

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 7th March, 2012

+ **CO.APP. 1/2012**

% **CHANDER BHAN GANDHI** **....Appellant**
Through: In person.

Versus

RECKITT BENCKISER (INDIA) LTD. **..... Respondent**
Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Rohan Dheman, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The appellant impugns the judgment dated 3rd October, 2011 of the Learned Company Judge of this Court dismissing the objections filed by the appellant to the petition filed by the respondent Company under Sections 100 to 105 of the Companies Act, 1956 r/w Rule 46 of the Companies (Court) Rules, 1959 (for confirming the reduction of share capital of the respondent Company) and consequently allowing the said petition of the respondent Company.

2. The appellant was holding 536 out of 2,62,79,612 fully paid up equity shares of ₹10/- each of the respondent Company. Of the remaining shares, 1,67,85,722 shares constituting 63.87% of the total shareholding were held by M/s. Reckitt Benckiser Plc being the promoter of the respondent

Company, 94,65,355 shares constituting 36.02% were held by M/s. Lancaster Square Holdings SL a subsidiary of the promoter company and 27,995 shares were held by other members of the public as the appellant and 4 shares were held by employees of the company. The public shareholders including the appellant held 28,531 shares constituting only 0.11% of the shareholding of the respondent Company.

3. The respondent Company being desirous of reducing its share capital by 1.55% by cancelling and extinguishing 3,78,614 equity shares held by M/s. Lancaster Square Holdings SL and 28,531 shares held by the public, appointed Chartered Accountants to determine the fair value of its equity shares. The said Chartered Accountants recommended value of ₹836/- per share for payment to the shareholders whose shares were sought to be cancelled/extinguished. However the Board of Directors of the respondent Company in the meeting held on 3rd March, 2010 while approving such reduction in the share capital, enhanced the payment from ₹836/- to ₹940/- per share. M/s Reckitt Benckiser Plc being the largest shareholder expressed intent to retain its share holding. The Extraordinary General Meeting (EOGM) of the shareholders of the respondent Company held on 24th April, 2010 by a special majority also approved such reduction. The appellant voted against the said resolution.

4. Upon the respondent Company thereafter filing the petition aforesaid for approval of its action of reduction of share capital, initially 24 shareholders including the appellant filed objections. However upon the respondent Company offering to pay an amount of ₹1,500/- per share as against the amount of ₹940/- proposed by the Board of Directors and

approved in the EOGM, 23 of the said objectors accepted the said offer and withdrew their objections leaving only the appellant in the fray.

5. The appellant objected on the grounds:-

- A. that the proposal for reduction was nothing but a product of wrong economic policies of the Government of India of removing the sectoral caps in personal care and health sector;
- B. that it amounted to “forcible acquisition” of shares of public shareholders in as much as the shares of the promoter group remained unaffected;
- C. that reduction was with the intent to “eliminate” the minority public shareholders and was thus wholly unfair, discriminatory and *mala fide*;
- D. that the reduction if any in the share capital should be spread equally over all the different classes of shareholders;
- E. that the reduction did not fall within any of the three modes of reduction of share capital provided in Section 100(1) of the Act;
- F. that the Court is empowered to look into the proposal for reduction and to decide whether the same is legal, fair and equitable;
- G. that his shares were invaluable and the valuation thereof at ₹836/- was improper, as also evident from the valuation report

filed by the other objector(s) (who had since withdrawn their objections) valuing the share at ₹3,890/-;

- H. that the public shareholders of the respondent company including the appellant had been wrongly clubbed for the purposes of reduction, with the subsidiary of the promoter company and which had resulted in the special resolution being passed; he contended that the public shareholders holding 0.11% shares constituted a separate class and had a meeting of the said class only been held, the special resolution for extinguishing the shares would not have succeeded;
- I. that an earlier attempt by the respondent Company to extinguish the shares of such public shareholders had failed and in the year 2005 the respondent Company had then agreed to let the public shareholders continue; the principle of *res judicata* was sought to be applied;
- J. that the reduction was in effect a buy-back of the shares within the meaning of Section 77A of the Act and thus has to be done on proportionate basis in accordance with Section 77A(5) of the Act;
- K. that the forms of representation executed by M/s. Reckitt Benckiser Plc and M/s. Lancaster Square Holdings SL for EOGM held on 24th April, 2010 were invalid as the same had not been notarized.

