**In Re: Dcm Limited; in Re: Dcm Data Systems Limited**

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**SooperKanoon Citation** : sooperkanoon.com/702684

**Court** : Delhi

**Decided On :** Oct-29-2003

**Reported in** : 109(2004)DLT361

**Judge** : Mukul Mudgal, J.

**Acts** : Companies Act, 1956 - Sections 391 to 394

**Appeal No.** : CP No. 309/2000 and CA 820/2000

**Appellant** : In Re: Dcm Limited; in Re: Dcm Data Systems Limited

**Advocate for Pet/Ap.** : C.S. Vaidyanathan, Sr. Adv.,; Ritu Bhalla,; Ruchi A. Mahaja

**Judgement** :

**Mukul Mudgal, J.**

1. These petitions filed by DCM Data Systems Ltd., the transferor company/petitioner in CP.No. 310 of 2000 and DCM Limited, transferee company/petitioner in CP.No. 309 of 2000 before this Court under Section 391 to 394 of the Companies Act (hereinafter referred to as 'the Act') seek the sanctioning of the Scheme of Merger/Amalgamation of the DCM Data Systems Limited, a 100% subsidiary of DCM Ltd., with DCM Limited itself. Upon permission for merger being granted by this Court, the DCM Limited is expected to garner Rs.

28.5 crores of cash balance as well as running IT business which will boost its creditors and shareholdeRs. Upon the proposed scheme having been sanctioned by the Court, the IT business will be the principal business of the DCM Ltd. In May, 2000, an application, CA 819/2000 was filed by the DCM Limited(transferor company) for convening the meetings of shareholders and creditors of the company for approving the Scheme of Merger/Amalgamation.

2. As per the prayer made in C.A. Nos. 819 and 820 of 2000, on 25th May, 2000, this Court directed the convening of meetings of secured creditors, unsecured creditors & shareholders of both the companies on 20th, 21st and 22nd July, 2000 respectively. Notice of the said meetings were duly published in the manner prescribed under the Act and on 20th, 21st and 22nd July, 2000, the meetings were held. In all the meetings of shareholders/creditors, the scheme was approved by more than the requisite majority of the three-fourth in number and value of the shareholders and the creditors of the companies and were accordingly reported to this Court by the Chairpersons of the said meetings. The actual voting was as follows:-

' Voting pattern in respect of DCM Limited and DCM Data Systems Limited

1. DCM Limited

CREDItorS

A. Secured Creditors (Meeting held on 20th July, 2000)

Voted in favor of the proposed scheme : 427

Voted against the proposed scheme : 28

B. Unsecured Creditors (Meeting held on 20th July, 2000)

Voted in favor of the proposed scheme : 686

Voted against the proposed scheme : 22

SHAREHOLDERS

Voted in favor of the proposed scheme : 532

Voted against the proposed scheme : Rs. 1385/- in value.

2. DCM Data Systems Limited

CREDItorS

A. Unsecured Creditors (Meeting held on 21st July, 2000)

Voted in favor of the proposed scheme : 65

Voted against the proposed scheme : NIL

B. Secured Creditors (Meeting held on 10th August, 2000)

Voted in favor of the proposed scheme : 2

Voted against the proposed scheme : NIL

SHAREHOLDERS (Meeting held on 22nd July, 2000)

Voted in favor of the proposed scheme : 6

Voted against the proposed scheme : NIL'

3. On 25th August, 2000 the present petitions, CP.Nos.309 and 310 of 2000 were filed under Sections 391 to 394 of the Act seeking sanction and the approval of the proposed Scheme. This Court on 30th August, 2000 issued notice to the Official Liquidator (OL), attached to this Court and the Regional Director, Department of company Affairs, Northern Region, Kanpur as well as the creditors and shareholders of the petitioner company by way of the prescribed publication in Statesman and Veer Arjun. By the Report dated 31st November, 2000, the Regional Director, Department of Company Affairs has not indicated any objection to the proposed scheme. A report has also been filed by the Official Liquidator, confirming the details of the proceedings and stating that 'the Official Liquidator has no objection to the proposed scheme of merger and amalgamation of DCM Data Systems Limited with the transferee company...'

4. On 23rd October, 2001, the Binani and Bells Controls have filed their respective objections to the proposed scheme and the same objections were withdrawn later on 8th May, 2002. No other shareholder, secured or unsecured creditor has filed any objection to the grant of sanction to the proposed Scheme of Merger.

