(2007) 02 BOM CK 0085

Bombay High Court (Goa Bench)

Case No: Company Application No. 56 of 2006

Sesa Industries Ltd.	APPELLANT
Vs	
Krishna H. Bajaj24/25, Bharatiya Bhavan, 7th Floor, 72 Marine Drive, Mumbai - 400020	RESPONDENT

Date of Decision: Feb. 9, 2007

Acts Referred:

- Companies Act, 1956 - Section 101, 198, 209(5), 209A, 211(7)

Hon'ble Judges: N.A. Britto, J

Bench: Single Bench

Advocate: I.M. Chagla and Mr. Ramani, for the Appellant; S.K. Kakodkar with Mr. V.A. Lawande and Amey Kakodkar, Advocates, Mr. C.A. Ferreira, Assistant Solicitor General for the Central Government, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.A. Britto, J.

A scheme for amalgamation between Sesa Goa Limited, the transferee Company, and Sesa Industries Limited, the transferor Company is pending for consideration of this Court and the objector who holds 0.29% of shares in Sesa Industries Limited has filed objections for the said amalgamation of the said two companies and has also filed an application dated 24.8.2006 with several prayers either for issuance of notices to the Ministry of Company Affairs, Stock Exchanges, or for production of certain documents. 88.25% of the shares of Sesa Industries Limited are held by Sesa Goa Limited. Although the objector has not spelt out in the application as to why the said documents are required, the learned Senior Counsel on behalf of the objector, has submitted that the said documents are required to substantiate objector''s objections and the Court will also require them to perform its duty of supervision in sanctioning the scheme of amalgamation.

2. It appears that the objector has a long standing grievance against Sesa Industries Limited when she acquired 5,31,950 shares in the year 1993 or there about which were not listed at the Stock Exchange but subsequently the objector sold and the said Sesa Industries Limited purchased, after an offer was given to the objector a large number of shares. The objector now is left with only about 57,450 shares. Another offer to buy the said shares by Sesa Industries Limited appears to have been rejected by the objector and it is the contention of the petitioner Sesa Industries Limited that the application has been filed by the objector with malafide intent and with ulterior motive to prolong the sanctioning of the said scheme of amalgamation.

3. The prayers (g) and (h) of the application could be considered first. Prayer (g) relates to production and/or inspection or giving the copies of entire joint valuation report as submitted by M/s N.M. Raiji & M/s Haribhakti & Co. As per the objector, her Constituted Attorney had visited the registered office of Sesa Industries Limited on 8.5.2006 to inspect the joint valuation report and the inspection was refused by Sesa Industries Limited/Sesa Goa Limited. The petitioner has contested the said allegation of the objector that he had sought inspection of the joint valuation report. Nevertheless, it has been submitted by the learned Senior Counsel, on behalf of the petitioner, that the said joint inspection report would be placed on record. In view of the concession made on behalf of the petitioner, the petitioners are directed to place the joint valuation report on record within a period of two weeks. The objector would be at liberty to inspect the same and/or take out copies for her perusal. Nevertheless, a reference to the case law on the subject will not be out of place. In Reliance Petroleum Limited (2003) 46 SCL 38, the learned Single Judge of Gujarat High Court has stated that valuation, in a sense, is an estimate and a discretion. The actual value assigned to a property is essentially a matter of informed opinion. It is generally a matter of estimate based to some extent on guesswork and despite the utmost bonafides, the estimate of the fair market value is bound to vary from individual to individual. Value is a word of many meanings. Basic meaning is how much something is worth. The expression ''value'' has different significance for a lawyer, a finance manager or an accountant. ''Value'', as a word and a concept has different hues and colours, e.g., legal, taxation, finance, etc. The concept of value predominantly is used for the purpose of ascertainment of ''price'' or ''value''. As to whether addition of words ''market'', ''fair'', or ''real'' adds or detracts from the price or the value would differ depending upon the context and the purpose of the valuation. A fair value assumes that some values may be unfair. The concept of market value means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing conditions with all its advantages and the potential possibility. This also takes within its sweep any artificial restriction on the transferability of the property, the number of buyers given an opportunity to buy the property. In Larsen And Toubro Limited (2004) CC 523 Vol. 121), this Court referred to various decisions including Miheer H. Mafatlal v. Mafatlal Industries Ltd.

