

IN THE HIGH COURT OF DELHI AT NEW DELHI

CO.PET. No. 275 of 2011

Reserved on: January 31, 2013

Decision on: February 20, 2013

PHENIL SUGARS PRIVATE LTD

..... Petitioner

Through: Mr. Amit S. Chadha, Senior Advocate with
Mr. Uday Kumar, Mr. Mayank Bhughana,
Mr. Upendra Prasad, Mr. Sanjay K. Singh and
Mr. Naveen Chawla, Advocates.
Dr. Manmohan Sharma, Advocate for
Intervener/Mr. H.K. Chadha.
Mr. Rajiv Bahl, Advocate for Official
Liquidator.
Mr. K.S. Pradhan, Dy. Registrar of Companies.

WITH

CO.PET. No. 276 of 2011

BASTI SUGAR MILLS COMPANY LTD.

..... Petitioner

Through: Mr. Amit S. Chadha, Senior Advocate with
Mr. Uday Kumar, Mr. Mayank Bhupana,
Mr. Upendra Prasad, Mr. Sanjay K. Singh and
Mr. Naveen Chawla, Advocates.
Dr. Manmohan Sharma, Advocate for
Intervener/Mr. H.K. Chadha.
Mr. Rajiv Bahl, Advocate for Official
Liquidator
Mr. K.S. Pradhan, Dy. Registrar of Companies.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

20.02.2013

1. Company Petition No. 275 of 2011 is by Phenil Sugars Pvt. Ltd ('PSPL') and Company Petition No. 276 of 2011 is by Basti Sugar Mills Co. Ltd ('BSMCL').

2. Both petitions have been filed as second motion petitions under Sections 391 and 394 of the Companies Act, 1956 ('Act') seeking sanction to the Scheme of Arrangement ('Scheme') involving amalgamation of BSMCL ('Transferor company') with PSPL ('Transferee company') with effect from 1st April 2010.

3. Earlier BSMCL had filed Co. Appl (M) No. 71 of 2011 and PSPL had filed Co. Appl (M) No. 67 of 2011 as first motion applications regarding convening of meetings of all the shareholders and creditors of both the Transferor and Transferee companies. By an order dated 5th April 2011 the Court had directed the convening of meetings of the shareholders and the Transferor company, the secured creditors and the Transferee company, the unsecured creditors and the Transferee company. It dispensed with the holding of the meetings of the shareholders and unsecured creditors of the Transferee company as they had given their consent to the Scheme. There was no secured creditor of the Transferee company. The Court, however, clarified that "the issues of conversion of loan given by Bajaj Hindusthan Limited as well as the approval/No Objection certificate by the Delhi Stock Exchange ('DSE') are left open to be considered at the second motion stage."

4. Pursuant to the above directions, the meetings of the shareholders, secured

creditors and unsecured creditors of the Transferor company were held on 12th May 2011 wherein approval was granted to the Scheme.

5. After the meetings were held, an application CA No. 909 of 2011 was filed in CA (M) No. 71 of 2011 by Mr. Harinder Kumar Chadha ('H.K. Chadha') for impleadment as well as for stay or the cancellation of the meetings of the shareholders. By an order dated 18th May 2011 the said application was disposed of noting that the meetings of the shareholders had already been held on 12th May 2011. Mr. H.K. Chadha was given the opportunity to raise objections at the second motion stage and also forward his objections to the Regional Director ('RD') as well as the Registrar of Companies ('ROC') so that they could consider his objections while filing their replies at the second motion stage.

6. The present petitions at the second motion stage were filed by BSMCL and PSPL on 4th July 2011. In both the petitions, notice was directed to issue on 12th July 2011 to the RD and the Official Liquidator ('OL'). Soon thereafter Mr. H.K. Chadha filed CA No. 2168 of 2011 in Co. Pet. No. 276 of 2011 seeking to be impleaded as Respondent and also for a direction to the parties to supply him the full set of applications and replies so that he could file his objections. Notice was issued in the said application on 9th November 2011.

