

Pentamedia Graphics Limited Vs The Bombay Stock Exchange

Court: Madras High Court

Date of Decision: Oct. 30, 2006

Acts Referred: Companies Act, 1956 " Section 101, 235, 236, 237, 238
Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 " Regulation 2, 24, 3, 34, 35
Securities and Exchange Board of India Act, 1992 " Section 11(4), 11B
Securities Contracts (Regulation) Rules, 1957 " Rule 19, 19(2)

Citation: (2008) 145 CompCas 327 : (2007) 1 LW 337

Hon'ble Judges: Chitra Venkataraman, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Chitra Venkataraman, J.

These company applications are filed by the transferor and transferee companies, challenging the order of the

Bombay Stock Exchange dated 13th June 2006 and to direct the Stock Exchange to list the shares of Mayajaal Entertainment Ltd.

2. The prayer herein is the result of the approved Composite Scheme of Amalgamation, merger and compromise which provided for listing of the

equity share capital of Mayajaal Entertainment Ltd. in the Madras Stock Exchange, Chennai, National Stock Exchange of India, Mumbai, and the

Stock Exchange, Mumbai.

3. It is stated by these applicants that during the course of the proceedings for sanction of the Companies" Scheme of Amalgamation, compromise

and arrangement before this Court, the Madras Stock Exchange had already issued its No Objection letter and that the Stock Exchange, Mumbai

alone did not indicate its No Objection. This Court passed an order dated 8.11.2004, approving the Scheme of Amalgamation, compromise and

arrangement, after considering the report of the Regional Director, Ministry of Company Affairs, as well as the merits of the Scheme, apart from

the fact that the procedure under Sections 391 and 394 of the Companies Act were fully satisfied. In the face of such approval by this Court, the

applicants raised an issue as to whether the Stock Exchange, Mumbai, is justified in its refusal to list the shares of Mayajaal Entertainment Ltd.

4. It is seen that on an earlier occasion, the Bombay Stock Exchange filed applications in C.A. Nos. 498 to 502 of 2006 before this Court to

modify the terms of the order of this Court dated 12.10.2004 approving the Scheme. After hearing both sides, by order dated 5.4.2006, this

Court directed that the objections of the applicants herein be placed before the Stock Exchange, Mumbai, and a reasoned order be passed.

Consequent on the directions, the Stock Exchange has now passed an order rejecting the plea for listing the shares of Mayajaal Entertainment Ltd.

Aggrieved of this, the applicant companies, who are parties to the Scheme, are now before this Court.

5. A reference to the facts leading to the controversy need to be made herein. The applicants herein originally presented Company Petitions for

approval of a Scheme of Amalgamation, arrangement and compromise before this Court in C.P.Nos. 167 to 171 of 2004. Under the Scheme, the

NUM TV Division of Pentamedia Graphics Ltd. petitioner in C.P.No. 167 of 2004, a listed company, was proposed to be demerged to Mayajaal

Entertainment Ltd. petitioner in C.P.No. 171 of 2004, hereinafter referred to as Transferee Company, an unlisted company. The other three

transferor companies namely, Media Dreams Ltd. petitioner in C.P.No. 168 of 2004, Kris Srikanth Sports Entertainment Ltd., petitioner in

C.P.No. 169 of 2004 and Intelvision Ltd. petitioner in C.P.No. 170 of 2004, were to be merged with Mayajaal Entertainment Ltd. petitioner in

C.P.No. 171 of 2004. By order dated 12.10.2004, this Court granted sanction of the said Composite Scheme, on compliance of the requirements

of Section 391 of the Companies Act. The approval of the Scheme includes a Clause there that ""the entire equity shares of Mayajaal Entertainment

Ltd. (including the existing paid up equity share capital of Mayajaal Entertainment Ltd. and the equity shares issued pursuant to the scheme) shall

be listed at the Stock Exchange at Madras Stock Exchange Ltd. Chennai, National Stock Exchange of India, Mumbai and Stock Exchange,

Mumbai."" It may be noted that at the time of passing the order, the Madras Stock Exchange had already given its No Objection. The petition for

sanction before the Bombay Stock Exchange was still pending, awaiting orders. It is seen that the Bombay Stock Exchange has called for certain

particulars and clarifications and the same replied to.

6. A perusal of the paper book submitted herein shows that the application was presented before the Bombay Stock Exchange with necessary

copies of the petition to be filed u/s 391 of the Companies Act before this Court. The stocks were presented by Pentamedia Graphics Ltd.

petitioner in C.P.No. 167 of 2004, along with the necessary undertaking required under the Regulations pertaining to the Bombay Stock

Exchange. The paper book shows correspondence from 20.2.2004 that till the date of passing the order of this Court dated 12.10.2004,

approving the Composite Scheme seeking clarifications and reply, admittedly, no order was passed by the Bombay Stock Exchange indicating No

Objection in this regard. Incidentally, it may be seen from the extracts of the minutes of the meeting by the Listing Committee of the Stock

Exchange, Mumbai dated 22.6.2004, that clarification was sought as to whether any other Stock Exchange had approved this Scheme. The Listing

Committee also sought clarification as to what would be the stand of the Company in the event of the Bombay Stock Exchange disapproving the

Scheme. The Committee, however, postponed the matter and advised the company to submit the necessary papers called for. On 15.9.2004,

further clarifications were sought for. By letter dated 17.9.2004, the applicant company informed the Stock Exchange that the matter is pending

before the High Court, Madras. On 30th October 2004, after nearly a month, the Bombay Stock Exchange wrote a letter to Pentamedia Graphics

Ltd. that due to non-availability of the information mentioned therein in its letter, the matter could not be placed before the Listing Committee

Meeting. Hence the Stock Exchange directed the Company not to proceed with the matter till the Stock Exchange gave its No Objection. As

already stated, in the meantime, this Court passed an order on 12.10.2004, granting the approval.

7. It may be seen that in the meantime, the Company replied on 1.11.2004 to furnish the details sought for in the earlier letter. Further

correspondence went between the Company and the Stock Exchange seeking further clarification in this regard. The clarification sought for

centered particularly on writing off of a huge sum of Rs. 1,130.26 crores. It is stated that there had been a gradual erosion in the value of assets.

After considering the fact that the core business of Pentamedia Graphics Ltd. has been transferred to Mayajaal Entertainment Ltd. and the value of

the parent company, namely Pentamedia Graphics Ltd. was already eroded drastically, it was decided that the documents submitted by the

Company and the representation made be placed before the Governing Board to take further action. It also stated that a legal opinion be taken on

the implications on filing of the Scheme before the High Court in spite of Exchange's communication for keeping the matter on hold until No

Objection was given by the Exchange.

8. In the meantime, it is seen from the order dated 27.5.2005 passed by SEBI. u/s 11-B and 11(4) of the Securities Exchange Board of India Act,

1992, that during the period March - May, 2005, SEBI received complaints from Oriental Bank of Commerce, Mylapore Branch (erstwhile

Global Trust Bank Ltd.), against Cameo Corporate Services Ltd. Share Transfer Agents for Pentamedia Graphics Ltd. It was stated that Oriental

Bank of Commerce had sent share certificates of 34 lakhs equity shares of Pentamedia Graphics Ltd. in the name of Vrijay Advertisement Pvt.

