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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION

**COMPANY APPLICATION (L) NO. 527 OF 2015**
**IN**
**COMPANY SUMMONS FOR DIRECTION NO. 346/347 OF 2014**

Man Infraprojects Ltd. ...Applicant
vs
Man Industries (India) Ltd. ...Respondent.

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Mr Virag Tulzaurkar, Sr. Advocate a/w Ashish Parwani, Mayur Shetty, Jesse Cornelious, Hitesh Agrawal i/b Rajani Associates for the Applicant.
Mr Dinyar Madon, Sr. Advocate a/w Mr Snehal Shah & Aditya Shiralkar i/b Kanga & Co. for the Respondent.

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**CORAM : S.C. GUPTE, J.**
**JULY 24, 2015**

**P.C. :**

The Company Application seeks directions concerning a notice to convene a meeting of the Applicant company issued by the Respondent, and also to restrain the Respondent and its directors from taking any steps in pursuance of the notice. The application is purportedly filed under Section 392 of the Companies Act, 1956 ("the Act").

2 The Applicant – Man Infraprojects Ltd. ( "Man Infraprojects") and the Respondent – Man Industries (India) Ltd. ("Man Industries") belong to a group of companies, of which the latter is a flagship company. The shares of Man Infraprojects are wholly owned by Man industries and its nominees. The main business of the companies includes manufacturing and coating of large diameter carbon steel pipes, and real estate. This business was sought to be restructured by the companies. A scheme of arrangement was accordingly proposed between the two companies and their respective shareholders and creditors under Sections 391 to 394 of the Act. The scheme envisaged (i) transfer of the business division of Man Infraprojects engaged in construction / development of residential projects (referred to in the scheme as Demerged Undertaking 1") on a going

concern basis to Man Industries and (ii) transfer of the real estate business of Man Industries (referred to as Demerged Undertaking 2) on a going concern basis to Man Infraprojects. As and by way of consideration for this transfer, the scheme envisaged issuance and allotment of fully paid up equity shares of Man Infraprojects to the shareholders of Man Industries in the ratio of one fully paid up equity share of Rs.5/- of Man Infraprojects for every one fully paid up equity share of Rs.5/- each held by equity shareholders in Man Industries. At the same time, upon coming into effect of the scheme and upon issuance of such equity shares, the investment made by Man Industries in Man Infraprojects, in the form of equity shares, was to stand automatically cancelled without any further act or deed. In other words, upon the scheme coming into effect, Man Industries would cease to be the shareholder of Man Infraprojects and in its place the shareholders of Man Industries would become shareholders of Man Infraprojects. The scheme also made appropriate provisions for implementing the scheme. The Board of Directors of Man Infraprojects was required to apply for and obtain approvals from Reserve Bank of India, Foreign Investment Promotion Board and / or concerned government / regulatory authority and undertook necessary compliance for issue and allotment of equity shares to the members of Man Industries pursuant to Clause 13.1 of the scheme. The equity shares of Man Infraprojects to be issued to the members of Man Industries were required to be listed and/or admitted to trading in terms of the Securities and Exchange Board of India Regulations, 2009 on all stock exchanges on which shares of Man Industries were listed on the effective date. The scheme was conditional upon and subject to such approvals and sanctions. Under clause 30 of the scheme, in the event of non receipt of approvals / sanctions, the scheme was to stand cancelled and be of no effect, save and except in respect of completed acts and accrued rights and liabilities. It is the case of the Applicant that whereas the Applicant submitted the requisite documentation for obtaining these sanctions/ approvals, particularly the approval of SEBI for listing of shares, the Respondent has not complied with the requirements of SEBI towards listing of shares. At any rate, it is submitted by the Applicant that SEBI's approval has not come so far. The grievance of the Applicant is that whilst SEBI approval to the scheme was pending, by the impugned notice dated 3 July 2015, the Respondent issued a requisition to convene an Extraordinary General Meeting of the Applicant company, for consideration of resolutions for removal of the existing directors of Man Infraprojects and appointment of two new directors in their place. It is the case of the Applicant that the Respondent and its Board of Directors, who belong to the rival RCM group, have acted in breach of trust in issuing the impugned notice and should not be allowed to use their existing shareholding to call an Extraordinary General Meeting to oust the existing directors of the Applicant, who belong to the JCM group. It is submitted that the rationale of the scheme was that after the effective date of the scheme, the JCM group would control Man Infraprojects, whilst the RCM group would continue to control Man Industries. It is submitted that the RCM group ought not to be permitted to use its existing control over Man Industries for ousting the directors of the JCM group from Man Infraprojects. It is submitted that such act would be in breach of fiduciary obligations of the Respondent vis-a-vis the Applicant company.