7. The RD filed an affidavit/representation on 18th August 2011 where in para 5 it was indicated that till that date the RD had not received any objection from Mr. H.K. Chadha as directed by the Company Court in its order dated 18th May 2011 except a copy of the Company Application No.909 of 2011. In

para 5.1 of the affidavit it was mentioned that inspection of the books of account and record of both companies had been conducted in 2008 and various violations of the Act were observed. It was further stated that pursuant to applications made by both the companies, the offences had been compounded by the competent authority. Both the companies had since filed E-Form 21 along with the said orders under Section 621A of the Act.

8. On 23rd November 2011, the RD was directed by the Court “to file a supplementary affidavit within four weeks clearly dealing with the objections raised by Mr. H.K. Chadha in his impleadment application bearing CA No.2168 of 2011.” On 4th January 2012, the RD filed a further affidavit stating that the copies received on 31st May 2011 from Mr. H.K. Chadha had been examined. It was mentioned in the said representation/affidavit that the RD and the ROC had been receiving complaints from Mr. H.K. Chadha against BSMCL from time to time. It was stated that Mr. H.K. Chadha was a partner of M/s. Basant Ram & Sons (‘BRS’) who had been appointed as statutory auditors of BSMCL during the years 2003-2004 and 2004-2005. In view of the frequent complaints from investors and others, the Ministry of Corporate Affairs (‘MCA’) had by letter dated 12th January 2007 ordered an inspection of the books of accounts and statutory records of BSMCL under Section 209 A of the Act. The inspection was carried out by Mr. R.V. Dani, the then Deputy Director, during March and April 2007. It was stated that according to the annual returns filed with the ROC by BSMCL on 27th October 2005, it was noted that the Annual General Meetings (‘AGMs’) of BSMCL for the financial year 2003-2004 and 2004-2005 were held on 29th September 2004 and 30th September 2005 respectively. Since the inspection

report dated 15th June 2007 did not refer to the holding of the said AGMs it was stated by the RD that BSMCL should clarify by filing an affidavit before the Court. It was pointed out that even if the AGMs had not been concluded then BRS would continue as statutory auditors. For removal of the statutory auditors, approval of the Central Government under Section 224 (7) of the Act was required. It was stated that BSMCL should clarify this and produce a copy of the approval under Section 224 (7) of the Act.

9. The RD termed the allegations made by Mr. H.K. Chadha as “very-very serious and the matter is not free from doubt” and prayed that “BSMCL may be directed to file an affidavit with details and reply to each of the points as alleged by the applicant in para 9 thereof”. The same was said of the allegations made in para 14 of the objections.

10. On 10th April 2012, this Court disposed of Co. Appl. No. 2168 of 2011 impleading Mr. H.K. Chadha as a Respondent. It was noticed that in Co.A. (SB) No. 74 of 2011, the Court had already held Mr. H.K. Chadha to be a shareholder of BSMCL. Accordingly, the Court directed Mr. H.K. Chadha to file his objections to the Scheme in a concise manner within four weeks. The RD was directed to place on record in a sealed cover a photocopy of the inspection report dated 15th June 2007 by Mr. Dani. BSMCL filed an affidavit on 21st November 2011 in response to the report of the OL filed on 24th October 2011. In particular it is pointed out that Bajaj Hindusthan Ltd. (‘BHL’) was a secured creditor who had appeared in the Court convened meeting on 12th May 2011 and approved the Scheme. It was left open to BHL to opt for the Zero Coupon Optionally Convertible Preference Shares

(‘OCPS’). Another affidavit was filed on the same date by BSMCL dealing with the objections raised by Mr. H.K.Chadha. This will be discussed hereafter while dealing with the objections of Mr. H.K. Chadha. Enclosed with the affidavit was an order dated 3rd August 2011 of the Company Law Board (‘CLB’) in Co. Pet. No. 9/111/2007-CLB which had been filed by Mr. Raman Chadha son of Mr. H.K. Chadha against BSMCL under Section 111A of the Act praying that the register of members be got rectified by registering him as a shareholder in place of his father.