Ltd. to Cameo Corporate Services Ltd. share transfer agents, for transfer to the name of the Bank. It is further stated that SEBI sought for certain

clarifications from Cameo Corporate Services Ltd. which replied that the shares of 34 lakhs in number sent to them did not match with the records

maintained at their end. It was stated that they could not effect transfer of shares in the name of Oriental Bank of Commerce. This raised certain

doubts regarding the genuineness of the share certificates. Consequently, SEBI advised Cameo Corporate Services Ltd. to furnish additional

information. It was learnt that Pentamedia Graphics Ltd. is a listed company of the Bombay Stock Exchange, National Stock Exchange of India

and the Madras Stock Exchange. On 12th September 2003, Pentamedia Graphics Ltd. had issued 95 lakhs equity shares of Rs. 10/- each on

preferential basis at Rs. 11.36 per share out of which, Vijay advertising private Limited was allotted 40 lakh Nos. of shares. Originally, the shares

were issued in physical form. Pentamedia Graphics Ltd. sent details regarding the above allotment to Cameo Corporate Services Ltd. for master

update. In respect of dues payable by Pentamedia Graphics Ltd. to Oriental Bank of Commerce, shares in possession of Vijay Advertising

Private Ltd. were pledged as security. While the security was still in force, Vijay Advertising Private Ltd. sent another set of physical shares having

the same distinctive number (as those pledged with Oriental Bank of Commerce) to Cameo Corporate Services Ltd. for dematerialisation of the

shares. The dematerialisation was effected and Cameo Corporate Services Ltd. uploaded the data in the normal course.

9. As per the shareholding for the quarter ended 30.9.2004, Vijay Advertising Private Ltd. did not appear as one among the significant

shareholders. On 30.12.2004, Oriental Bank of Commerce sent the original share certificates of Pentamedia Graphics Ltd. lying with it along with

the transfer deed to Cameo Corporate Services Ltd. to have them transferred from the name of Vrijay Advertising Private Ltd. to the name of the

Bank. Coming to know about this duplicate series, Cameo Corporate Services Ltd. forwarded the request of Oriental Bank of Commerce along

with the original document to Pentamedia Graphics Ltd. and sought its advice. Pentamedia Graphics Ltd. offered to replace the share certificates

pledged with Oriental Bank of Commerce with some other shares for the same value, to which Oriental Bank of Commerce did not agree. This

resulted in the proceedings before the SEBI, which took up the matter with Cameo Corporate Services Ltd. On the basis of these facts, SEBI

found that Pentamedia Graphics Ltd. had issued physical share certificates in three sets in the name of Vrijay Advertising Private Ltd. against single

allotment One set was pledged by Vrijay Advertising Private Ltd. with Oriental Bank of Commerce as security for the debts due from Pentamedia

Graphics Ltd. The second set was dematerialised by Cameo Corporate Services Ltd. at the instance of Vijay Advertising Private Ltd. while the

physical shares pertaining to the same distinctive numbers were still with the Oriental Bank of Commerce.

10. It is stated that those certificates which were with Vijay Advertising Private Ltd. were sold in the market after dematerialising the shares.

Considering the two sets of the physical share certificates of the same numbers, prima facie, this stands to reason that one of them is fake, issued

directly by the company. The said facts render Pentamedia Graphics Ltd. its Directors, allottees, namely, Vijay Advertising Private Ltd. guilty of

violation of Regulation 3 and Regulation 4(2)(h) of SEBI (Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

It also held that lapses on the part of Cameo Corporate Services Ltd. in complying with the provisions of the Securities Contracts (Regulation)

Act, 1956 as well as that of the SEBI Act, 1992 and the Rules made thereunder could not be ruled out casting a suspicion on their conduct. In the

above circumstances, SEBI came to the prima facie conclusion that the conduct of the above entities is not in consonance with the high standards

of integrity, fairness and professionalism expected from securities market participants. It is stated that such conduct by the said entities saps the

investors" confidence and is detrimental to investors" interest as well as the safety and integrity of the securities market.

11. SEBI initiated formal investigation in this matter. Considering the seriousness of the issue, an interim order was passed on 21.5.2005 holding

that Pentamedia Graphics Ltd. shall not issue any further shares or alter its share capital in any manner till further directions. The Company and its

Directors were prohibited from accessing the capital market or dealing in securities in any manner, directly or indirectly, till further orders in this

regard were given. As far as Vrijay Advertising Private Ltd. is concerned, it was directed that the sale proceeds accruing to them be impounded

and Vijay Advertising Private Ltd. was also directed to retain the impounded sale proceeds in its account and the same should not be utilised in

any manner for any purpose; that Vijay Advertising Private Ltd. and its Directors should not deal in securities market in any manner directly or

indirectly till further orders. The notice granted further time to file objections.

12. Final order in this regard was passed on 3rd October 2005, confirming the interim order passed on 27th May 2005. It also stated therein that

appropriate action would be initiated against the concerned entities as per the SEBI Act, Rule and Regulations.

13. There afterwards, on 18th July 2005, the Bombay Stock Exchange indicated in view of the gross mismanagement leading to erosion in the

networth of the company by Rs. 1,153.09 crores over a period of three years, the matter be referred to the SEBI for investigation. The Listing

Application was kept in abeyance till SEBI gave its opinion. This is in relation to the list of additional securities of Pentamedia Graphics Ltd.

and the listing of the shares of Mayajaal Entertainment Ltd. pursuant to the Scheme of Amalgamation.

14. Subsequently, Pentamedia Graphics Ltd. addressed a letter to the Stock Exchange, Mumbai, narrating the said facts on the Scheme approved

by the Court and the issue of shares under the Scheme of Amalgamation, which provided for the amalgamation of Media Dreams Ltd. Kris

Srikanth Sports Entertainment Ltd. Intelvision Ltd. with Mayajaal Entertainment Ltd. de-merger and vesting of Animation and NUM TV

Divisions of Pentamedia Graphics Ltd. in Mayajaal Entertainment Ltd. reorganisation of capital of Pentamedia Graphics Ltd. compromise between

Mayajaal Entertainment Ltd. and holders of advances against equity of Mayajaal, compromise between Pentamedia Graphics Ltd. and its secured

creditors. The scheme contemplated entire equity share capital of Mayajaal Entertainment Ltd. including the existing equity share capital of

Mayajaal Entertainment Ltd. and equity shares: issued pursuant to the Scheme to be listed in the Stock Exchange at Madras, National stock

exchange, Mumbai and Stock Exchange, Mumbai. It also envisaged issue and allotment of shares to the shareholders of the transferor companies.

Considering the clause on listing with Mayajaal Entertainment Ltd. going into public offer, it referred to the application on 11.6.2004 for grant of

relaxation of the applicability of Rule 19(2)(b) of the Securities Contract Regulation Rules, 1957 and approval thereof. Referring to the various

correspondence, they requested the Board for issuing necessary orders and to the Stock Exchange at Mumbai for permitting Mayajaal

Entertainment Ltd. to have their shares listed in the Stock Exchange as per the Scheme approved by this Court. They also marked a copy to the

Mumbai Stock Exchange.