3 There are three important aspects of this matter. In the first place, one needs to consider if an application such as the present lies within the supervisory jurisdiction of this Court over a sanctioned scheme of arrangement under Section 392 of the Act. The scheme of Sections 391 and 392 of the Act envisages that whereas under Section 391 the Court sanctions a compromise or arrangement between a company and its creditors and/or members, Section 392 envisages the Court's power to supervise the carrying out of such compromise or arrangement. The present scheme of arrangement is sanctioned by the Court under Section 391 of the Act. It is a scheme between the two companies and their respective members and creditors. The scheme envisages restructuring of the business of the companies by swapping demerged undertakings of the two companies and allotment of equity shares of one company, namely, Man Infraprojects, to the equity shareholders of the other, namely, Man Industries, against cancellation of the shares of the latter in the former. The scheme is yet to come into effect. The scheme is conditional upon various approvals and sanctions which have yet to come. In the meantime, the old dispensation, namely, Man Infraprojects as fully owned by Man Industries and its nominees continues to operate. The scheme does not in any way envisage any change of

management *per se* or perpetuation of any particular management insofar as Man Infraprojects is concerned. The proposal for change of management was contained in the original family arrangement ('MOU') between the family members who controlled Man group. This arrangement envisaged that whereas JCM group would control the management of Man Infraprojects, the RCM group shall control and manage Man Industries. This provision has not been carried into the sanctioned scheme of arrangement. In fact, the draft scheme of arrangement, originally proposed, made the provisions of MOU an integral part of the scheme. That provision was, however, dropped, when the scheme was placed before this Court for sanction. Thus, perpetuation of the management of JCM group over Man Infraprojects or of the RCM group over Man Industries is not an integral part of the scheme. A restraint on change of management of Man Infraprojects pending implementation of the scheme of arrangement, thus, is no part of carrying out of the compromise or arrangement. Under Section 392, the Court has power to supervise carrying out of the compromise or arrangement. The jurisdiction of the Court, thus, cannot be invoked for restraining any change in the management of Man Infraprojects.

4 It is submitted by Mr. Tulzapurkar, learned Senior Counsel appearing for the Applicant, that the Respondent has failed to comply with the listing requirements of SEBI in terms of the applicable circular and cannot be allowed to take advantage of its own wrong. It is submitted that one of the main reasons why the scheme could not be brought into effect so far is that Man Industries have not complied with the requirements of SEBI for implementation of the scheme. Reliance is placed, in this behalf, on SEBI circular of 4 February 2013**.** Circular of 4 February 2013 is issued under Rule 19 of the Securities Contracts (Regulations) Rules, 1957 (“SCRR, 1957”). This Rule provides for the requirements with respect to the listing of securities on recongnised stock exchanges. A public company, desirous of getting its securities listed on a recognized stock exchange, is required to apply for the purpose to the stock exchange and forward various documents and particulars along with its application (Rule 19 (1)). It must also satisfy the stock exchange about various stipulated matters (Rule 19 (2)). SEBI may, at its own discretion or on the

recommendation of a recognized stock exchange, waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by the Rules (Rule 19 (7)). Clause (b) of Sub-rule (2) provides for a minimum offer and allotment to be made to public as a condition of listing. Pursuant to a scheme of reconstruction or amalgamation sanctioned by the High Court under Sections 391 to 394 or Section 101 of the Act, companies desirous of getting their equity shares listed after merger / de-merger / amalgamation, etc. are required to seek an exemption from the requirements of Rule 19 (2) (b) of SCRR, 1957. SEBI grants such exemption on a case to case basis under Rule 19 (7) of SCRR, 1957. The circular of 4 February 2013 inter alia deals with this exemption application. The circular contains various requirements before the scheme is submitted for sanction to the Court and also after the scheme is sanctioned. Admittedly, the requirements prescribed before the scheme is submitted for sanction of the Court have been duly complied with in the present case and the scheme has been duly sanctioned thereafter by this Court. The dispute concerns the requirements of the stock exchange while submitting sanctioned schemes. These are contained in part B of the circular and *inter alia* require the stock exchanges to ensure that an unlisted issuer makes an application to SEBI under Sub-rule (7) of Rule 19 of the SCRR, 1957. For such application the unlisted issuer must satisfy *inter alia* the following conditions: (i) the listing of the equity shares of the transferee entity is in terms of the sanctioned scheme and (ii) the equity shares sought to be listed have been allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity). On the other hand, a listed company needs to submit to stock exchanges documents *inter alia* including an application seeking exemption from Rule 19(2) (b) of SCRR, 1957, wherever applicable. The argument of Mr. Tulzapurkar is that Man Industries, a listed company, needs to seek exemption from Rule 19 (2) (b) from SEBI, which it has not done. There is a clear fallacy in this argument. An exemption is required only when shares are issued by a listed company or by an unlisted company seeking a listing thereof on the stock exchanges as part of a scheme of reconstruction or amalgamation without offering them to public. Man Industries is not issuing any shares under the scheme. The issuing company is Man Infraprojects and it is an unlisted issuer (transferee entity). Its equity shares are being issued to the holders of equity shares of Man Industries, a listed entity (transferor entity). These newly issued shares are sought to be listed on stock exchanges without offering them to the public, that is to say, without complying with the SEBI condition of minimum offer and allotment to public under Rule 19 (2) (b). The exemption under Rule 19 (7) needs to be accordingly applied by Man Infraprojects and not by Man Industries. The contention, therefore, that an application seeking exemption under rule 19(2) (b) of SEBI Rules is required to be made by Man Industries has no force. Nevertheless, Man Industries has already submitted the requisite documents and particulars to SEBI which include a certificate that Man Industries is not required to seek any exemption as per the provisions of Rule 19 (2) (b) of SEBI Rules. Man Industries is, accordingly, not in default of any compliance of the relevant SEBI circular. It is pertinent to note that even the sanctioned scheme, under clause 13 (4), casts the duty of obtaining approvals from regulatory authorities including SEBI on the Board of Directors of Man Infraprojects. All compliance necessary for issue and allotment of equity shares of Man Infraprojects to the members of Man Industries, in pursuance of the scheme, is to be made by the Board of Directors of Man Infrarojects. No doubt the other company, namely, Man Industries, and its Board of Directors have to co-operate with the Board of Directors of Man Infraprojects for obtaining the approvals and generally for implementation of the scheme. As pointed out above, however, Man Industries has taken the requisite steps for such compliance and is not in default of any particular requirement.