11. BSMCL filed a further affidavit on 31st March 2012 in response to the affidavit dated 3rd January 2012 of the RD. In this affidavit it is pointed out that BRS had been an auditor of BSMCL till 30th December 2006. However, Mr. H.K. Chadha had been holding for more than 10 years, eight equity shares of BSMCL of the face value of Rs.100 each. BSMCL was owned, managed and controlled by one Narang Group till 31st October 2005 on which date 99.04% shares of BSMCL were purchased by PSPL and a new management came into existence. The new management had examined the records and found that Mr. H.K. Chadha was prone to filing cases against companies where he was an auditor. Reference was made to the decision of this Court in ***Basant Ram & Sons v. Union of India 2002 (110) Company Cases 38***. The actions of BRS had resulted in it being disqualified to act as an auditor. It was also pointed out that Mr. H.K. Chadha had deliberately not completed the audit for the years 2003-2004 and 2004-2005. Consequently on 30th December 2006, 99% of the shareholders of BSMCL appointed a new auditor in place of Mr. H.K. Chadha.

12. It was pointed out by BSMCL that by an order dated 16th May 2007 in RFA (OS) No. 133 of 2006, this Court disposed of the appeal filed by BRS against an order passed by the learned Single Judge in CS (OS) No. 2369 of 2006 filed by one Mr. Madhu Sudan Ladha, shareholder of BSMCL against the re-appointment of BRS as statutory auditors. That suit had been disposed of by order dated 19th December 2006 by the learned Single Judge recording the statement of BSMCL that it had no intention to re-appoint BRS as a statutory auditor. The allegation in the appeal by BRS was that the suit was a collusive one and an attempt to oust BRS as statutory auditors could not be done except under Section 224 (7) of the Act. The Division Bench which heard the appeal noted that the AGM was to be held on 30th December 2006 and that it was “open to the members voting in the AGM to appoint any statutory auditor in accordance with law”. In its order dated 16th May 2007, the Division Bench noted that in the said AGM, the members appointed M/s Vinod Kumar and Associates (‘VKA’), Chartered Accountants as statutory auditors for the financial year 2007-2008. When BRS raised an objection that the said meeting was not held in accordance with the Act, the Division Bench observed that it would be a fresh cause of action for the Appellant to challenge the resolution passed in the AGM. Accordingly, the appeal was disposed of as having become infructuous.

13. By a subsequent order dated 5th October 2007, the words “financial year 2007-2008” occurring in two places in the order dated 16th May 2007 were substituted by the Division Bench with the words “till the conclusion of the next AGM”.

14. It was submitted further by BSMCL in its affidavit that Mr. H.K. Chadha was engaged in litigation without any *bonafide* cause and was acting prejudicially to the affairs of BSMCL. Being a shareholder with only 8 shares he could not stall the proceedings for approval of the Scheme under Sections 391 and 394 of the Act. The plea of Mr. H.K. Chadha that he was not a shareholder of BSMCL on account of having sold his shares on 9th April 2001 was denied by referring to the order of the CLB dated 9th September 2011 holding him to be a shareholder which was upheld by the Company Court with the dismissal of Co.A. (SB) No. 74 of 2011 on 2nd February 2012 which was filed by Mr. Raman Chadha, son of Mr. H.K. Chadha. Mr. Raman Chadha had claimed that Mr. H.K. Chadha had transferred his shares to him. This was disbelieved both by the CLB as well as by this Court, thus confirming that Mr. H.K. Chadha continued to remain a shareholder of BSMCL. It was pointed out that BSMCL is a subsidiary of PSPL which held 99.04% shares of BSMCL. The affidavit also dealt with other specific allegations of Mr. H.K. Chadha which will be discussed hereafter.