15. By letter dated 12th December 2005, the Bombay Stock Exchange addressed a letter to the Securities & Exchange Board of India, Mumbai,

regarding the listing of the shares of Mayajaal Entertainment Ltd. It referred to the meeting of the Listing Committee on 22.6.2004 that contrary to

the decision, the Company had proceeded further to obtain an order of approval to the Scheme on 12th October 2004. In the circumstances, it

sought advise from SEBI on the above. The Bombay Stock Exchange sought its advise as to whether the Exchange should take on record the

book closure for implementing the Scheme.

16. The Securities & Exchange Board of India, vide its letter dated 27th December 2005, referred the letter of the Bombay Stock Exchange on

12th December 2005 and directed that the Bombay Stock Exchange might grant its approval for implementation of the order of this Court dated

12th October 2004 subject to ensuring compliance of the Bombay Stock Exchange's Bye-laws and Regulations.

17. The Bombay Stock Exchange viewed that the Company had not complied with the Bye-laws and Regulations of the Bombay Stock Exchange

namely, Regulation 2, which contained the Listing Agreement. It was held that the Company had violated the provisions of Clause 24(f) of the

Listing Agreement which required the prior approval by the Bombay Stock Exchange on the Scheme presented. The Bombay Stock Exchange

held that since the Company had acted contrary to the statutory requirement and had not disclosed to this Court about the non-approval of the

Scheme by the Stock Exchange, it refused listing as per the Scheme. It is stated that the company had not given satisfactory reasons on its write off

of huge assets of a sum of Rs. 1,153.09 crores and there was gross mismanagement. In the above circumstances, the Bombay stock exchange

moved applications before this Court in C.A.Nos. 498 to 502 of 2006 to modify/review the order dated 12.10.2004 and to recall the order dated

8.11.2004 passed in C.P.Nos. 167 to 171 of 2004 to the effect that the shares of Mayajaal Entertainment Ltd. may be listed subject to the

compliance of the Rules and Regulations and Bye-laws of the Bombay Stock Exchange. The application was resisted by the Companies, the

applicants in C.A.Nos. 1078 to 1081 of 2006, stating that they had not violated Clause 24(f) of the Listing Agreement and that the Stock

Exchange had no locus standi to object to the Scheme. It is further stated that the Central Government has already made its observation u/s 394-A

apart from the other provisions of the Act, that the Scheme was considered by this Court before granting approval to the Scheme. It also denied

the allegations that no satisfactory explanation was given for writing off of the huge assets. It was also pointed out that a sum of Rs. 690 crores was

adjusted towards the Share Premium Account which was sanctioned as per the Scheme. The same was also mentioned in its replies. Denying the

allegation that the approval would be only subject to the clearance from the Stock Exchange, the applicants herein prayed for a direction to the

Bombay Stock Exchange to implement the Scheme as approved by this Court and the issue listing of the shares of Mayajaal Entertainment Ltd. in

terms of the said order. Considering the grievance made by the parties herein that no proper opportunity was granted, this Court, by order dated

5th April 2006, directed the Bombay Stock Exchange to give their requirements for considering the plea for listing; that on receipt of the objection

from the companies, the Stock Exchange would pass an order. In the event of the Stock Exchange passing an order to the prejudice of the

companies herein, it kept its doors open for seeking any clarification therefor. Subsequently, an order was passed on 13.6.2006 by the Bombay

Stock Exchange, wherein, it is stated that in spite of opportunities granted, the Listing Committee was not convinced of the grounds on which the

assets of the company were written off. Apart from that, they referred to the order passed in May/October, 2005 by SEBI, wherein, the Directors

of the company Pentamedia Graphics Ltd. were debarred from accessing the capital market or dealing in securities in any manner, directly or

indirectly, considering that the conduct of the above entities is not in consonance with the high standards of integrity, fairness and professionalism

expected from securities market participants. In the view thus taken, it rejected the application of Pentamedia Graphics Ltd. under Clause 24(f) of

the Listing Agreement. It also referred to the letter dated 6.6.2006 of SEBI, wherein it informed about Bombay Stock Exchange that the matter

was forwarded to the Ministry of Company Affairs for necessary action.

18. Aggrieved of this order, the present applications are filed before this Court seeking intervention to set aside the impugned order of the Bombay

Stock Exchange dated 13.5.2006; secondly to direct the Stock Exchange to list the shares of Mayajaal Entertainment Ltd. The applications were

moved by the transferor companies before this Court in C.A.Nos. 1078 to 1081 of 2006.

19. A counter affidavit is also filed by the Bombay Stock Exchange contending therein that the allegation that the Stock Exchange had not

complied with the orders of this Court sanctioned under the Scheme was not correct; that in compliance of the procedure and the applicable law

including bye-laws, provisions and Regulations, the respondent had passed the orders after providing opportunities to the applicants herein.

Referring to the issue of rejection, they stated that writing off of assets was totally a result of mismanagement which is detrimental to the interest of

the investing public. Secondly, it viewed the conduct of the entities is not in consonance with the high standards of integrity. Hence, it debarred the

Directors from accessing the capital market or dealing in securities. Thirdly, it is stated that SEBI had referred the reference made by the

respondent to the Department of Company Affairs for further investigation. Considering all these factors, the respondent defended that the

impugned order herein was made after due deliberation and the allegations in the applications were totally incorrect. It further stated that the

rejection of the application for listing was based on two substantial grounds based on the appreciation of submissions made by the company. It is

further stated that the decision whether the shares have to be listed or not is a matter exclusively within the province of the Stock Exchange and the

same is binding on the applicants subject to any statutory right of appeal. Referring to Bye-law 34 of the Stock Exchange, it submitted that the

Governing Board of Stock Exchange was to consider and pass order in exercise of its discretion. Bye-law 35 further empowers the Stock

Exchange to prescribe listing conditions and requirements to stipulate that the company would not be permitted to list equity shares without

complying with the conditions and Regulation 2. As per Clause 24(f) of the Listing Agreement, at least one month prior to the date of presentation

of the Scheme before the Court, the Company is required to file the same before the Stock Exchange. It is further stated that Clause 24(g)

contains an undertaking from the Company that it will ensure that the Scheme would not violate or circumscribe with requirements of law.

20. Clause 24(g) reads as follows:

The company agrees to ensure that any scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital, etc., to be presented

to any Court or Tribunal does not in any way violate, override or circumscribe the provisions of securities laws or the stock exchange

requirements.

Explanation: For the purpose of this sub-clause, "securities laws" mean the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the

Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI u/s 55A thereof, the rules, regulations,

guidelines etc. Made under these Acts and the Listing Agreement.