(1996) 87 CC 792 and stated that unless material is shown and produced on record to show that the valuation, as done, was unfair, or contrary to the record or material, the Court has no reason to interfere with such expert opinion in proceedings like this. The Court also noted that the valuation of the shares which is mandatory in a scheme of amalgamation may not be necessary in cases of demerger since the shareholders continue to hold shares in the transferor company and are also issued shares in transferee company. It was a case where no objection of any irregularity in accounts or under valuation of shares was raised by the Regional Director or substantiated by others. The Court also referred to Piramal Spinning and Weaving Mills Ltd., (1980) 50 CC 514 and reiterated that it is not possible for the Court to examine the various methods of valuation which are available for valuing the shares of a company. The valuation of the shares is a technical matter which required skill and expertise. There are bound to be differences of opinion as to what the correct value of shares of any given company is. Simply because it is possible to value the shares in a manner different from the one which has been adopted in given case, it cannot be said that the valuation which has been agreed upon is unfair. The Court also noted in that case that all the shareholders of both the companies have unanimously accepted the valuation which was arrived at by the auditors of the transferor and transferee companies and none of the shareholders had complained of any such unfairness.

4. In Miheer H. Mafatlal (Supra), the Apex Court has also reiterated that the valuation of shares is a technical and complex problem which can be appropriately left to the consideration of the experts in the field of accountancy. Many imponderables enter the exercise of valuation of shares suggested the said ratio which exchange ratio is better is in the realm of commercial decision of well informed equity shareholders. It not for the Court to sit in appeal over this valuation judgment over equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposal scheme and who with open eyes have okayed the ratio and the entire scheme.

5. As regards prayer (h) of the application, the objector has stated that the inspection of the proxy register revealed that almost all the proxy slips apart from the proxies sent by the objector bore the same handwriting and that there were approximation 261 proxies submitted by the shareholders of Sesa Goa Limited and 417 proxies submitted by the shareholders of Sesa Industries Limited in favour/against the proposed amalgamation. The objector has also stated that such a vast number of proxies were not received in the past and that the fact that about 670 proxies had the same handwriting pointed out to one conclusion that the entire meeting summoned was stage managed by the petitioners and therefore the petitioners ought to produce and/give inspection of the proxy registers alongwith relevant proxies held on 8.5.2006. The petitioners have denied the said allegations of the objector, but nevertheless the learned Senior Counsel on behalf of the

petitioners has conceded that the said proxies will be placed by them before the Court. In view of the said contention, the petitioners are directed to place before the Court the said proxies in terms of prayer (h) of the application within a period of two weeks and the objector would be certainly entitled to take inspection of the same.

6. The objector has also sought the production/ inspection of letter dated 4.7.2003 from the Registrar of Companies, Goa and the replies dated 25.8.2003 and 7.10.2003 of both the petitioners. As per the objector the petitioner-Companies were inspected by the Department of Companies Affairs Western Region in January, 2004 and the Department of Companies Affairs Western Region after inspecting the documents/records of the petitioners found some minor contraventions which were compounded by the said companies. As per the objector, certain minor contraventions then noticed were compounded by the petitioners and thereafter the investigation against both the petitioners were dropped. The matter of compounding and subsequent closing of further investigation has not been contested by the objector. In a situation like this, there would be no useful purpose to be served from granting prayer (e) to the application since it would not be in the interest of any one to open a closed issue which ended in compounding of minor contraventions of the Act by both the petitioners. Past contraventions would be irrelevant for the purpose of sanctioning the scheme. Prayer (e) shall therefore stand rejected.