15. The RD filed a third affidavit dated 7th December 2012. Along with the said affidavit, the RD enclosed the report dated 30th November 2012 of the ROC. The ROC also gave its comments in CA No. 2168 of 2011 filed by Mr. H.K. Chadha. It was stated that the said objections were similar to the objections raised in CA No.909 of 2011 and termed it as a dispute between the management and the ex-statutory auditor and except the said complaint, the ROC had not received any complaint from any shareholder or creditor of the company to the Scheme. The ROC enclosed with the said report an earlier

report dated 8th December 2011 sent to the RD. This will also be referred to in due course while dealing with the objections of Mr. H.K. Chadha.

16. This Court has heard the submissions of Mr. Amit S. Chadha, learned Senior counsel appearing for the Transferor and Transferee companies i.e., BSMCL & PSPL, respectively. The submissions of Dr. Manmohan Sharma, learned counsel appearing for Mr. H.K. Chadha, have been heard. Mr. K.S. Pradhan, Deputy Registrar of Companies appeared on behalf of the ROC and Mr. Rajiv Bahl, learned counsel appeared for the OL.

17. Dr. Sharma submitted that BRS had in the qualified audit report dated 9th October 2006 of the accounts of BSMCL for the financial year ending 31st March 2004 stated that they did not give a true and fair view of the statement of affairs of BSMCL. Consequently the statement of accounts for the years 31st March 2004 and 31st March 2005 could not be taken as correct unless the corrective adjustment entries were recorded in the books of accounts “in respect of the fraudulent acts of misfeasance of the funds of the company by its directors which are disclosed by the Statutory Auditor in its aforesaid qualified audit report.” He submitted that only then would the latest financial position of BSMCL be able to be determined and it is only then that sanction of the Scheme can be granted under Section 391(2) of the Act. It is submitted that the inspection report dated 15th June 2007 does not term the objections raised in the report dated 9th October 2006 to be baseless. Dr. Sharma alleged that in spite of incorporating the necessary adjustment entries, BSMCL got its accounts audited illegally by another auditor ignoring the binding directions of the Division Bench in its orders dated 16th May 2007 and 5th October 2007.

18. The Court is not impressed with the above submissions of Dr. Sharma. They overlook the fact that BRS was removed as auditor and a new auditor, VKA was appointed at the AGM held on 30th December 2006 as recorded by the Court in its order dated 16th May 2007. BRS, therefore, could not have continued as a statutory auditor of BSMCL. As regards the comments made by the RD in the earlier affidavit dated 17th August 2011, the position stands clarified by the ROC in its report which has been enclosed with the RD's affidavit dated 7th December 2012. Therein the ROC has extracted its earlier report dated 8th December 2011. In its inspection report dated 15th June 2007, the ROC has observed as under:

“As regards the allegations made in the complaints from time to time and the impleadment applications that the AGMs held on 29.09.2004 and 30.09.2005 were adjourned, it is stated as under:

a. As per Annual returns filed with this office on 27.10.2005, the AGMs of the company for the financial year 2003-04 & 2004-05 were held on 29.09.2004 and 30.09.2005.

b. In para 51 of the Inspection report, it has been pointed out *inter alia* that “the company did not transact the business relating the adoption of accounts in the 3 AGMs held for financial years 2003-04, 2004-05 and 2005-06. The company appointed the auditors even though the accounts were not audited. Strictly speaking this is an irregularity and is not in the spirit of the Act. In the absence of not transacting the normal business, the company cannot be held to have complied with the provisions of section 166 of the Act. As such the company has violated the provisions of section 166 r/w section 173(1)(a) by way of not conducting the AGMs as contemplated and is liable for prosecutions under Section 168 of the Act.”

c. The company has moved compounding application under Section 621A of the Act for composition of default committed under Section 166 r/w 173(1)(a) of the Act mentioning therein that the offence was committed due to the fact that the then M/s.