In view of the said requirement, the respondent contended that the applicant company was bound to obtain approval of the respondent Stock

Exchange prior to moving the Court for sanction. The respondent submitted that the Company was under an obligation to see that it complied with

the Stock Exchange requirements prior to the sanction of the Scheme. Considering the nature of extensive financial information to be given and the

obligation stipulated under Clause 49, it defended its right to seek all relevant information as a prerequisite to consider the listing of application of

any company including the applicant company. Paragraph 11 of the counter affidavit sums up the essential prerequisites as given in SEBI

(Disclosure and Investor Protection) Guidelines, 2000.

21. Referring to the letter of the SEBI dated 27.12.2005 which granted approval for implementation of the Scheme of Amalgamation subject to

the compliance with the Stock Exchange requirements, the respondent states that the repeated writing off of the assets aggregating to Rs. 1,153.09

crores was solely on account of the mismanagement. They denied the allegations that the Stock Exchange had nothing to do, nor had any locus

standi to look into the past financial performance of the company, look into the financial status, considering the fact that the Regional Director of

the Department of Company Affairs had not raised objections with regard to the repeated writing off of the assets. Referring to the applicants"

contention that the shareholders had condoned the writing off of assets and that the Madras Stock Exchange had given its approval in principle, the

respondent submitted that each Stock Exchange being an independent entity, was entitled to take independent decision. The respondent pointed

out that in terms of Section 73 of the Companies Act, a Company could proceed with trading only if all the Stock Exchanges grant their

permission. It is stated that neither the National Stock Exchange nor the respondent Exchange had granted approval for listing. They emphasised

the importance of calling for more details of financial performance of the Company in the past to assess the scope of management of the Company

in future for considering the application for listing. It is further stated that the order of sanction of the Scheme did not divest the respondent of its

obligation to consider and approve or reject a Listing Application. Considering the weak financial position and the severe erosion in assets and

investments, considering the respondents' responsibility in the capital market, it viewed that it would be in public interest not to list the shares of the

company, it stated that greater prejudice would be caused if the shares of Mayajaal Entertainment Ltd. were to be fettered on the respondent Stock

Exchange. However, having regard to the fact that there was a right of appeal against the order of the respondent company, the invoking of the

jurisdiction was not sustainable. Hence, the respondent prayed for dismissal of these applications.

22. The questions raised in these applications turn more on the aspect of necessity to secure clearance from the Stock Exchange before moving

this Court for an approval and the right of the Exchange to reject the plea for listing in the wake of an approval to the Scheme containing the clause

for listing. As may be seen from the counter affidavit and the submission made herein, the objection of the Stock Exchange is that the approval

obtained from this Court without waiting for a No Objection was irregular and hence, the Scheme had to be modified to exclude the clause for

listing.

23. Learned Counsel for the applicants submitted that a Scheme of Amalgamation, Compromise and Demerger is primarily a case of commercial

decision for restructuring aimed at reducing debt and for a better profitable management of the concern. Referring to the SEBI Guidelines at

8.3.5.1, he submitted that the requirements as regards the requisite minimum of 25% of Mayajaal's share capital comprised of equity shares to be

allotted to the public holders of equity shares of Pentamedia Graphics Ltd. are fully complied with and hence, the company Mayajaal, prayed for

relaxation of the applicability of Clause (b) to Sub-rule (2) of Rule 19. Placing reliance on the decision reported in 2004 1 CLJ 148 in the case of

Hindustan Lever v. State of Maharashtra, learned Counsel submitted that the commercial wisdom exercised by the members of the Company who

had ratified the Scheme by the requisite majority, could not be thwarted by the respondent He submitted that once the Scheme is sanctioned, the

respondent cannot refuse listing, but abide by the terms of the sanctioned Scheme.

24. Learned Counsel submitted that in terms of the decision of the Apex Court that the Court exercising the jurisdiction to sanction a Scheme has

to examine as to whether the provisions of the statute are complied with; that when once the Court finds that the parameters set out u/s 394 of the

Companies Act are complied with, the Court would have no further jurisdiction to sit in appeal over the commercial wisdom of the class of persons

who with their open eyes give their approval. Referring to the decision of the Supreme Court in the case of Miheer Mafatlal v. Mafatlal Industries

reported in 1996 4 CLJ 124, he submitted that this Court granted its approval on 12.10.2004, satisfied of the fact that the procedures were

fully complied with. Section 73 of the Companies Act mandates an application to be made to one or more Stock Exchanges whenever a company

intended to offer shares to the public. Regulation 24(f) deals with listing on amalgamation. He referred to Rule 19 of the Securities Contract

Regulation and Rules, 1957, which list the document which are to be given when a company applies for listing in a recognised Stock Exchange.

Byelaw 34 refers to the grant or refusal of admission to dealings and Byelaw 35 relates to listing conditions and requirements. The listing agreement

is given at page 8397 of A Guide to the Companies Act, by Ramaiah, Part II Appendix. He also submitted that the details of the assets and the

reasons for diminution in the value of the assets were given in detail before the authorities. Consequently, he submitted that the question of the

Company not giving a satisfactory explanation does not arise. Countering the plea of the respondent that a right of appeal is available before the

Securities Appellate Tribunal, learned Counsel relied on a decision in C.A.No. 1836 of 2002 in C.P.No. 538 of 2000 dated 25th April 2003 in

the matter of Scheme of Amalgamation of M/s. Om Sindhoori Capital Investments Ltd. with M/s. Apollo Sindhoori Capital Investment Ltd.

wherein this Court considered that even, at the time of considering the sanctioning of an amalgamation, the parties had reserved their right to move

this Court for any clarification. In the circumstances it was not necessary to prefer an appeal considering the fact that the Company had complied

with Clause 8.3.5 of the SEBI Regulations. Learned Counsel also placed reliance on the decision reported in 38 company cases 701 at page 728

(In Re New Kaiser I Hind Spinning & Weaving Company Ltd.) and submitted that once the Scheme is sanctioned, the Stock Exchange is bound

to give effect to the orders of this Court He also stated that there is no mandate or absolute requirement under the provisions of the Companies

Act to await a report of the Stock Exchange to get the Scheme sanctioned.

25. Countering this argument learned Counsel for the respondent submitted that the jurisdiction of this Court granting an approval to the Scheme is

purely a supervisory one and hence, limited; as such, the question of going into the merits on the listing is not an issue before this Court while

sanctioning the scheme, for any adjudication. Referring to the decision reported in 2004 1 CLJ 148 in the case of Hindustan Lever v. State of

Maharashtra at page 158 at paragraph 10.2, learned Counsel submitted that the role of the Court is that of an Umpire to see that the teams play

their role as per the Rules and that there is no quarrel as far as the jurisdiction of this Court is concerned. Referring to the reliance of the applicants

on the decision reported in AIR 1979 SC 734 (S.K. Gupta v. K.P. Jain) that SEBI has no locus standi to move this Court for modification or for

rejection of a Scheme, the counsel for the respondent submitted that the jurisdiction of this Court while sanctioning is of limited scope only, yet,

when the Expert Body on securities and shares had given a decision that the terms of compromise on listing would be against the Regulations

prescribed therein, in the face of effective alternative remedy available to the aggrieved party, it is for the applicants to justify their cause before the

Appellate Forum. He also laid emphasis on the mandatory character of the provisions of the Listing Agreement Referring to the decision reported

in 124 company cases 523 (Lanco Kalahasthi Castings Ltd. In Re) relied on by the counsel for the applicants herein, he submitted that the same

will not be a binding precedent, having regard to the nature of order passed by consent vide page 523. Learned Counsel also defended that the

respondent could not grant an approval to a Scheme which is in conflict with the Regulations under Clause 24(f). He also pointed out the non-

disclosure of the fact before this Court that the Bombay Stock Exchange had called for particulars before giving its objection. He questioned the

necessity to hurry through its petition before this Court without waiting for the Bombay Stock Exchange's approval. Referring to the jurisdiction of

this Court under the Scheme of Amalgamation, he submitted that Section 391 of the Companies Act is concerned with the compliance of the

process of decision-making and not on the decision itself, since the Court does not judge on the pros and cons of the Scheme or the compromise.