7. That takes us to prayer (d) by which the objector has prayed that a notice be issued to the Bombay Stock Exchange and the National Stock Exchange with a direction to the said Exchanges to file their respective affidavits placing the correspondence entered by them with petitioners alongwith the necessary documents of approval/non approval given by their respective Boards to the request forwarded by the Sesa Goa Limited/Sesa Industries Limited under the provisions of section 24(f) of the Delisting Agreement. As far as this aspect is concerned, the objector has stated that the objector had written to both the Exchanges stating her objections to the scheme of amalgamation and the same was kept for discussion at the meeting of the Governing Board of the Bombay Stock Exchange in the first week of January 2006, but no discussion took place on the issue of granting of any approval/permission under the provisions of section 24(f) of the Delisting Agreement. The objector contends that no approval could be granted by any Department of the Exchange unless the Governing Board had discussed and ratified the same. It is the contention of the objector, that the objector also believes that the same situation prevailed at the National Stock Exchange. The contention of the objector is that he has been denied inspection of the correspondence entered into by the petitioners with the said Exchanges. Further, the contention of the objector is that unless the Bombay Stock Exchange and National Stock Exchange give their permission to the Listing of the shares, the proposed scheme of amalgamation could not be implemented. The objector has therefore prayed that notices be issued to the Bombay Stock Exchange and National Stock Exchange with

a direction to the Stock Exchanges to produce the correspondence entered by them with the petitioners alongwith necessary documents.

8. The petitioners in their reply have stated that the Bombay Stock Exchange and National Stock Exchange have given their approval to the scheme of amalgamation and have placed on record letter dated 13.1.2006 from the Bombay Stock Exchange and letter dated 25.1.2006 from the National Stock Exchange. By the first letter dated 13.1.2006 the Bombay Stock Exchange has conveyed their no objection to the scheme of amalgamation under the provisions of the Listing Agreement in order to enable the petitioners to file the scheme before this Court. Nevertheless, the Bombay Stock Exchange has reserved its right to withdraw the no objection in case later on, it is found that the information submitted to it is false, incorrect etc. Likewise, by letter dated 25.1.2006, the National Stock Exchange has also conveyed its no objection with reference to Listing requirements within the provisions of the Listing Agreement.

9. The petitioners have stated that the Listing of the new shares which are to be allotted by Sesa Goa Limited to the shareholders of Sesa Industries Limited can only take place once the scheme of amalgamation is sanctioned by this Court. The petitioners have stated that the objector cannot obtain direction from this Court including to issue notices to the said Exchanges to produce the correspondence exchanged with the petitioners and the said Stock Exchanges in as much as the said Exchanges cannot be parties to the proceedings nor they could be directed to file an affidavit. The petitioners have further stated that it is settled law that in case a company is yet to comply with clause 24(f) of the Listing Agreement, amalgamation cannot be considered to be premature nor can the Court hold up sanctioning of the scheme.

10. The Companies Act, 1956 does not provide for any notice to be issued to the Stock Exchanges. The only provision which has been made by virtue of section 294(A) of the said Act is a notice to the Central Government. In such a situation, there is no question of issuing any notice to either of the said Exchanges. There is no doubt that the petitioners had a Listing Agreement entered into with the said Exchanges in terms of section 21 of the Security Contract (Regulation) Act, 1956 and in terms of clause 24(a), of the said Listing Agreement, the petitioners had agreed to obtain in principle approval for listing from the Exchanges having National Trading Terminals where it is listed, before issuing further shares or securities, etc. In terms of sub clause (f) of clause 24 of the Listing Agreement, the company had agreed that it shall file any Scheme/petition proposed to be filed before any Court or Tribunal u/s 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. The petitioner did file such an application and have obtained the consent of the respective Exchanges as can be seen from the letters dated 13.1.2006 and 25.1.2006 of the Bombay Stock Exchange and National Stock Exchange, respectively. In other