Basant Ram & Sons did not submit their Auditors Report in time and as a consequence, the Board of Directors of the company was constrained to place the unaudited accounts before the AGMs of the company held on 29.09.2004, 30.09.2005 and 30.12.2006 respectively. In the 80th AGM of the company held on 30.07.2007, the company placed audited accounts for the financial year ended on 31.03.2004, 31.03.2005, 31.03.2006 & 31.03.2006 thereby making the default good regarding unaudited balance sheet. Copy of Hon'ble CLB order dated 31.03.2010 compounding the offence u/s 216 read with sec.220 of the Companies Act, 1956 is attached."

19. It has further been stated in para 8 as under:

"As regards the facts raised in para 5, 6 & 7 of the Directorate's letter, it is submitted that the Hon'ble High Court in its order dated 16.05.2007 clearly mentioned interalia that "it was for the members to exercise their right and to decide as to who should be appointed as the statutory auditors in the said AGM. We are informed that the said AGM was held on 30.12.2006 as scheduled. However, in that meeting the members chose to appoint M/s. Vinod Kumar and Associates, Chartered Accounts as the statutory auditors for the financial year 2007-08. The learned counsel for the appellant states that the meeting was not held and/or the business was not conducted in accordance with the provisions of the Companies Act, if that is so, it would be a fresh cause of action to the appellant to challenge the Resolution passed in the said AGM in so far as the appointment of statutory auditors is concerned. It is clear from the aforesaid that in so far as the present appeal is concerned, it has become inficituous (*sic. infructuous*) in as much as order dated 19.12.2006 passed by the learned single Judge was not given the effect to in view of the order dated 27.12.2006 passed by the Division Bench in this appeal". In this regard, it is not clear as to whether the complainant has taken fresh cause of action in view of the orders of the Hon'ble High Court. It is also not clear by the complainant that what would be the affect of the above allegations in the proposed Scheme of Amalgamation. Further, the complainant

had filed writ petition as petitioner against M/s Basti Sugar Mills Ltd, the details of prayers made in this petition or at **Annexure-D.**”

20. The above report has been adopted *in toto* by the RD and, therefore, the objection as regards holding of the AGMs held on 29th September 2004, 30th September 2005 and 30th December 2006 does not survive. In other words, the fact that in the 80th AGM held on 30th July 2007, the audited accounts for the financial years ended 31st March 2004, 31st March 2005 and 31st March 2006 were placed and adopted makes it clear that any default in that regard by BSMCL stands condoned. No other shareholder has objected to those accounts. They are taken to be the audited accounts. Neither the ROC nor the RD, nor the OL raised any objection. The objection of Mr. H.K. Chadha that adjustment entries have to be made in the accounts prepared by BRS for an earlier period to arrive at the correct picture cannot, in the above circumstances, be countenanced. No material has been placed on record by Mr. H.K. Chadha to substantiate the plea of non-preparation of the audited accounts of the above financial years.

21. As pointed out in the report of the ROC, Mr. H.K. Chadha either by himself or as representing BRS appears to be a chronic litigant. Earlier BRS had filed Civil Writ Petition No. 3141 of 1999 in this Court assailing the order of the Central Government dated 12th April 1999 under Section 224 (7) of the Act granting approval to the removal of BRS as statutory auditor of Gangeshwar Ltd. The ROC has noted that similar complaints were repeatedly made by Mr. H.K. Chadha.

22. There is also no merit in the contention that the orders dated 16th May 2007 and 5th October 2007 of the Court have not been complied with. Those orders in fact only permitted Mr. H.K. Chadha to raise objections to the Scheme while not interfering with his removal as auditor. In any event, since it is stated that there is a writ petition filed by him challenging his removal, the said issue will be decided in those proceedings in accordance with law. For the purpose of the present proceedings, the Court has to proceed on the basis that neither BRS nor Mr. H.K. Chadha is any longer the statutory auditor of BSMCL.