The Court's jurisdiction is peripheral and supervisory to see whether the procedural formalities are complied with for granting approval. He placed

reliance on the decision reported in *H. B. Gandhi v. Gopi Nath and Sons and Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa* and

Others, (Titaghur Paper Mills Co. Ltd. v. State of Orissa) and submitted that in passing this order, the Bombay Stock Exchange has not interfered

with the order of this Court, but it had merely exercised its authority as per the Regulations and that the applicants could have avoided this state of

affairs if only they had brought this material particulars about Bombay Stock Exchange seeking clarification to this Court.

26. In reply, learned Counsel for the applicant submitted that Mayajaal Entertainment Ltd. had preferred an application on 11.6.2004. He laid

great emphasis on the letter from the SEBI that the Bombay Stock Exchange was bound to grant its approval. He further stated that there is no

indication of the violation of bye-laws. In these circumstances, he submitted that given the commonness of the object, once the Stock Exchange at

Chennai had granted its approval, it stands to reason that the Bombay Stock Exchange did not pass an order in conflict with an order already

passed by an Institution similarly placed. He also submitted that the Bombay Stock Exchange had knowledge of the proceedings before this Court

and hence, it was open to the Stock Exchange to oppose the petition before this Court or lodge its objection or views, before this Court passed an

order. Referring to the submission made by the Bombay Stock Exchange placing reliance on the decision reported in 113 Comp. Cas. 273

(*S.E.B.I. v. Steriute Industries (India) Ltd.*), learned Counsel for the applicants submitted that having had the knowledge of the proceedings before

this Court, it is not now open to the Bombay Stock Exchange to reject the plea for listing; consequently, the order is liable to be set aside.

27. A perusal of the provision u/s 391 shows that the Section deals with the right of the Companies to enter into a compromise and arrangement.

An arrangement may include a reorganisation of the share capital of the Company. Courts have taken the view that Section 391 is a complete

Code by itself and once procedural requirements are observed, satisfied of the due compliance, Courts sanction the Scheme which is binding on all

the parties concerned. Under Sub-section (2), it is stated that an order for sanctioning a Scheme of Compromise and Arrangement shall be made

by the Court, if it is satisfied that the Company or person by whom the application is made has disclosed all material facts relating to the company

such as registers and financial position of the Company, the latest Auditor's Report on the Accounts of the company, the pendency of any

investigation proceedings in relation to the company under Sections 235 to 251 and the like. The proviso enumerates by way of illustration, the

requirements which are to be disclosed for the purpose of finding out due deliberation on the facts leading to the amalgamation. Section 392 states

that where an order is passed u/s 391 sanctioning a compromise or an arrangement in respect of a company, Courts shall have the power to

supervise the carrying out of the compromise or arrangement and may, at any time of making such order or at any time thereafter, give such

direction 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. It may be noted that although the Court's power in this Section is very wide, yet, from the three

limitations, namely, the Court cannot sanction an agreement which is prohibited. Secondly, it cannot sanction an act done if the law permits, only

subject to certain conditions, particularly for sanctioning a scheme which would be effected under some provisions of the Companies Act. It is

stated that while the power of the Court is of a widest amplitude, yet, it has the power to go into all incidental and ancillary matters an effort to

satisfy about the requirement of the Act. It may be noted that one of the requirements which guides the Court while granting the Scheme is that the

proposed Scheme of Compromise is not violative of any provision of law and is not unconscionable or contrary to public policy. In the case of

Hindustan Lever v. State of Maharashtra 2004 CriLJ 148, the Supreme Court held that for ascertaining the real purpose under 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.

28. The Supreme Court, in the decision reported in 2004 1 CLJ 148 (Hindustan Lever v. State of Maharashtra), at page 158, summed up the

broad principles on the extent of jurisdiction of the Court granting approval as follows:

10.1. Two broad principles underlying a scheme of amalgamation which have been brought out in this judgment are:

1. That the order passed by the court amalgamating the company is based on a compromise or arrangement arrived at between the parties; and

2. That the jurisdiction of the Company Court while sanctioning the scheme is supervisory only, i.e., to observe that the procedure set out in the

Act is met and complied with and that the proposed scheme of compromise or arrangement is not violative of any provision of law, unconscionable

or contrary to public policy.

10.2. The court is not to exercise the appellate jurisdiction and examine the commercial wisdom of the compromise or arrangement arrived at

between the parties. The role of the court is that of an umpire in a game to see that the teams play their role as per rules and do not overstep the

limits. Subject to that how best the game is to be played is left to the players and not to the umpire.

10.3. Both these principles indicate that there is no adjudication by the court on the merits as such.

29. It may be noted that public policy as a criteria is of vital consideration in the matter of sanctioning of a compromise. Going by the requirements

under the Act, objections were received from the Regional Director, Ministry of Company Affairs and considered before the order was passed.

Hence, even if the Court grants approval satisfied of the compliance of requirements of law and there being no indication that the Scheme is not

against public policy, yet, on coming to know about the inherent defects in the Scheme as may come to the notice of the Court even there

afterwards, powers are reserved u/s 392 of the Companies Act as elucidated earlier, that the Court can give directions or make such modification

as may be necessary for proper enforcing of the compromise or arrangement. It must be noted that the Court, while sanctioning the Scheme of

Arrangement, or Compromise, is supervisory in character to see that the Scheme arrived at is lawful and that the affairs of the company were not

conducted in a manner prejudicial to the interests of the members or to public interest or unfair to public policy.

