

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO. 551 OF 2015
IN
COMPANY SCHEME PETITION NO. 388 OF 2014

In the matter of :

The Companies Act, 1956 (1 of 1956);

And

In the matter of:

Section 391 read with Section 392
of the Companies Act, 1956;

And

In the matter of Scheme of Arrangement
BETWEEN

Monitowoc India Pvt.Ltd.

WITH

Potain India Pvt.Ltd.

AND

their respective shareholders and
creditors

Monitowoc India Pvt.LTd.

...Applicant Company
(Original Petitioner Company)

AND

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(Original Petitioner Company)

Mr.Hemant Sethi for Applicant.

Mr.M.S. Bhardwaj i/b. A.A. Ansari for ROC / Respondent.

CORAM : S.C. GUPTE, J.

17 JULY 2015

P.C. :

These company applications seek recall of an order sanctioning a scheme of arrangement. The scheme was sanctioned on 19 December 2014 on the basis of a business strategy of Monitowoc group of companies to which both the transferor and transferee companies belong. Under the scheme, Monitowoc India Pvt.Ltd., the transferor company, was to merge into Potain India Pvt.Ltd., the transferee company. Since the sanctioning of the scheme, the group strategy has undergone a change and the management has decided not to proceed with the amalgamation. In the premises, the transferor and transferee companies both apply for withdrawal of the scheme. The companies have taken consent of all their equity shareholders including nominee shareholders for the withdrawal of the scheme. It is submitted that the creditors of the companies would not be affected in any manner by withdrawal of the scheme.

2 It is an admitted position that the scheme has not been given effect to, since the order sanctioning the scheme has not been filed with the concerned Registrar of Companies. As held by our Court in the case of **Topworth Steels and Power Pvt.Ltd.**¹, a scheme, which is not given effect to, can be recalled by the company court. That judgment has since been followed by our Court in several other cases.

3 Having regard to the reasons stated in support of the present applications, some of which have been noted above, there is a case for recall of the order passed by this Court sanctioning the scheme, as prayed for by the

¹ Company Application No.389 of 2011 decided on 13 December 2011

Applicants.

4 Accordingly, the company applications are allowed in terms of prayer clauses (a) thereof.

(S.C. Gupte, J.)