23. The next allegation is that the property of BSMCL located in Civil Lines, Delhi is worth more than Rs. 250 crores and has been transferred for an unrealistically paltry consideration of Rs. 9 crores in favour of a private company owned/controlled by a promoter. BSMCL has vehemently denied the allegation. The Court notes that the transaction took place way back in 2005. There is absolutely no material produced by Mr. H.K. Chadha to show that the value of the property on the date of its sale was more than Rs. 250 crores. No shareholder or creditor has ever objected to the above sale. Even the allegation that two sets of books of accounts were maintained; one maintained for cash facility with Central Bank of India ('Central Bank') for filing fabricated balance sheets and forged signatures of the auditor is unsubstantiated. The Central Bank has not made any such allegations. There is no objection raised in that behalf by either the ROC or the RD.

24. It is then alleged that shares of certain shareholders holding 32% shares in BSMCL were illegally shown as having been transferred to PSPL. This

included 9.56% shares held by one Mr. Sudhir Avdhoot who expired on 31st March 2002. It is stated that the wife of Mr. Sudhir Avdhoot had filed a criminal complaint in this regard. Further it is stated that 5.61% of the total equity share capital held by Mr. Vivek Sahgal and Mrs. Usha Sahgal were also fraudulently transferred in the name of PSPL and that an FIR has been lodged in that regard. It is also the allegation made by Mr. H.K. Chadha that contrary to the assertion of BSMCL, none of the shares held by Systems Investments Pvt. Ltd ('SIPL') were transferred to Goyal Capital Ltd. ('GCL') on 31st October 2005. It is stated that 40773 "A" class shares belonging to SIPL were never sold/transferred. The original share transfer deed is also not produced. According to Mr. H.K. Chadha, SIPL still held 16.93% shares of the equity capital of BSMCL as on 30th September 2005. It is accordingly submitted that the claim of PSPL that it held 99.04% shares of BSMCL is false.

25. The affidavit of BSMCL shows that by an agreement dated 28th October 2005, the erstwhile share holders of BSMCL sold their shares to PSPL. The 32% share holders have not come forward to complain about any alleged illegal transfer of their shares to PSPL. The annual returns of BSMCL for the last seven years show that 99.04% shares of BSMCL is held by PSPL. Neither the wife of Mr. Sudhir Avdhoot nor Mr. Vivek Sahgal or Mrs. Usha Sahgal have come forward to make any complaint of illegal transfer of their shares. The allegation by Mr. H.K. Chadha that the Scheme raises a strong apprehension that the Sahgals were paid consideration illegally is not substantiated by any material whatsoever. Consequently this Court is unable to find any merit in this objection. Similar complaints made earlier by Mr.

H.K. Chadha have been examined by the ROC and found to be without any basis.

26. It is next contended by Dr. Sharma on behalf of Mr. H.K. Chadha that BHL has siphoned off funds of Rs.500 crores whereas it had given a loan of only Rs.250 crores. It must be recalled that BSMCL gave its approval to the Scheme as a secured creditor. The RD has carried out the inspection of the statutory accounts and records. Nothing objectionable has been found in any of these transactions. The allegations of Mr. H.K. Chadha are thus unsubstantiated.

27. Mr. H.K. Chadha relies on a letter dated 3rd October 2005 to urge that BSMCL has admitted that the AGMs held on 29th September 2004 and 30th September 2005 were adjourned. BSMCL has denied the said letter as being a forged one. In any event, the report of the ROC is clear that there is no basis in these allegations. The minutes of the AGM have been placed on record.

28. As regards the no objection certificate ('NOC') from the DSE, Mr. Amit S. Chadha, learned Senior counsel has pointed out that despite several reminders sent to DSE, they have not responded. He points out that all that Clause 24 (f) of the listing agreement requires is that an NOC is to be obtained from the DSE. Apart from the requirement being only directory, in the facts of the present case where DSE was not responding to the notices, it was not practically possible to obtain an NOC.