5 It is thirdly submitted by Mr Tulzapurkar that in any event the approval of SEBI has not come so far and that pending such approval the Respondent cannot use the strength of its shareholding in the Applicant and effect changes in the management of the Applicant company. In this behalf, it is submitted by Mr. Madon, learned Senior Counsel appearing for the Respondent, that Man Industries and its nominees continue to be 100 % shareholders of Man Infraprojects and can very well seek changes in its management. Relying on the judgment of the Supreme Court in the case of **L.I.C. of India Vs Escorts Ltd.**[1] it is submitted that it is not necessary for the shareholders of a company to assign

1 AIR 1986 Supreme Court 1370

any reasons for passing of any resolution seeking changes in the management of the company, when they give a requisition notice. At any rate, it is submitted that, in the present case, there are weighty reasons which justify the requisition on the part of the Respondent. It is submitted that the Applicant has made several defaults and has indulged into various acts of mismanagement. It is submitted that even on this date, Man Infraprojects continues to be wholly owned by Man Industries and consequently its annual accounts are required to be consolidated along with the accounts of Man Industries. It is submitted that in spite of repeated requests of Man Industries, Man Infraprojects has defaulted in submitting its annual accounts. As a result, the annual accounts of Man Industries for the year ending 31 March 2014 could not be consolidated and there was a breach of statutory requirements without any fault of Man Industries. Secondly, it is submitted that the directors of Man Infraprojects, who are sought to be removed in the proposed meeting, had used their voting rights and defeated two important special resolutions which were moved by Man Industries for creation of a charge on its assets to secure its borrowings and make investments in its subsidiary companies. Thirdly, after taking control of the management of Man Infraprojects, the directors caused Man Infraprojects to subscribe to compulsorily convertible debentures of Man Steel & Power Limited (now known as Man Tubinox Limited), a company promoted by JCM group to the extent of Rs.50 crores at an overvalued amount of Rs.247/- per debenture of the face value of Rs.10/- each. It is submitted that Man Tubinox Limited does not carry on any business and the investment of an amount of Rs.50 crores was nothing but siphoning of funds of Man Infraprojects by its existing directors. It is submitted that despite dissent recorded by the majority shareholders, namely, Man Industries, in the SGM of Man Infraprojects, unresolved resolutions were unilaterally and arbitrarily declared to have been passed and filed with the Registrar of Companies. It is submitted that no meeting of the board of directors of Man Infraprojects has been convened since January 2015. In the premises, it is submitted that whereas the Applicant has deliberately refrained from complying with the requirements of the regulatory authorities and implementing the sanctioned scheme and, on the other hand, sought to commit various acts of mismanagement in the interregnum which are to the serious prejudice of the shareholders of Man Infraprojects. It is submitted that after the scheme of arrangement is implemented, the shareholding of Man Infraprojects shall be held by the shareholders of Man Industries. Till this happens, as the existing shareholder of an Infraprojects, Man Industries is duty-bound to look after the interests of its shareholders and not allow directors of Man Infraprojects to commit any act of mismanagement. In the premises, it is submitted that the notice requisitioning Extraordinary General Meeting is duly issued by Man Industries. At the outset, it is pertinent to note that none of these facts, termed as gross acts of mismanagement, have been controverted by the Applicant. Having regard to the non - rebuttal of these allegations by filing any affidavit, these facts have to be taken to be correct. The Applicant seeks to justify this non – rebuttal on the ground of urgency of the application, and lack of adequate time with the Applicant to deal with these allegations. That is no justification for non – rebuttal. These acts clearly justify the meeting proposed by Man Industries. The scheme does not contemplate that its implementation should be delayed indefinitely and in the interregnum, JCM group should continue to manage the Applicant company according to its sweet will without any interference from its shareholders which include Man Industries. There is, accordingly, no case on merits for restraining the Respondent from acting upon the requisition notice.

6 In that view of the matter, there is no merit in the application. The application is, accordingly, dismissed. There shall be no order as to costs. Certified copy of this order is expedited. In the meantime, parties to act on the authenticated copy of this order.

**( S.C.GUPTE J. )**