words, the petitioners have complied with the respective clause of the said Listing Agreement which is entered into in terms of section 21 of the Securities Contract (Regulation) Act 1956. At this stage it will not be improper to refer to the decision in the case of Compact Powers Sources (P) Limited (2005) CC 289 Vol. 125 wherein with reference to sub clause (f) and (g) of the Listing Agreement, which are similar, the Court has stated that a reading of the said sub clause discloses that under sub clause (f) what the Company had agreed was that atleast a month before it presents a Scheme/petition u/s 391, 394 and 101 of the Companies Act, before the Court or Tribunal, it shall file the Scheme/petition proposed, before the Stock Exchange for approval. It is no where stated in the said sub clause that consent of the Stock Exchange is compulsorily required to be obtained from the Stock Exchange before preferring the Scheme/petition before the Court or Tribunal by Company or such consent is mandatory for preferring such Scheme/petition before the Court or Tribunal. The Court therefore concluded that the consent of the Stock Exchange in terms of clause 24(f) of the Listing Agreement was not compulsorily required to be obtained and it would be sufficient if the Company file a Scheme/petition before the Stock Exchange a month before the Scheme/petition is presented before the Court/Tribunal for its approval. This Court in Chemidye Manufacturing Company P. Ltd (2006) 134 CC 58 has held that the consequence of non compliance with any of the provisions of Listing Agreement would entail action by the relevant Exchange under the provisions of the Listing Agreement and the Securities Contract (Regulation) Act 1956. For instance, the Bombay Stock Exchange may initiate action against the defaulting member including by delisting the member. Such non compliance does not ipso facto entail consequences under the Companies Act of the nature submitted by the intervenor. The Court further held that non compliance with the provision of clause 24(f), (g) and (h) of the Listing Agreement does not by itself bar a Company from seeking sanction of the scheme of amalgamation u/s 391 to 394 of the Companies Act. Nor does it entail an automatic dismissal. Considering the letters dated 13.1.2006 and 25.1.2006 of Bombay Stock Exchange and National Stock Exchange respectively and the position of law indicated hereinabove, there is no question of either issuing notices to the said Exchanges or directing them to file any affidavits or to produce any documents. Prayer (d) needs to be rejected.

11. That brings us to prayer (a), (b) and (c) of the application and therefore to the proviso below sub section 2 of section 391 of the Companies Act 1956 which reads as follows:

Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the Company or any other person by whom an application has been made under sub section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the company, such as the latest 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 351, and the like.

12. As far as any notice being issued to the Ministry of Companies Affairs, New Delhi, the same does not arise at all. The Central Government has been noticed and is being represented by the learned Assistant Solicitor General. There is no dispute that the Regional Director represents the Central Government. On behalf of the Central Government learned Assistant Solicitor General has placed on record letter No. RD/JDL/MISC/2006/7550 dated 21.9.2006. The said letter is addressed to the Registrar of Companies and states that the letter dated 12.8.2006 of the objector received in the Ministry of Companies Affairs has been examined by it and it has been decided not to file any affidavit in the matter. It is also stated in the said letter that this Court may decide the matter on its merits. The Registrar of Companies is requested to submit accordingly to this Court at the time of hearing. Pursuant to the said letter dated 21.9.2006, the Registrar of Companies had filed an affidavit on 10.8.2006. This has been stated by the objector in para 11 of his application. In the said affidavit it has been stated that the transferor (Sesa Goa Limited) and the transferee (Sesa Industries Limited) were inspected u/s 209(A) of the Companies Act, 1956 by the Inspecting Officers of the Ministry of Companies Affairs during the year 2005 and any violation which may be noticed during the course of inspection, there will be no dilution for initiating legal action under the Act and that will not in any way affect the amalgamation. The Registrar of Companies in the said affidavit has also stated "save and except above, I have no objection for the approval of the scheme of amalgamation by this Hon''ble Court with such order as it deem fit and proper".

13. Even if the provision of inspection u/s 209(A) of the Companies Act, 1956, was to be read in the proviso to section 391 of the Act, all that is required is that the petitioner approaching the Court for sanctioning any compromise or arrangement has to disclose to the Court by affidavit or otherwise the fact that such inspection has taken place. The letter dated 17.2.2006 addressed to the Regional Director (Western Region) Mumbai by Director of Inspection and Investigation was produced by the objector at the time of obtaining an order from this Court calling for a meeting of the shareholders of the said Company to consider and if fit to approve the scheme of amalgamation of the said Companies (petitioners). By order of this Court dated 18.3.2006 the said letter was made part of individual notices to be sent to the shareholders. Inspite of knowing the contents of the said letter dated 17.2.2006 that the Companies were under investigation and certain contraventions of the Act were pointed out, the majority of the shareholders have approved the scheme of amalgamation. The said letter dated 17.2.2006 shows that M/s Sesa Goa Limited was inspected u/s 209(a) of the Act and was again re-inspected and during the course of inspection certain contraventions of section 269 r/w 198, 309, 289 r/w Article 111 and 140 of the Articles, section 260 and 313, 268 r/w section 256, 628 of the Act were pointed out. The Investigating Officer has suggested invoking the provisions of section 397 and 398 r/w 388(b), 401, 402 and 406 of the Act including section 542 of the Act. The inspection report has also pointed out financial

