

(2003) 03 BOM CK 0123

Bombay High Court

Case No: Company Petition No. 152 of 2003 in Company Application No. 56 of 2003

Goodlass Nerolac Paints Ltd.

APPELLANT

Vs

RESPONDENT

Date of Decision: March 31, 2003

Citation: (2004) 1 BomCR 319 : (2004) 118 CompCas 337 : (2004) 1 CompLJ 447

Hon'ble Judges: D.G. Karnik, J

Bench: Single Bench

Advocate: Berjis Colabawala and P. Sekseria, Ajay Vazirani and Yatish Ghadiyali and N. Dhilla, instructed by Hariani and Co., R.C. Master, instructed by H.D. Rathod for Regional Director, Department of Company Affairs, Mumbai, for the Appellant;

Final Decision: Allowed

Judgement

D.G. Karnik, J.

The petitioner herein Goodlass Nerolac Paints Limited, has two wholly owned subsidiary companies viz. Saurashtra Paints Limited (hereinafter referred to as "first transferor company") and GNP (Madras) Limited (hereinafter referred to as "second transferee company") A scheme of arrangement (for short "the scheme") was proposed by the first transferor company as well as second transferor company proposing their amalgamation and their merger into the petitioner company. Under the scheme of amalgamation, all the assets and liabilities of the first transferor company as well as second transferor company are to vest in the petitioner company. The whole of the share capital of the first transferor company as well as second transferor company is held by the petitioner company which is the transferee company and no shares are to be issued to the shareholders of the first and second transferor companies whose shares are to stand cancelled on amalgamation. Thus, the scheme does not involve any increase of the share capital of the petitioner company.

2. The first transferor company has its registered office at Ahmedabad within the jurisdiction of High Court of Gujarat. By an order dated 4th March 2003, passed in

Company Petition No. 221 of 2002, the High Court of Gujarat at Ahmedabad has sanctioned the scheme of Amalgamation of the first transferor company with the petitioner.

3. The second transferor company has it's registered office at Perungudi, State of Tamil Nadu. By an order dated 7th March 2003, passed in Company Petition No. 14 of 2003 the High Court of Judicature at Madras has also sanctioned the scheme of amalgamation of the second transferor company with the petitioner company subject to the sanction to be obtained by transferee company from the High Court of Judicature at Bombay.

4. The petitioner company moved this court by Company Application No. 56 of 2003 for dispensing with the holding of the meetings of the members, as well as the secured and unsecured creditors. By the order dated 28th January 2003 this Court (Coram D.K. Deshmukh, J.) dispensed with the holding of the meetings of the members as well as the secured and unsecured creditors.

5. By the order dated 7th February 2003, this Court (Coram D.K. Deshmukh, J.) admitted the Company Petition and directed issuance of a notice of hearing of the petition to the Central Government (Regional Director) and also directed publication of the notice of the date of hearing of the petition in Free Press Journal in English and Nav Shakti in Marathi, but dispensed with the publication of notice in the Maharashtra Government Gazette. The Court also dispensed with the issuance of notices of hearing of the petition individually on the members and secured creditors and unsecured creditors below Rs. five lakhs. The petitioner has filed on record three separate Affidavits all dated 5th March 2003 sworn in by G.T. Govindrajan, Company Secretary of the petitioner company. By the first affidavit, the petitioner has proved the service of notice on the Central Government through the Regional Director, Western Region on 11th February 2003. By the second affidavit, the petitioner has proved the publication of the notice in the newspapers viz. Free Press Journal dated 20th February 2003 and Nav Shakti dated 20th February 2003. By the third affidavit, the petitioner has proved the service of individual noticed to unsecured creditors of the company having a credit of more than Rs. five lakhs.

6. Shri Chakradhara Paik, Regional Director, Western Region, Bombay has filed an affidavit sworn in on 12th March 2003 in which he has stated that the scheme is not prejudicial to the interest of the creditors and shareholder. The learned counsel appearing for the Regional Director states that the Regional director has no objection for sanctioning of the scheme. At the hearing of the petition, no one has appeared to oppose the sanction of the scheme.

7. In *Bank of India v. Ahmedabad Manufacturing and Calico Pvt. Ltd.* reported in 1972 42 Comp Cas 211, this Court (Coram Vimadalal, J.) has held that if a scheme by way of a transfer of an undertaking does not affect the rights of the members or creditors of the transferee company, as between themselves and the company, or

does not involve a re-organisation of the share capital of the transferee company, no application by the transferee company u/s 391 or 394 would be necessary. This judgment was followed by another Single Judge (Dr. D.Y. Chandrachud, J.) of this Court in *Mahamba Investments Limited v. IDI Limited*. In that case, a petition was filed by the transferor company for approval of the scheme of amalgamation with the transferee company. The transferee company had not filed a separate petition for sanction of the scheme of amalgamation of the transferor company with it. Office of this court has therefore, raised an objection. After observing that the proposed scheme would not affect the members of the transferee company, the creditors of the transferee company were not likely to be affected by the scheme and no new shares were sought to be issued to the members of the transferor company by the transferee company and there was no re-organisation of the share capital, following the judgment of this Court in the case of *Bank of India v. Ahmedabad Callico* (Supra), it was held that it was not necessary to file a separate petition for sanction by the transferee company. The office objection was thus disposed of. The present case also appears to be covered by the decisions of this Court in the two cases referred to above. The rights of the members of creditors of the petitioner company are not likely to be affected by the Scheme. The scheme does not involve any re-organisation of the capital of the transferee company. As such, it was not necessary for the transferee company to file a petition for sanction of the scheme.

8. No judgment however, was cited before me to show that other High Courts has followed this view. In particular, it was not cited that Madras High Court has followed this view. On the other hand, in the Company Petition No. 14 of 2003 filed by second transferor company, the High Court of Judicature at Madras has granted conditional approval to the scheme subject to the approval to be obtained by transferee company from the High Court of Judicature at Bombay. The petitioner company is thus required to obtain the sanction of the scheme from this Hon'ble Court failing which the scheme of approval by the second transferor company would not be effective in view of the specific directions issued by Madras High Court.

9. It is true that in the case of *Bank of India v. Ahmedabad Callico* and in the case of *Mahamba Investments v. IDI Ltd.*, this Court has taken the view that it is not necessary for the transferee company to file an application for sanctioning of the scheme where the entire undertaking of the transferor company is transferred to the transferee company without affecting any rights of the members or the creditors of the transferee company as between themselves and the Company and the scheme does not involve re-organisation of the share capital of the transferee company.

However, the said judgments do not lay down that the transferee company cannot file a petition, if it so desires. It is one thing to say that it is not necessary to file a petition and another thing to say that petition cannot be filed. The transferee

company may choose to file a petition and seek approval of the scheme by way of an abundant caution or because of any doubts as to whether it's members or creditors are in any way affected by the scheme or any other reason. I therefore, hold that though it may not be necessary in certain cases, the transferee company is not precluded from filing of the petition for approval especially when while approving the scheme, another High Court has given a direction that the scheme shall stand approved subject to the approval of the scheme by this Court.

In view of this, scheme is approved and the petition is allowed in terms of prayer Clauses (a) to (d).

The petitioner company shall pay Rs. 2,500/- as costs to the Regional Director.

Parties to act on a cop of this order duly authenticated by the Company Registrar.