6. The Learned Company Judge in the impugned judgment has observed/found/held:-

- (i) that Section 100 of the Act expressly permits a Company if so authorized by its Articles of Association, to reduce its share capital by following the procedure prescribed therein;
- (ii) Clauses (a), (b) and (c) of Section 100(1) of the Act are mere illustrations and not the only manner in which share capital of a company can be reduced; the power of reduction of capital else is general and extends to any possible method of reduction subject to compliance with the applicable provisions;
- (iii) that the judgments relied upon by the appellant were pertaining to a Scheme of Arrangement under Section 391 of the Act and had no applicability to reduction of share capital under Section 100 of the Act;
- (iv) that the Articles of Association of the respondent Company permitted such reduction; the respondent Company had only one class of shareholders and the equity shares of the respondent Company were delisted from the Bombay, Calcutta and National Stock Exchanges between the years 2003-05 in accordance with Regulation 21(3)(a) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
- (v) Section 100 of the Act required passing of a Special Resolution by equity shareholders and does not require passing of a

separate class resolution as provided for under Section 391 r/w Rule 61 in the case of a Scheme of Arrangement; that the procedure prescribed for sanction of a Scheme of Arrangement could not be applied to reduction of share capital; thus the resolution of the majority under Section 100 was of the entire body of shareholders of the company and not minority public shareholders;

- (vi) the fact that the minority shareholders are Indian and the majority promoter shareholders are foreigners is of no relevance as long as the mandate of law is complied with;
- (vii) there was nothing in the Act requiring the reduction to be spread either equally or rateably over all the shareholders of the company. Reliance was placed on *Sandvik Asia Limited vs. Bharat Kumar Padamsi* (2009) 92 SCL 272 where the Division Bench of the Bombay High Court had observed that once it was established that the non-promoter shareholders were being paid fair value of their share, the Court will not be justified in withholding its sanction to the resolution;
- (viii) Reliance was placed on *Organon (India) Ltd., In Re.* (2010) 98 CLA 480 where the Bombay High Court had rejected the arguments of forcible acquisition of public shareholders in the context of a Scheme of Reduction;
- (ix) that the valuation of shares is a technical matter requiring considerable skill and experience and the report of the

valuation is not to be interfered with by the Court in the absence of any fraud or illegality even though there were bound to be differences of opinion amongst accountants as to the correct value;

- (x) that the valuation report produced by the other objector (s) stood withdrawn on withdrawing their objections; no reliance could be placed thereon by the appellant;
- (xi) that the price of ₹1,500/- per share which had been accepted by all the other shareholders was fair and reasonable;
- (xii) the principles of *res judicata* were not attracted to the respondent Company on an earlier occasion notwithstanding having proposed reduction, having agreed to allow the public shareholders to continue;
- (xiii) that the objection to the validity of the form of representation was untenable as the principles of notarization as applicable to proxy form were not attracted;
- (xiv) Section 77A was a facilitating provision enabling a company to buy-back its shares without approaching the Court and had no application to a proceeding under Section 100;
- (xv) that the Court could not interfere with the economic policy which was in the domain of the executive;

(xvi) that the reduction in share capital was a commercial and business decision approved by 99.999% of the equity shareholders of the respondent Company and did not require any interference.

7. The appellant arguing in person before us, besides reiterating the arguments aforesaid dealt with by the Learned Company Judge has also contended that he has been receiving dividend of ₹50,000/- per year for his aforesaid shares and of which he would be deprived of and the price of ₹1,500/- per share being paid was not compensation enough for the same. He has also argued that the Directors of the respondent Company in proposing the reduction have not acted independently as they were required to. Faults are also pointed out in the EOGM on account of the presence of the lawyers therein. The argument of the reduction being required to be *pro rata* and the policy of pick and choose being not permitted is reiterated.

8. Needless to state that the senior counsel for the respondent Company has supported the impugned judgment.

9. We have given our anxious consideration to the matter and perused the memorandum of appeal carefully. The same is drafted, finding no faults in the legal reasoning given by the Learned Company Judge, but as a critique to the economic policies of the government and the modus of the respondent Company and drawing sympathy to the appellant who is now over 80 years of age and had acquired the shares aforesaid nearly 35 years ago. However, though our hearts may bleed for the appellant, we are bound by the law and are unable to find any error in the legal reasoning given by

the Learned Company Judge approving the action of the respondent Company of reducing the share capital. Though we were a little anxious as to the valuation of the shares, since the Board of Directors of the respondent Company itself had not accepted the valuation at ₹836/- per share of the Accountants engaged by the respondent Company and had increased the valuation to ₹940/- and further since the respondent Company when faced with the objections had further increased the said valuation to ₹1,500/- but nevertheless find that there can be no better indice of valuation than the market forces. The acceptance by all the other public shareholders except the appellant of the price of ₹1,500/- clearly establishes that though the price of ₹940/- offered may not have been the correct price but the price of ₹1,500/- clearly was. The appellant before us also has not produced anything to dissuade us. Our conscience is thus satisfied as to the price also.

10. Finding no merit, the appeal is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 7, 2012

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