irregularities. The complaints of Mrs. Kalpana Bhandare and the objector (Mrs. Krishna Bajaj) were also examined and which was reported in part A of the inspection report. Contraventions of section 297 of the Act was reported in part B of the inspection report. Contraventions of part D of the report was referred to the Ministry of Finance and S.E.B.I. and the Regional Director (Western Region) was requested to examine part B of the report and the contraventions of part A and part D were to be examined by the Ministry and it was stated that necessary instructions would be issued in due course. It has been submitted by the learned Assistant Solicitor General that the said inspection carried out in terms of section 209A of the Act has culminated into reports which learned Assistant Solicitor General submits, if required, will be placed in sealed cover before the Court that there is nothing unusual about the stand taken by the Regional Director on behalf of Central Government. Reliance is placed on Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., in which case also notice was issued to the Central Government u/s 394(A) of the Act and the learned Additional Central Government Standing Counsel had appeared before the High Court and submitted to the order of the court making it clear that the Central Government is not to make any representation in favour or against the proposed scheme. Similar stand was also taken in Larson & Toubro Ltd. (Supra) wherein the Regional had not taken any objection to the scheme and on the contrary had made a statement that the Regional Director had no opposition of any kind to the scheme. Here it may be noted that the Regional Director not having taken any objection that the scheme was not in the interest of the public or to the companies'' shareholders, it was to be presumed that it is in public interest.

14. In S.E.B.I. v. Sterlite Industries (India) Ltd. (Bom) (2003) CC 273 Vol. 113, a Division Bench of this Court referred to Ucal Fuel Systems Ltd., (1992) 73 CC 63 wherein the Madras High Court has held that the fact that the Ministry of Industry had to approve the transfer of the letter of intent did not mean that the Ministry of Industry had to be impleaded or issued notice. The provisions of section 394A of the Companies Act did not require any such notice to be served. While considering an application u/s 394A of the Act, the Court has to give notice to the Central Government and shall take into consideration the representation having been made by it and there is no need to implead the Industries Department. This decision, the Division Bench observed lends support to their view that S.E.B.I. has no right of notice of proceedings u/s 391 or section 394 of the Companies Act. By the same standard neither of the Exchanges nor the Ministry of Companies Affairs is required to be noticed by the Court while considering proceedings u/s 391 or section 394 of the Act.

15. As far as the notice to Central Government is concerned, the Division Bench felt that the Central Government stands on a different footing. The Division Bench noted that section 394A was inserted in the Companies Act with the object to enable the Central Government to study the proposal and raise such objections as it think fit in the light of the facts and information available with it and also place the Court in

possession of certain facts which might have not been disclosed by those who appear before it so that the interests of the investing public at large may be fully taken into account by the Court before passing its order. A more liberal approach is required to be adopted in the background of objective of the Legislature in enacting section 394A. The Central Government has the statutory duty and interest to see that the interest of the investing public should be protected and that the laws are not violated. Section 394A enjoins the Court to take into consideration the representation, if any, made to it by the Central Government before passing any orders u/s 291 or 394. If the decision of the company Court, according to the Central Government, is contrary to the law or it is of the opinion that sanctioning of the scheme of arrangement would adversely affect the interest of the investing public at large, the Central Government can be said to be aggrieved person to safeguard the interest of the investing public and can maintain an appeal u/s 391(7).

16. The objector is going about as if the objector is the repository of public interest. The objector is not. It is the Central Government which is repository of public interest. The Court will certainly not sanction a scheme which is against the public policy or the economic interests of the Country. Public interest or public policy is a vital element which is required to be considered while sanctioning any kind of scheme. The Regional Director who represent the Central Government has filed an affidavit through the Registrar of Companies assuring the Court that any violations which have been noticed, there will be no dilution for initiating legal action under the Act and that will not in any way affect amalgamation. The action to be taken at the most will be a criminal action against the Directors or other persons responsible for the violation of the relevant sections which were noticed first in the said letter dated 17.2.2006 and which now forms the subject matter of the two reports. In case the said reports would lead to supersession of the Board of Directors of the petitioners, then the Regional Director would have certainly stated to be so and the fact that the Central Government has left the matter to the discretion of this Court would only indicate that there is nothing in the said reports which will come in the way of the Companies'' Boards being superceded or approving the scheme of amalgamation. As assured to this Court, the Central Government is bound to take appropriate criminal action against the persons responsible for the violation of the relevant provisions of the Act. The objector is otherwise at liberty to file appropriate proceedings to compel the Central Government to take necessary action. The contention that the Registrar of Companies had no authority to file the affidavit has got to be rejected in the circumstances of the case and in the light of the letter of the Regional Director and the submissions made on behalf of the Central Government by the Assistant Solicitor General.