30. A perusal of the Byelaws of the stock exchange show that Byelaws 34 and 35 are the relevant ones containing the list of conditions. Byelaw

34 mandates the Governing Board to consider and in its discretion subject to such terms as it deems proper, approve or defer or reject any

application for admission of the securities of a company to dealings on the Exchange. Byelaw 35 states that the Governing Board may not grant

admission to dealings on the Exchange to the securities of a Company unless it complies with the listing conditions and requirements prescribed in

the relative Regulation namely Regulation 2, or such other conditions and requirements as the Governing Board may from time to time prescribe in

addition thereto or in modification or substitution thereof in addition to the listing requirements prescribed in the Securities Contract (Regulation)

Rules, 1957. Regulation 2 prescribes a check list of items to be complied with, it further shows the detailed requirement starting from the

Memorandum and Articles of Association, advertisement, listing agreement, application for securities from public, kept open for three days; at least

25% of the issued capital offered to the public to be allotted fairly and unconditionally. The listing agreement enumerates number of clauses

touching on every aspect of dealing with public money by a company going in for listing. It must be noted that the stock exchanges are there as the

regulatory bodies to monitor the business in the capital market. Hence, they are the authority to regulate all the matters connected with the business

of Stock Exchange. These Stock Exchanges regulate and control the business of buying and selling or dealing in securities. With a regulatory

mechanism like a Stock Exchange, it goes without saying that compliance of the Regulation for listing is a mandatory one for anyone desiring to

have their shares listed.

31. In the context of the Regulations of the Bombay Stock Exchange, the fact that the Stock Exchange has not disposed of the application, before

the Court granted an approval, needs to be noted on the following facts.

32. Rightly the company went in for seeking approval from the Stock Exchange, Mumbai. The Madras Stock Exchange alone had granted its

approval. As regards the Bombay Stock Exchange, it sought for clarifications and indicated through one of its letters even prior to the approval

granted i.e., on 15th September 2004, that the comparer may not proceed with the petition till the Exchange gives No Objection. Surprisingly,

even after receipt of this letter, the proceedings before this Court was taken further to get an order passed on 11.10.2004 giving approval to the

Scheme. It is also seen that though the Company replied to this letter on 17th September 2004 and 30th October 2004, once again, the Stock

Exchange informed the Company not to proceed further, by which time, this Court had already passed an order. This is followed by a letter on

1.11.2004 from the Company, in which there is absolutely no reference as to the Scheme granted by this Court.

33. I do not find any justification in the conduct of the company not informing this Court about the letter written as early as September, 2004, by

the Bombay Stock Exchange, nor to the Bombay Stock Exchange, informing them about the order passed by this Court granting the Scheme.

Learned Counsel for the applicants submits that in view of the jurisdiction of this Court granting the Scheme, the jurisdiction absolute in terms of

Section 391, there being no mandatory requirement under the provisions of the Companies Act to get the approval of the Stock Exchange to the

Scheme proposed, the absence of an order could not be viewed as a deterrent factor that no exception could be taken to the conduct of the

petitioners. Apart from this, it is not for the Bombay Stock Exchange to interfere with the orders of this Court. He states that the Bombay Stock

Exchange is bound to honour the order of this Court granting approval to the Scheme.

34. While at the first flush of the argument it looks correct, I can accept this only up to a point and subject to the scope of Section 392, since as

already noted supra and as laid down by the Supreme Court, while granting sanction, the role of the Court is only supervisory.

35. Learned Counsel for the applicants submits that once a Stock Exchange grants its No Objection, it stands to reason that the rest of the Stock

Exchanges before whom the applications were made, should follow the footsteps therein. He placed strong reliance on the decision of the Andhra

Pradesh High Court reported in 125 Comp. Cas. 289 (Compact Power Sources, In Re), A perusal of the judgment of the Andhra Pradesh High

Court shows that after adverting to the Listing Agreement, particularly to Sub-clause (f), the Andhra Pradesh High Court held that although the

transferee company had agreed to file a Scheme of Approval before the Stock Exchange a month before the same is presented and had in fact

filed the same for approval it would be sufficient if the company complies with the filing before the Stock Exchange; that it would not be

compulsory to get a No Objection from the Stock Exchange concerned. It further stated that no serious objection could be taken to the company

not receiving a No Objection letter, considering the certificate issued by the Company Secretary that the Scheme of Amalgamation did not, in any

way, violate or circumscribe the provisions of the SEBI Act and Securities Contracts (Regulation) Act, Depositories Act, 1956, Companies Act,

1956, Rules and regulations, Guidelines made under the said Acts or the provisions and the Clauses of Listing Agreement of Stock Exchanges.

The Court also noted that apart from this certificate issued, the Stock Exchange, Hyderabad, had issued no objection as regards the transferee

company. Hence, the Court held that considering the fact that there was no mandate or a compulsory requirement stated in Clause 24 of the

Listing Agreement, and that the transferee company had already obtained the consent from the Stock Exchange, Hyderabad, no serious objection

could be taken in not receiving the No Objection letter from the Stock Exchange at Mumbai.

36. It may be noted that the fact situation which has been assessed by the Stock Exchange, Bombay, in the case on hand, is not the same as one in

the case reported, apart from the fact that the Bombay Stock Exchange had given a letter to the Company not to go ahead with proceeding before

the High Court, since the matter was receiving attention and that they sought for certain clarification. A perusal of Clause 24 of the Listing

Agreement shows that the Company agrees to obtain in-principle approval for listing from the exchanges having nation-wide trading terminals

where it is listed. Sub-clause (f) states that the Company shall file any scheme/petition proposed to be filed before the Court under Sections 391,

394 and 101 of the Companies Act, 1956, with the Stock Exchange for approval within a month before it is presented to the Court for approval.

Sub-clause (g) states the company agrees to ensure that any scheme of arrangement/amalgamation/merger/reconstruction/ reduction of capital etc.,

to be presented to any Court or Tribunal does not in any way violate, override or circumscribe the provisions of securities laws or the stock

exchange requirements.

37. The Explanation appended to Sub-clause (g) gives what are included in securities laws. In the context of Sub-clause (g), one cannot view Sub-

clause (f) as a mere requirement without a purpose. If Sub-clause (g) is to have some relevance for its existence, Sub-clause (f) must necessarily

be understood as to require a satisfactory compliance of Sub-clause (g), so that the authority constituted therein discloses its views on the Scheme.

Considering the fact that the existence of the Stock Exchange is a regulatory mechanism, so that the investing public interests are safeguarded, the

mere compilation of financial information placed before the shareholders, per se, would not mean that matters of compromise or arrangement on

the affairs of the company with select third parties like creditors would automatically ensure to the protection of investing public, particularly in a

case of this nature. It must be noted that any Scheme of Arrangement or compromise centers more on the internal affairs of the company and the

projection of its image on the public rather than one keeping in forefront the interest of the investing public. Hence, given the constitution of the

Stock Exchange and the purport of the Securities Laws, Sub-clause (g) contemplates that the scheme does not in any way violate the principles of

the securities laws, as enumerated therein. Hence, when in a compliance of Sub-clause (f), the concerned Stock Exchange comes forward with its

objection before the Court passes an order of approval, the granting of the approval necessarily involves the examination of the objection from the

Stock Exchange, so that the public interest is protected. Where a Stock Exchange places its objection to any clause on listing before the Court,

keeping in mind the interest of parties, the Court may pass an order subject to modification or on the satisfactory explanation from the petitioner,

grant the Scheme. It must however be kept in mind that non-participation or non-issuance of a No Objection Certificate prior to the approval of

the Scheme does not seal the jurisdiction of the Stock Exchange to reject the application for listing as per the Scheme, if the Clause is in violation

of the SEBI laws, even after the approval is given. The merits or demerits of such an order passed is one to be dealt with under the remedial

measures provided therefor.