5. The position of law relating to the powers and obligations of a Company Court under Section 391 to Section 394 of the Act is as follows:-

(a) In United Bank of India Ltd. v. United India Credit and Development Company Ltd. (1977) 47 Com. Cas 689 it was held that while exercising the discretionary power of the Company Court to sanction a scheme, it must be viewed as a whole by taking into consideration the objective of the scheme and surrounding circumstances and the Court must take into view the local conditions. The Court must honour the collective wisdom of shareholders and is not required to analyze the impact or potential of the scheme clause-wise;

(b) In Re Cotton Agents Rajasthan Ltd reported as , PrimalSpinning and Weaving Mills Ltd and in the matter of Nayug Investments Ltd (1993) 3 Comp L.J 305 (Del) it has been held that when after notice to shareholders and other concerned, the scheme has been approved and no objection filed, the scheme should be considered by the Court to be fair to all concerned;

(c) In Vadlamudi Rama Rao v. Asian Coffee Ltd 2000 CLC 1356 (AP), it was held that once financial institutions approved the scheme of amalgamation by an overwhelming majority, the Court cannot at the instances of the members of the Company enter into a role of a fault finder;

(d) In Ucal Fuel Systems Ltd. reported as (1992) 73 Comp. Cas 63 (Mad) , the Court held that a unanimous decision of the shareholders ought not be lightly interfered with;

(e) In Shankarnarayna Hotels v. Official Liquidator 1992 (74) Com. Cas 290 and Kamla Sugar Mills Ltd reported as (1984) 55 Comp. Cas 308 (Mad) , it was held that a Company Court in its discretionary jurisdiction must take a overall view of the scheme to find it fair and reasonable and if a scheme of amalgamation benefits

both companies and affairs of the companies are not conducted contrary to interest of the members of the companies and public interest, the determination of commercial merits and demerits of the scheme is not the domain of the Company Court particularly when the collective wisdom of the shareholders has been expressed in favor of the scheme and

(f) In CetexPetro Chemicals Ltd reported as (1992) 73 Comp. Cas 298 (Mad) it was held that it is for the members of the company to judge the benefits of a scheme and not for the Company Court.

6. In Miheer H. Mafatlal v. Mafatlal Industries Ltd. reported as [1996] 87 Comp Cas 792, the Hon'ble Supreme Court held as under:

'..... The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by section 391(1)(a) have been held; that the scheme put up for sanction of the court is backed up by the requisite majority vote as required by section 391, sub-section (2); that the concerned meetings of the creditors of members or any class of them had the relevant material to enable the voters to arrive at informed decision for approving the scheme in question; that the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class ; that all necessary material indicated by section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by section 391, sub-section (1) ; that all the requisite material contemplated by the proviso to sub-section (2) of section 391 of the Act is placed before the court by the concerned applicant seeking sanction for such a scheme and the court gets satisfied about the same ; that the proposed scheme of compromise and arrangement is not found to be vocative 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 company court has also to satisfy itself that the members or class of members or 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 that of the latter comprising the same class whom they purported to represent. The scheme as a whole must also be found to be 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.

Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the court are found to have been met, the court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the court there would be a better scheme for the company and its members or creditors for whom the scheme is framed.'

7. In the case of Maneckchowk and Ahmedabad . [1970] 40 Comp Cas 819 in a comprehensive and exhaustive summation of law under Section 391-394 of the Act, the Gujarat High Court held as under:

'.....(i) The court in exercising its discretion in sanctioning a scheme of compromise with members and creditors under Section 391(2) of the Companies Act, 1956, must treat it as cardinal that its function does not extend to usurping the view of the members or creditors. It must look at the scheme to see that it is a reasonable one and, while so doing, the court will be strongly influenced by a big majority vote and the reasons which actuated the contesting creditors in opposing the scheme. None the less it is essential that the scheme must be a fair and equitable one, though it is none of the business of the court to judge upon the commercial merits which in fact is the function of the creditors and membeRs.

(ii) The scheme has not got to be scrutinised by the court with that much care with which an expert will scrutinise it, nor will it approach it in a carping spirit with a view to pick holes in it. If the majority is acting in a bona fide and honest manner, and in the interests of the class that it purports to represent, then, if the scheme is such as fair-minded person, reasonably acquainted with the facts of the case as prevailing at the time when the scheme was sponsored and approved, can regard it as beneficial for those whom the majority seeks to represent, then, unless there are some strong and cogent grounds to show that the scheme was conceived,

designed or calculated to cause injury to others, the court will ordinarily sanction it, rather than reject it. While examining the scheme the court should, keeping in view all the aspects of the matter, prefer a living scheme to compulsory liquidation bringing about an end to a company.

SIDHPUR MILLS CO. LTD., : AIR1962 Guj305 relied on.

(iii) Before the court accords its sanction to any scheme of compromise and arrangement, it would normally expect to be satisfied about three important not; (b) whether the class or classes have been fairly represented; and (c) whether the arrangement is such as a man of business would reasonably approve.'.....

