

**HIGH COURT OF GUJARAT****TAMBOLI CAPITAL LIMITED*****Versus*****Date of Decision:** 23 January 2009**Citation:** 2009 LawSuit(GUJ) 43**Hon'ble Judges:** [K A Puj](#)**Case Type:** COMPANY PETITION; COMPANY APPLICATION**Case No:** 224, 225 OF 2008; 369, 370 OF 2008**Subject:** Company**Acts Referred:**[Companies Act, 1956 Sec 392](#), [Sec 393](#), [Sec 391](#), [Sec 394](#)**Final Decision:** Petition disposed**Advocates:** [Nanavati Associates](#), [M Iqbal Shaikh](#)

**[1]** The object of these two petitions is to obtain sanction of this Court to the proposed scheme of arrangement and demerger between Investment & Precision Castings Ltd., (hereinafter referred to as the 'petitioner Company' or 'transferor company' or 'IPCL') and Tamboli Capital Ltd., ( hereinafter referred to as the 'transferee Company' or 'TCLP') whereby the Investment Division of IPCL i.e. transferor Company is sought to be demerged and transferred as a going concern to Tamboli Capital Ltd.

**[2]** The transferor Company was incorporated on 3.4.1975 under the Companies Act, 1956 and its registered office is situated at Nari Road, Bhavnagar - 364 006.

**[3]** The transferor company is carrying on business of manufacture, exporter, importer and dealers in ferrous and non-ferrous castings of all kinds, grades and quality and in particular investment and precision castings, continuous castings, chilled and malleable castings, special alloy castings, steel castings, gun metal, copper, brass and aluminum castings and foundry work of all kinds and refining of all kinds metals and alloys and to obtain technical know how for the above purposes and procure foreign collaboration or technical assistance for any of the above objects.

**[4]** The transferee Company was incorporated on 17.4.2008 under the provisions of Companies Act, 1956. Its registered office is situated at Bhavnagar. The transferee company is carrying on industrial business and trade activities in the expansion and modernization thereof by investment therein in the form of contribution by way of capital or loan or financial assistance in any form of equity participation, debentures issues, securities of financial institutions, statutory Corporations, cooperative societies, associations, societies, industrial enterprises etc.

**[5]** The main rationale for the scheme of arrangement is that the transferee Company is 100% subsidiary of transferor company and it is an 100% export oriented undertaking engaged in the manufacturing of casting. It is funded to a large extent by the equity and debt contribution from the transferor company. The investment business of the demerged company representing investments in the equity and debt of transferee company as well as various other mutual fund investments, have tremendous growth and profitability potential, representing essentially the future growth prospects of transferee company. The transfer of the assets comprising the demerged undertaking from the demerged company to transferee company as contemplated by the scheme of arrangement will enable the respective avenues of the business to implement bird's eye view strategies, ensure better management and touching paramount growth cornerstones. The integration of the demerged undertaking into transferee company will contribute to better economic value creation for shareholders of the demerged company and transferee company. The demerged will also help in unlocking value for the shareholders of the demerged company in respect of the demerged company's investment in transferee company. With this objective, it was proposed to demerge the transferor company undertaking to the transferee company. The Board of Directors of the demerged Company is of the view that the demerger is to the benefit of the shareholders, employees, creditors and other stock holders of the demerged company. It was, therefore, proposed that the transferor company's undertaking be segregated and demerged, as a going concern, pursuant to a scheme of arrangement under Sections 391 to 394 of the Companies Act, 1956 transferred to the transferee company for achieving independent focus in such area. Under these circumstances demerger of the demerged undertaking under the provisions of the Scheme of arrangement would be affected, whereby the whole of the undertaking being the investment division of the transferor company is to be demerged and transferred to and vested in the transferee company as a going concern.

**[6]** The scheme of demerger was placed before the Board of Directors of both the transferor company and the transferee company on 29.4.2008 and 30.4.2008, where M/s. Rajendra And Co., Chartered Accountant submitted its report and recommended the share exchange ratio for the issue of share by the transferee company to the

shareholders of the transferor company upon coming into effect of the scheme of demerger. Based on this the Board of Directors of the transferor company and the transferee company have by their respective resolutions dated 29.4.2008 and 30.4.2008, approved the proposed scheme.

**[7]** The transferor company has thereafter filed a summons for direction in this Court being Company Application No.369 of 2008 seeking necessary directions, inter alia, for convening and holding meeting of equity shareholders and unsecured creditors and dispensing with the convening and holding of meetings of the secured creditors for the purpose of considering and approving if thought fit, with or without modification, the arrangement embodied in the scheme of arrangement and demerger between the transferor company and the transferee company as the transferor company was having only two secured creditors, both of whom have given their approval and consent in writing to the scheme of amalgamation. The said application came to be allowed by this Court vide order dated 26.6.2008 with a direction to hold the meeting of the equity shareholders and unsecured creditors of the transferor company, while dispensing with the meeting of the secured and unsecured creditors. Similarly the transferee company had also filed a Company Application No.370 of 2008 seeking direction of dispensing with the convening and holding of meeting of its members and secured creditors for considering and if thought fit approving with or without modification to the arrangement embodied in the scheme of arrangement and demerger. Vide an order dated 26.6.2008 passed by this Court, the convening and holding meeting of the equity shareholders, secured creditors and unsecured creditors of the transferee company were dispensed with.