38. This takes us to the question as to whether the No Objection from the Stock Exchange is to be treated as a mandatory requirement. A perusal

of the provisions relating to the sanction of the Scheme under the Companies Act shows that the Companies Act does not provide for any notice

to be issued to either SEBI or to a Stock Exchange prior to any order to be passed u/s 391 or 394 of the Companies Act. Section 394-A

provides for issuance of notice to the Central Government only. On a report filed by the Central Government, the Court takes into consideration

the representation, if any, made before passing of an order. The Central Government has a statutory duty to study the proposal and raise its

objections in the light of the information available and place before the Court, facts which might not even be disclosed by the petitioner so that

interest of the investing public are fully taken note of before the Court passes an order. It may also be seen that when the Central Government

places a report before the Court, the normal expectation is that it had taken note of every circumstance so that the interest of the investing public

are protected, that the laws relating thereto or governing the affairs of the company involving the public money are not violated. Hence, when the

Court grants the sanction, it must be noted that it is only on full satisfaction arrived at as to the compliance of the procedural requirement as well as

on the report of the Central Government as to the affairs of the company. Given the constitution of a Stock Exchange, the requirement of a notice

not being there under the provisions of the Companies Act or under the Rules, it stands to reason that the notice as such to a Stock Exchange is

not a mandatory requirement while granting approval to the Scheme. Consequently, failure to give a notice or to wait for the No Objection from

the Stock Exchange does not, per se, stand in the way of a Court granting approval to a Scheme. As held in *Miheer H. Mafatlal Vs. Mafatlal*

Industries Ltd., the Company Court has to see to it that all the requisite statutory procedures as per Section 391 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 is backed up by the

requisite majority of votes as required u/s 391(2). The Supreme Court held that the Court cannot refuse to sanction a Scheme on any other ground,

as the Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the

Company who have ratified the Scheme by the requisite majority. Hence, in the absence of any notice contemplated to a Stock Exchange or SEBI

under the provisions of the Act, it is not correct to say that the order granting the scheme suffers a patent illegality. Given the Scheme under the

provisions of Section 391 as interpreted by the Supreme Court, I accept the plea made by the learned Counsel for the applicant that getting No

Objection from the Stock Exchange is not a mandatory requirement before a Scheme is granted; yet, it must be noted that given the scope u/s 392,

I do not think the Court is powerless to regulate an order to see that public policy and interest are safeguarded.

39. The Bombay High Court in the decision reported in 113 Comp. Cam 273 (S.E.B.I. v. Sterlite Industries (India) Ltd. while considering the

request of the SEBI to file an appeal u/s 391(7) of the Companies Act, held that by virtue of the provisions u/s 55-A of the Companies Act, the

SEBI had been empowered to administer the provisions in so far as they relate to the issue of securities, transfer of securities and non payment of

dividend. Merely because the SEBI has been empowered to administer the provisions of Sections 77 and 77A, it does not give the SEBI any

locus in a petition u/s 391 or Section 394. The right to notice in Section 391 proceedings remains with the Central Government u/s 394-A. The

SEBI has no right of notice nor does it have any right to appear in the proceedings under Sections 391 and 394-A of the Act. The decision

reported therein supports the view that I have taken herein.

40. Having held that it is not mandatory to wait for a nod from the Stock Exchange for granting approval to the Scheme, could the Stock Exchange

reject the Scheme approved or implement, even if any clause therein is violative of any of the requirements of law. Regulation 2 of the Stock

Exchange, Mumbai, enumerates the conditions precedent to dealing on the Exchange. We have already noted Regulations 34 and 35 of the Stock

Exchange, Mumbai. Given the autonomy in its operation, the compliance of these Regulations is absolute if any company wishes to have its

dealings on the Exchange. Clause 24(f) of the Listing Agreement states:

The company agrees that it shall file any scheme/petition proposed to be filed before any Court or Tribunal under Sections 391, 394 and 101 of

the Companies Act, 1956, with the stock exchange, for approval, at least a month before it is presented to the Court or Tribunal.-

Clause 24(g) states as follows:

The company agrees to ensure that any scheme of arrangement/amalgamation/merger/ reconstruction/reduction of capital, etc., to be presented to

any Court or Tribunal does not in any way violate, override or circumscribe the provisions of securities laws or the stock exchange requirements.

Explanation: For the purpose of this sub-clause, "securities laws" mean the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the

Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI u/s 55A thereof, the rules, regulations,

guidelines etc. Made under these Acts and the Listing Agreement.

41. In the face of such requirement, it must be noted that the compliance of the provisions of Securities Laws, the Stock Exchange requirements

and the Listing Agreement is absolute if any company wishes to have the shares listed thereon. While the requirement of No Objection is not a

mandatory requirement for granting a Scheme, at the same time, it must be noted that any Scheme approved containing a clause for listing before

an Exchange must necessarily comply with the mandate of the Securities Laws, rules and regulations and guidelines made under the Acts and the

Listing Agreement. Hence, even after the sanction of the Scheme, it is open to the Stock Exchange to insist on compliance of its Regulations as a

condition for listing, and in the event of any violation thereof, reject an application. By such rejection, the Scheme, per se, does not become bad or

the order of this Court granting sanction violated. It must be noted that when the Court grants an approval to the Scheme, it is on the satisfaction

that the arrangement or the compromise is not violative of the provisions of the Companies Act and is not against public interest. But where in the

process of implementing the Scheme as approved by the Court, an authority, in exercise of its statutory power or a Regulation, finds that the

implementation of a Clause in the Scheme as approved may not be implemented for violation of the Securities Laws and thus, the public interest

would suffer, I do not think any objection could be taken to such view taken by an authority validly constituted. When an expert body assesses

various aspects as regards the requirement on listing as required under law, it is well within its jurisdiction to pass an order rejecting the plea for

listing, if it is satisfied on the materials therein, such listing is in violation of the Securities laws. In considering the scope of the jurisdiction of the

authorities functioning under the Securities Act of this Court u/s 391, one must keep in mind the clear-cut respective jurisdiction on matters before

it.

42. It must be noted that SEBI acts in its own field, given the jurisdiction as a regulatory agency in the matter of dealing with stocks, shares and

debentures. The intricacies on the listing of the Company is entirely with the Stock Exchange. Section 4 of the Securities Contracts Regulation Act

empowers SEBI to recognise the Stock Exchanges. It also controls the rule-making of the said Exchanges. Stock Exchanges are held to be

regulatory authorities. Their byelaws bind not only buyers, sellers and brokers, but also third parties who are affected by the transactions in the

Stock Exchange. They are entitled to regulate all matters connected with the business of the Stock Exchange. The byelaws have the effect of the

statutory force. Hence, given the expertise in the above field, the exclusive province of the Stock Exchange to grant recognition subject to the

compliance of the Securities Laws, the Regulations and the Listing Agreement, in the context of Clause 24(f) is not to be confused with the

jurisdiction of this Court granting approval of the Scheme. The applicants have, no doubt, filed a copy of the Scheme and the petition proposed to

be filed. However, considering Clause 24(g), even after the grant of approval to the Scheme, it is open to the Stock Exchange to reject the plea for

listing, when it is satisfied that such listing would be violative of the Securities Laws, there is no disrespect to the order of approval granted by this

Court. The authority who is to judge on the merits of listing is competent to arrive at a decision in terms of the laws pertaining to the listing. In this

view of the matter, one has to look at Section 392 of the Companies Act.