29. The above submission of Mr. Amit S. Chadha merits consideration. In

Compact Power Sources P. Ltd v. HBL Nife Power Systems Ltd. (2005) 125 Company Cases 289 (AP), in similar circumstances it was held that the requirement of obtaining the NOC from the stock exchange in terms of the listing agreement was not mandatory. All that the listed company was to do was to give a scheme/petition to the stock exchange at least one month before presenting the scheme under Sections 391 and 394 of the Act. As long as that was done, the fact that the stock exchange did not give its no objection, will not prevent the Scheme from being approved. The following observations of the Court in this regard are relevant:

“Inasmuch as the Transferee Company under Sub-clause (f) had merely agreed to file scheme/petition for approval before the Stock Exchange at least a month before the same is presented before the Court or Tribunal, and had, in fact, filed the scheme/petition for approval before the Stock Exchange one month before it presented before this Court, as is required under Sub-clause (f) of Clause 24 of the Listing Agreement, I am of the considered opinion that the consent of the Stock Exchange is not compulsorily required to be obtained, and it would suffice if the company files the scheme/petition before the Stock Exchange a month before it presents the scheme/petition before the Court or Tribunal for its approval, and more so when the company under Sub-clauses (g) and (h) of Clause 24 of the Listing Agreement, had agreed that the

Scheme of arrangement/amalgamation/merger/reconstruction/reduction of capital etc., to be presented to any Court or Tribunal does not violate, override or circumscribe the provisions of securities laws (as mentioned in the explanation appended thereto) or the stock exchange requirements, and also agreed to disclose the pre and post-arrangement or amalgamation (expected), capital structure and shareholding pattern.....”

30. Consequently, both the issues referred to by the Court in its order dated 5th April 2011 in the first motion petition have been accounted for.

31. It is repeatedly urged by Dr. Sharma on behalf of Mr. H.K. Chadha that the matter required investigation by the Central Government under Section 237 of the Act and by the Serious Fraud Investigation Office. This Court does not find any material placed on record by Mr. H.K. Chadha to substantiate the above plea. In *Miheer H. Mafatlal v. Mafatlal Industries Ltd. (1997) 1 SCC 579*, the Supreme Court explained the basic requirements that have to be satisfied before a scheme presented under Sections 391 and 394 of the Act can be approved by the Company Court as under:

“In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged:

1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(a) have been held.
2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 Sub-Section (2).
3. That the meetings concerned of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.
4. That all necessary material indicated by Section 393(1)(a) is placed before the voters at the meetings concerned as contemplated by Section 391 Sub-section (1).
5. That all the requisite material contemplated by the proviso of Sub-section (2) of Section 391 of the Act is placed before the

Court by the applicant concerned seeking sanction for such a scheme and the Court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying 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.

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purported to represent.

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction."

32. In light of the above principles, this Court finds that apart from the objections of Mr. H.K. Chadha, the holder of 8 equity shares, which objections have been found to be without merit, there is no other objection to the sanctioning of the Scheme. Consequently this Court accords its sanction to the Scheme which is at Annexure V to the petition. As pointed out by the RD, upon the sanctioning of the Scheme, in terms of Sections 391 and 394 of the Act, all the properties, rights and powers of BSMCL will be transferred to and will vest in PSPL without any further act or deed. BSMCL will be taken to be dissolved without winding up and without any formal petition being filed for that purpose. The necessary intimation will be filed with the ROC within 21 days. However, this order will not be construed as an order from making exemption from payment of stamp duty or taxes or any charges, if payable in accordance with law or any permission required under any other law, or permission/compliance with any other requirement which may be specifically required under any law.

33. The learned Senior counsel for BSMCL has stated voluntarily that upon the Scheme being sanctioned, it would deposit a sum of Rs. 1 lakh with the Common Pool Fund of the OL. The said statement is taken on record. The amount be deposited with the said fund of the OL within three weeks.

34. The petitions are allowed in the above terms, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

FEBURARY 20, 2013

as