(1995) 12 AP CK 0004

Andhra Pradesh High Court

Case No: Company Application No''s. 5 of 1993 and 151 and 152 of 1995 in Company Petition No. 21 of 1993

HIFCO Consumer Credit Ltd.		APPELLANT
	Vs	
Midland Industries Limited and Others		RESPONDENT

Date of Decision: Dec. 27, 1995

Acts Referred:

- Companies Act, 1956 - Section 237, 391, 392, 433

Citation: (1998) 93 CompCas 502

Hon'ble Judges: G. Bikshapathy, J

Bench: Single Bench

Advocate: B. Veerabhadra Rao, for the Appellant; Amancharla Krishna Murti, for the Respondent

Judgement

G. Bikshapathy, J.
Both the applications can be decided in the common order.

2. Company Application No. 151 of 1995, has been filed u/s 392 of the Companies Act, 1956, read with rule 86 of the Companies (Court) Rules, 1959, seeking a direction to respondents Nos. 2 and 3 to issue share certificates in accordance with the scheme of amalgamation in Company Application No. 5 of 1993, in Company Petition No. 21 of 1993. Company Application No. 152 of 1995, is filed seeking an ancillary direction to respondents Nos. 2 and 3 not to take any decision or give any directions to respondent No. 1 contrary to the scheme of amalgamation.

3. The facts leading to this case are that the applicant, Hifco Consumer Credit Limited, was holding 1,10,000 equity shares of Rs. 10 each in Agrobel Industries Limited. It had 6,00,000 equity shares of Rs. 10 each. The said Agrobel Industries Limited was amalgamated with Midland Industries Limited-the first respondent. The scheme of amalgamation was approved by this court in Company Petition No. 21 of

1993, dated July 29, 1994. As per the terms of amalgamation for every two equity shares (fully paid) of the transferor-company, seven equity shares (fully paid) shall be issued by the transferee-company. However, after the amalgamation the first respondent-company did not allot any shares to the petitioner to which it is entitled on the basis of 2 : 7 ratio. Respondent No. 1 thus flouted the orders of this court.

4. The applicant further states that it filed suit O.S. No. 178 of 1995, before the Vth Addl. judge, seeking injunction restraining respondent No. 1 from issuing any shares to anybody except in accordance with the scheme of amalgamation. The civil court granted interim injunction and the suit is pending. An application for seizure of records of the first respondent-company was ordered, but during the search some incriminating documents came to light establishing collusion between respondents Nos. 2 and 3. The records required by the applicant could not be traced. Hence, the application is made for various reliefs. However, learned counsel submits that he is confining his relief only to the extent of issuing the share certificates.

5. The first respondent filed a counter-affidavit stating that the application is not maintainable. The scheme of amalgamation has been implemented without any deviation. On October 17, 1994, respondent No. 1 wrote to Agrobel Industries to furnish the list of shareholders as on the record date and the company through its director, Mr. A. V. Rama Raju, furnished the names of shareholders (6,00,000 shares) to the first respondent. On October 20, 1994, the board of directors held its meeting and allotted the shares. The applicant filed suits O.S. Nos. 178 of 1994 and 284 of 1995, and they are pending. In effect the submission of respondent No. 1 is that the allotment of shares has been done on the details of shares furnished by the director of Agrobel. If the name of the applicant is not found, it cannot make any grievance against respondent No. 1 and hence it has to approach the appropriate forum for the relief. It is also stated that as per the memorandum of understanding between respondents Nos. 2 and 3 the details of shareholders were furnished.

6. The third respondent also filed a counter stating that the list furnished on October 17, 1994, is the correct list of shareholders and it was based on the memorandum of understanding dated September 5, 1994. Respondent No. 2 also filed suit O.S. No. 367 of 1995, before the IVth Additional Judge regarding inter se share disputes and the court had granted an interim injunction to respondent No. 3 restraining respondent No. 1 from issuing 2 lakhs shares to respondent No. 3 and another.