43. As already noted, it is no doubt true that the Madras Stock Exchange has given its approval. With such approval therein, the question then

arises is that, would it be open to the Bombay Stock Exchange to reject the claim for No Objection Certificate.

44. In this connection, the decision reported in AIR 1996 SC 180 : 85 Comp. Cas. 479 (Rishyashringa Jewellery Ltd. v. Stock Exchange) merits

attention. Dealing with the provisions of Section 73 of the Companies Act, the Supreme Court held that refusal of permission by any one of the

Stock Exchanges named in the prospectus for listing the shares to which application is made by the Company, would render the entire allotment

void and the grant of permission by one of them is inconsequential. The decision came in wake of the cases concerned about issuing a prospectus

offering to the public for subscription, stating that the applications had been made to the Stock Exchanges at Coimbatore, Bombay and Madras for

permission and to forward quotation in respect of equity shares of the Company now being offered in terms of this prospectus. Allotment was

finalised on September 16, 1994 and permission was granted. The date of dosing of the subscription was given as 19th July 1994. The ten week

period stipulated in Section 73(1)(A) for grant of permission by the Stock Exchange expired on 27th September 1994. Permission was granted by

the Coimbatore Stock Exchange on 26th September 1994 and the meeting commenced on 7th October 1994. The Madras Stock Exchange

granted permission on 28th October 1994. However, the necessary compliance of the Regulations of the Bombay Stock Exchange was not

completed by the Company. This resulted in the rejection of the application by the Bombay Stock Exchange on 28th September 1994. The

question raised therein was whether the allotment would be rendered void in view of the rejection of the application by the Stock Exchange,

Bombay, to render ineffective even the permission granted by the Coimbatore Stock Exchange within the stipulated period. Taking note of the

amendment brought to Section 73(1)(A), the Supreme Court held that the expression ""each"" in Section 73(1)(A) has to be read as each and every

one of the Stock Exchanges mentioned in the prospectus. Hence, going by the plain meaning of Section 73(1)(A), the Apex Court held that in the

absence of permission granted by each and every one of the Stock Exchanges named in the prospectus for listing the shares, the allotment in toto

would be void and the grant of permission of one of them is inconsequential. In a subsequent decision reported in 95 Comp. Cas. 339 (Jaltarang

Motels Ltd. v. Union of India and Ors. following the decision of the Supreme Court reported in 85 Comp. Cas. 479 (Rishyashringa Jewellery Ltd.

v. Stock Exchange), the Gujarat High Court held that a transfer would be void. The question then would be, will this decision have a bearing on the

requirement in the Listing Agreement, particularly to Sub-clause (f) and (g) of Clause 24. Considering the scope of Section 391, while it cannot be

denied that Section 391 is a code by itself, yet, for the purpose of listing, the order of approval should not be read as relaxing the requirement of

law u/s 73 as interpreted by the Supreme Court in the decision reported in 85 Company Cases 479 (Rishyashringa Jewellery Ltd. v. Stock

Exchange) The Listing Agreement requiring placing of the Scheme before the Exchange and a requirement that the arrangement is not contrary to

the Securities Law show that given the authority to the Exchanges under the Securities Contract Regulation Act and the Securities Exchange and

Board of India Act, the undertaking given as per the Listing Agreement needs to be given its due weightage, that should there be any claim from a

company for listing contrary to the provisions of the SEBI Act, the question of insisting on recognition under the protective umbrella of the approval

order does not arise. It must be noted that the jurisdiction to grant approval by the Court is different from the applicants' compliance of the

Securities Laws for listing since both operate in different fields under the Securities Laws. The requirements are fine-tuned to protect and regulate

the market and thereby protecting the economy; and to slight them as just a procedural requirement, would be to undermine the very importance of

the safeguards under the Securities laws. In the circumstances, I am unable to accept the plea that the grant of approval of one Stock Exchange

will tie the hands of other Exchanges. The scope of Section 73(1)(A) could not be lost sight of in considering the plea of the applicant as regards

the compliance of Listing Agreement under Clause 24(g). In the circumstances, the Bombay Stock Exchange is justified in its view. In any event, in

the wake of the decision of the Supreme Court, I do not agree with the view expressed by the Andhra Pradesh High Court in the decisions

reported in 125 Comp. Cas. 289 (Compact Power Sources, In Re) and 124 comp. cas. 523 (Lanco Kalahasthi Castings Ltd. In Re).

45. Now, coming to the reference from the SEBI as regards the direction to the Bombay Stock Exchange to grant its approval, it must be noted

that it is not a blanket direction, but an approval to be granted subject to its byelaws and if the Bombay Stock Exchange finds that the terms of

arrangement are contrary to its Regulations or the requirement under the Listing Agreement, the same has to be tested in a manner known to law

and as provided under the Securities and Exchange Board of India Act. It may also be noted that the Bombay Stock Exchange, apart from

referring to the non-satisfaction of the listing requirement, had also pointed out to the conduct of the transferor company, namely, Pentamedia

Graphics Ltd. as regards issuance of fake certificates in the market.

In the background of this and the view on writing off of assets to a huge sum, it is better the question as to the satisfaction of the Listing Agreement

and the correctness of the order of this Court is left to the expert body viz., Bombay Stock Exchange and the appellate forum, if the applicant so

chooses to test the correctness of the same. In the light the view that I have taken, I do not accept the plea of the applicants. I accept the

objections raised by the Bombay Stock Exchange.

46. The question is what would be the effect of the order of this Court granting approval. It must be noted that the Act provides for an appeal

against the order of the Bombay Stock Exchange before the Appellate Tribunal. In the face of such an expert body to deal with matters relating to

the views expressed, it is but proper that the applicants seek their remedy by way of appeal before the Appellate Tribunal. Until such time, the

listing cannot take place as regards Mayajaal Entertainment Ltd. or on the question of allotment of shares to the shareholders of Pentamedia

Graphics Ltd. The approval granted to the Scheme cannot stand in the way of the Stock Exchange considering the compliance of the Listing

Agreement.

47. In the view that I have taken, subject to the result in the appeal before the Appellate Tribunal, the clause in the Scheme as regards listing has to

await the outcome of proceedings. In the face of Section 392(1)(b), the applicants herein are directed to exhaust their appeal remedy to satisfy the

Listing Agreement, particularly Sub-clause (g) so that Clause 34 the Scheme breathes life.

In the circumstances, the applications are dismissed reserving the liberty to the applicants to move the Tribunal if they so choose. Until then, Clause

34 in the approved Scheme can not be enforced by reason of the order of this Court dated 8.11.2004. There will, however, be no order as to

costs.