**[8]** The meeting of the equity shareholders of the transferor company was duly held and convened on 31.7.2008. The said meeting of the equity shareholders was attended to by 68 equity shareholders present in person or by proxy holding 25,99,263 equity shares. At the said meeting the scheme of arrangement and demerger was taken as read with the permission of the Chairman of the meeting. After inviting views of the equity shareholders thereon, the question submitted to the said meeting was whether the equity shareholders of the transferor company approved the arrangement embodied in the scheme of arrangement and demerger and the said question was submitted to the equity shareholders in the form of a resolution which was duly approved by the equity shareholders by casting their votes in favour of the resolution for approval of the arrangement embodied in the scheme of arrangement and demerger. The Chairman of the said meeting of the equity shareholders has reported the result of the said meeting to this Court by filing report as well as affidavit verifying the said report dated 5.8.2008.

**[9]** The meeting of the unsecured creditors of the transferor company was duly held and convened on 31.7.2008. The said meeting of the unsecured creditors was attended to by 44 unsecured creditors present in person or by proxy and having together claims against the transferor company of an aggregate value of Rs.84,59,536/-. The unsecured creditors have duly approved resolution moved at the said meeting and the Chairman of the said meeting has reported the result of the said meeting to this Court alongwith his affidavit dated 31.7.2008.

**[10]** Thereafter, both the transferor company as well as transferee company have filed the present petitions seeking sanction to the scheme of arrangement as well as demerger. This Court has admitted both these petitions on 11.8.2008 and passed an order of public advertisement to be issued in Times of India, English daily, Ahmedabad edition and Gujarat Samachar, Gujarati daily, Bhavnagar edition. The publication of advertisement in official gazette was dispensed with. Notice was issued to the Central Government through the Regional Director, Department of Corporate Affairs at Mumbai.

**[11]** Pursuant to the said order notice of the petition was served upon the Regional Director, Department of Corporate Affairs, Mumbai and affidavit of service has been filed on 8.9.2008. Notice of the petition was also published in two newspapers as directed by this Court and affidavit of publication has been filed on 8.9.2008.

**[12]** In response to the notice issued on the Regional Director, an affidavit is filed before this Court by the Dy. Registrar of Companies, Ahmedabad on 9.10.2008 raising three points which are as under :-

- (i) M/s. TCL the transferee company be directed to comply with the provisions of Section 94/97 read with schedule 10 of the Companies Act.
- (ii) Since demerged company is registered with RBI as NBFC, the company be directed to inform RBI about present scheme and the copy of the High Court order should be filed within 1 month from the date of passing of the order.
- (iii) Demerged company be directed to submit 'fairness opinion' from Merchant Banker as required by SEBI Press Release petitioner/165/208 dated 4.9.2008.

In response to the above affidavit filed by the Dy. Registrar of Companies, an affidavit-in-reply is filed for and on behalf of the petitioner Companies wherein necessary explanation was tendered in respect of three points raised by the Dy. Registrar of Companies in his affidavit. It is stated that the Company is agreeable to follow the procedure as required under Section 94/97 of the Companies Act, 1956. It is further stated that since the transferee company is not a NBFC it is not

registered with RBI and, therefore, the said objections has no substance. It is further stated that fairness opinion by independent Merchant Banker is not required as the SEBI has issued press release only on 4.9.2008 and circular dated 4.9.2008 is also with regard to the said opinion. The fairness opinion is with regard to valuation done by the valuer which is to be made available to the shareholders at the time of approving the resolution in respect of the merger. The present case is of demerger and not of merger of the shareholders and transferor companies are getting full shares of the resultant company for every one share held by them in the transferor company. Further all the existing shareholders of the transferor company shall continue to hold their respective share in the transferor company. Therefore, there is no question of any swap ratio as it would be in the case of merger. So far as the petitioner transferee company, is concerned, the convening and holding of meeting of the shareholders is dispensed with pursuant to the order dated 26.6.2008 passed by this Court in Company Application No.370 of 2008, in view of the consent given in writing by all the equity shareholders of the Company. So far as the meeting of the equity shareholders of the transferor company is concerned, the said meeting had taken place on 31.7.2008, wherein the resolution was passed unanimously by the equity shareholders, who were present either in person or in proxy. It is, therefore, submitted that the Circular dated 4.9.2008 issued by SEBI is as such not retrospective, but is prospective in nature and, therefore, the guidelines for obtaining fairness opinion of independent merchant banker would not be applicable in the present case.

Despite the aforesaid reply since the Court has insisted to file fairness opinion the petitioner Companies have placed on record a fairness opinion of FEDEX Securities Ltd., wherein it is stated that the swap ratio of two equity shareholders of TCL for every one equity share held in IPCL is fair.

In the above view of the matter and after considering the submissions made by Mr.Nandish Chudgar, learned advocate appearing for Nanavati Associates and Mr.M. Iqbal Shaikh, learned Standing Counsel appearing for the Central Government and considering the affidavit of the Dy. Registrar as well as the reply filed and the fairness opinion given, the Court is satisfied that the scheme of arrangement and demerger as proposed is just and proper and it is in the interest of the shareholders as well as creditors of both the Companies and also in the interest of both the Companies. The scheme is not contrary to the public interest. The Court, therefore, grants its sanction to the scheme and prayers made in paragraph 23 of both the petitions are hereby granted.

Fees for the Central Government Counsel are quantified at Rs.3500/- per petition. The petitioners are, therefore, directed to pay directly sum of Rs.3500/- each to

Mr.M.Iqbal Shaikh, the learned Standing Counsel, by drawing account payee cheque in his favour.

Subject to the aforesaid directions and observations both these petitions are accordingly disposed off.