7. In view of the pleadings and counter pleadings it has to be considered whether the relief as prayed for can be granted.

8. Admittedly, the application has been filed u/s 392 of the Act, which is extracted below :

"Power of High Court to enforce compromises and arrangements.-(1) Where a High Court makes an order u/s 391 sanctioning a compromise or an arrangement in respect of a company, it -

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the court aforesaid is satisfied that a compromise or arrangement sanctioned u/s 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made u/s 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act u/s 153 of the Indian Companies Act, 1913 (VII of 1913) sanctioning a compromise or an arrangement."

Thus, it is seen that it is open to this court to implement the orders of amalgamation in the case of any impediment. But in this case the dispute relates to issuance of the shares by respondent No. 1 in respect of shares held by the petitioner in the former Agrobel Industries. The said company was dissolved and merged with respondent No. 1 in pursuance of the approved scheme of amalgamation. The contention of learned counsel for the petitioner is that the petitioner is entitled to shares from respondent No. 1 in the ratio of 2 : 7. The said ratio is not disputed. Learned counsel for respondent No. 1 submits that as per the scheme of amalgamation, the shareholdings held by the applicant in the merged company (Agrobel Industries) as on the records are the criteria. Respondent No. 1 has to act on the information furnished by the authorised representative of Agrobel. The director of the said company furnished the list of shareholders and on the said basis the allotment is being done. However, learned counsel for respondent No. 1 submits that the application is not for implementation of the scheme, but the dispute relates to the shareholding of Agrobel and the same cannot be adjudicated in this application. He further submits that if the director of Agrobel played fraud and committed violation under the Act, it is open to the applicant to complain to the Central Government or the Company Law Board. Lastly, he submits that the applicant is trying to get the relief indirectly when he is not entitled to it under the Act.

9. I have considered the respective contentions. There is no dispute about the amalgamation. What the applicant is asserting is that he is entitled to shares in respondent No. 1 on the basis of the amalgamation scheme. The crux of the

problem is whether the applicant is holding shares. As per the applicant, it has 1,10,000 shares in Agrobel, but as per the letter dated October 17, 1994, the said company had furnished the shareholdings of persons in which the name of the applicant is not figuring. The dispute thus appears to be between the applicant and Agrobel. The said dispute cannot be decided by this court u/s 392 of the Act as it cannot form part of implementation of proceedings of scheme of amalgamation. Admittedly the parties have already approached the civil court for various reliefs and the suits are pending. This court cannot go into the matter as to who were the real shareholders of Agrobel Industries in this application.

10. Learned counsel for respondent No. 1 also relies on the decision of this court in Uunet India Ltd. v. I. C. Rao [1998] 93 Comp Cas 41. This court while dealing with the matter arising u/s 237(a)(ii) of the Companies Act held that the company court is concerned only with the aspect whether circumstances exist to issue directions to the Central Government and that power is traceable to section 237(a)(ii). Passing such an order for investigation is neither judicial nor quasi-judicial and it will not determine the rights of the parties. The learned judge further held that in the matters not enumerated under the Companies Act to be dealt with by the authority/company court/Company Law Board, the civil court''s jurisdiction u/s 9 of the Civil Procedure Code, 1908, is not barred.

11. Basing on this analogy, learned counsel for the respondent submits that since the issue which is before this court is not covered by any provision enumerated under the Companies Act, the petitioner has to approach the civil court for necessary relief.

12. This proposition cannot be disputed inasmuch as the civil court''s jurisdiction can always be invoked whenever there is no provision made under any other enactments for obtaining proper relief. Suffice it to say that the application is found to be not maintainable u/s 392 of the Companies Act, for the reasons already stated in the preceding paragraphs and the same is liable to be dismissed.

13. Company Application No. 151 of 1995 is accordingly held not maintainable and the same is dismissed. No costs.

14. Company Application No. 152 of 1995, stands dismissed in terms of the order passed in company Application No. 151 of 1995. No costs.

15. It is made clear that the order do not preclude the parties from approaching the proper forum if they are so advised.