration within thirty days from the date of the order. The fees payable to the Assistant Solicitor General, who appeared on behalf of the Central Government, and assisted this Court, is fixed at Rs. 2,000, (Rupees two thousand only), to be paid to him by the Central Government.

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