17. That takes us to the relevancy of the reports themselves which have been compiled after the said letter dated 17.2.2006. In Reliance Petroleum Limited (2003) 46 SCL 38, the Gujarat High Court has stated that the inspection report u/s 209A of the Act cannot stand in the way while granting approval to the scheme if other

factors stand satisfied. The Court has stated that upon inspection of books and records, the person making the inspection is required to report to the Central Government and in case of a default, sub sections 8 and 9 of section 209A provided for punishment, but the same are in relation to the company or its officers and cannot come in the way while granting approval to the scheme. In that case the scheme of amalgamation was sanctioned with a clarification that the sanction will not come in the way of the proceedings that may be pending or that may be commenced in relation to its liabilities arriving from the past activities. A Division Bench of this Court in Zee Telefilms Limited (Decided on 13.3.2003) had noted that the affidavit of the Regional Director had disclosed that certain proceedings were filed u/s 217(5), 212(9), 209(5), 307(7) and 211(7) of the Act and the learned Single Judge had held that it was not a matter where leave u/s 391 of the Act ought to be granted but the learned Division Bench held that the said proceedings should not stall in any manner the merger of the Programme Asia Trading Company Limited into Zee Telefilms Limited and that was particularly because the transferor company was a fully owned company of the transferee company. The Division Bench observed that those proceedings would continue in accordance with law and also noted that the Regional Director having filed the said affidavit had not objected to the merger of the transferor company into the transferee company. It is contended on behalf of the objector that the judgment of the Division Bench in Zee Telefilms Limited is per incuriam. The submission cannot be accepted. What follows from Reliance Petroleum Limited and Zee Telefilms Limited (Supra) is that the investigations u/s 209A of the Act can only result in prosecutions against the Directors/Other Officers responsible for the contraventions of various sections as indicated in the letter dated 17.2.2006 now forming part of two reports in relation to both the companies. One is certainly not expected to wait to see the end result of the said proceedings which is bound to take a considerable number of years before the scheme of amalgamation is sanctioned. A scheme for amalgamation cannot wait for its sanction for criminal proceeding to be launched or if launched to be terminated. That is bound to take its own course and its own time. An endless wait cannot be in the economic interests of the country. That would certainly not be in public interest nor in the interest of the companies which are sought to be amalgamated in the light of the consent given by the majority of the shareholders. Prayers (a), (b) and (c) are rejected.

18. Before concluding, a reference could be made to the contours of the jurisdiction of this Court while sanctioning a scheme for amalgamation. It is well settled that the jurisdiction of this Court is supervisory and as rightly pointed on behalf of the Central Government, it is not of suspicion. The Apex Court in Hindustan Lever Employees'' Union v. Hindustan Lever Ltd. And others. (1995) CC 30 Vol. 83 has held that a company Court does not exercise appellate jurisdiction. It exercises a jurisdiction founded on fairness and that the jurisdiction in sanctioning on claim of merger is not to a certain mathematical accuracy if the determination satisfied the

arithmetical test and the Court is required to apply its mind to the public interest involved in the merger of the settlement sought to be arrived at should not be unfair or contrary to public policy or unconscionable and the scheme should not be a device to evade law. Again, in Miheer H. Mafatlal, (Supra), the Apex Court after considering various decided cases has come to the conclusion that the Company Court which is called upon to sanction such a scheme has not merely to go by ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provision of law and it does not violate any public policy and that the Court will not sanction a scheme if it is unconscionable or an illegal scheme or is otherwise unfair or unjust to a class of shareholders or creditors for whom it is meant.

19. What follows from above is that the application succeeds in terms of prayers (g) and (h) in view of the concession made. The application shall stand dismissed as regards other prayers. S.O. four weeks.