(vii) A very general statement that there are several acts of mismanagement which must be investigated in winding up proceedings is rather vague and

(viii)...

(xi) If the holders of the preference shares meet in a meeting separate from the meeting of the ordinary shareholders and in each meeting the proposal for further issue of shares was considered and voted upon by a majority of 75 per cent of members present and voting, it can be said that the special resolution has been adopted. What is of the essence of the matter is that the persons affected must have an opportunity to consider the proposal and deliberate together. If the deliberations are carried on by two distinct classes having distinct interests separately it cannot be said that the proposal has not been considered in a general meeting. A too narrow and strict view may necessitate first convening the meeting of two classes together and then for the purpose of the scheme separate meetings of each class. It would be idle formality. .....

(xxi) It is always a moot question what constitutes 'a class' of creditors. The creditors comprising the different classes must have different interests. When one finds a different state of fact existing among different creditors which may differently affect their minds and their judgment, they must be divided into different classes. 'Class' must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their

common interest. In order to constitute a class, members belonging to the class must form a homogeneous group with commonality of interest.

(xxii) Even if there are different groups within a class, the interests of which are different from the rest of the class or who are to be treated differently in the scheme, such groups must be treated as separate classes for the purpose of the scheme. Broadly speaking, a group of persons would constitute one class when it is shown that they have conveyed all interest and their claims are capable of being ascertained by any common system of valuation. The group styled as a class should ordinarily be homogeneous and must have commonality of interest and the compromise offered to them must be identical.

(xxiii) General speaking, the creditors of the company should be divided into three different classes, viz. secured creditors, preferential creditors and unsecured creditors. The workers of the company, each to the extent of the first Rs. 1, 000 of his claim in winding up, would be a preferential creditor and indisputably they would form a separate and distinct class. Unsecured creditors will normally form a single class except where some of them are to be treated in a manner different from the rest and have different interests which might conflict. ....

(xxv) The essential requirement of section 393(1)(a) is that the creditors and members who are to assemble in the meeting should have advance information of the proposed scheme of compromise and arrangement and its effect on their interest as members and creditors. If the whole of the proposed scheme was annexed to the notice, anyone having a bare perusal of the scheme would be able to .... out what was intended to be done by the scheme of compromise and arrangement and what would be its effect on his interest as creditor or member of the company and the first part of clause (a) of section 393(1) will be fully complied with. .....

(xxx) The court has power at the time of making an order sanctioning the scheme under section 392(1)(b) to make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement. This power can be exercised not for substituting the scheme as approved by the creditors and members but for making the scheme of

compromise and arrangement effective and workable. In other words, the court can modify the scheme of compromise and arrangement so as to make it effective and workable.'

8. I am satisfied that

(a) The statutory procedure for holding the meeting and formulation of the scheme was complied with as per the requirement of Section 391(1)(a).

(b) It was approved by the requisite majority stipulated by Section 391(2).

(c) There was relevant and adequate material before creditors and members so as to arrive at an informed decision.

(d) Section 393(1)(a)'s requirement of placing relevant material before the voters at the statutory meeting under section 391(1) was complied with.

(e) Requisite material has been placed before the Court by the propounder of the Scheme under Section 391(2).

(f) There are no objections to the Scheme by any shareholder or unsecured/ secured creditor.

(g) The Scheme is not contrary to any public policy nor does it violate any provisions of law.

(h) There has been no coercion of the minority by the majority of either the member or any class of creditors.

(i) Since financial institutions and banks have agreed to the scheme it is obvious that prudent men of business have found it viable commercially for the class of secured creditors.

(j) A living scheme like the present one approved by the vast majority, is preferable to compulsory liquidation.

(k) The majority view of the shareholders and the creditors has to be given weight.

(l) Neither the Regional Director, Department of Company Affairs nor the Official Liquidator attached to this Court have indicated any objections to the scheme.

(m) All the classes of creditors and members were fairly represented in the meetings.

9. Having regard to the averments in the petitions and the materials placed on record, I am satisfied that the petitioner companies have disclosed to this Court all material facts relating to the companies as are required under Sections 391 to 394 of the Companies (Court) Rules, 1959. Since the shareholders and the creditors of the companies have approved the proposed Scheme of Merger and since the Central Government has no objection to the grant of sanction to the proposed Scheme nor has any objection been filed to the proposed Scheme, I do not find any legal impediment to the grant of sanction to the proposed Scheme of Merger/Amalgamation. In my view, the prayer made in these petitions deserve to be allowed in the interest of justice.

10. In the above circumstances, I am, thereforee, of the view that none of the objections to the scheme now survive and accordingly the sanction under Section 391 of the Companies Act is granted to the proposed Scheme of Merger/Amalgamation.

11. Both the company petitions stand disposed of in the above terms.