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[MANU/MH/0007/1985](#)

**Equivalent Citation:** [1987]61CompCas92(Bom)

### IN THE HIGH COURT OF BOMBAY

Company Petition No. 165 of 1985 (connected with Company Application No. 385 of 1984)

Decided On: 19.08.1985

Appellants: **In Re: Investment Corporation of India Ltd.**

**Vs.**

Respondent:

**Hon'ble Judge:**

N.K. Parekh, J.

**Subject: Company**

**Catch Words**

**Mentioned IN**

**Acts/Rules/Orders:**

Companies Act, 1956 - Sections 101, 390, 391 and 393

### JUDGMENT

**Parekh, J.**

1. This is a petition under section [101](#) and section [391](#) of the Companies Act, 1956.
2. The facts that give rise to this petition are that the petitioner-company was incorporated on March 5, 1957. Its authorised share capital stood divided into ordinary shares, preference shares and unclassified capital. The preference shares are of one category, viz. 5,000, 7 3/4% preference shares of Rs. 1,000 each. The bank rate having risen considerably, the preference shareholders made requests to the company to remedy the situation by increasing the rate of the dividend payable and more particularly as the terms of the issue of the said preference shares did not provide for the redemption thereof. The board of directors of the petitioner-company thereupon decided to cancel the said preference shares and instead issue to the members of the petitioner-company holding preference shares, secured non-convertible debentures of Rs. 100 each bearing interest at the rate of 12% per annum payable half-yearly. They also decided to draw up a scheme of arrangement between the petitioner-company and its shareholders to the said effect. The proposed scheme of arrangement was then drawn up, inter alia, providing (a) for the reduction of capital, (b) for the intended issue of the debentures on the cancellation of the preference shares, (c) that ten debentures of the face value of Rs. 100 would be given to the holder of each preference share, (d) that interest payable on the said debentures would be at 12%, and (e) that these debentures would be secured by a floating charge on the petitioner-company's assets. A meeting was then held on December 4, 1984, when a special resolution was passed touching on matters of reduction of capital and the cancellation of the preference shares and for issue of debentures in lieu thereof. Thereafter, the petitioner-company filed Company Application No. 385 of 1984. On December 12, 1984, the petitioner-company obtained orders to convene separate meetings of its members holding preference shares and ordinary shares. Meetings of its members holding when the scheme of arrangement was placed before the meeting of the preference shareholders as also before the meeting of the ordinary shareholders. In both the meetings, resolutions were passed approving the reduction. The chairman then filed his report. The petitioner thereupon presented this petition under section [101](#) and section [391](#) of the Companies Act.
3. On this petition being filed, an application was made to this court that in view of the Sachar Committee's Report and in view of the meetings held of the shareholders and in view of the

balance-sheet of the company, the court may dispense with the procedure under section [101](#) of the Companies Act and approve the reduction of capital. On this application, this court examined the fiscal health of the company by scrutinizing the balance-sheets and took into consideration the resolutions passed both by the company's preference shareholders and the company's ordinary shareholders as also the fact that the issue of the intended debentures was subject to the sanction and approval of the Controller of Capital Issues and subject to the petitioner company obtaining orders from all the authorities concerned with the issue of debentures. Orders were then passed on March 27, 1985, dispensing with the procedure under section [101](#) of the Companies Act. The petition has now come up for hearing for sanctioning the scheme of arrangement. The same is, however, opposed by the Registrar of Companies and/or the Company Law Board.

4. Mr. Bulchandani, learned counsel appearing on behalf of the Company Law Board, urged that in seeking a reduction of capital, it was incumbent on the company to follow the procedure laid down in section [101](#) of the Companies Act. That this was all the more necessary to guard against any unfairness to some class or the minority shareholders and to establish that the reduction sought is fair. In support of this contention, Mr. Bulchandani relied upon a passage in Palmer's Company Law (23rd edition), at page 375, reading as follows :

"The court will like wise refuse to confirm a reduction which is unfair to some class or minority of shares. If the reduction of a class of preference shares is resolved and the minority, when voting at the separate class meeting, was guided by its own interests and did not take into account the interests of the preference shareholders as a class, the onus of proving that the reduction is fair falls on the majority; prima facie the reduction of capital by cancellation of redeemable preference shares having a fixed date of redemption in exchange of unsecured loan stock redeemable at a much later date is unfair. The objecting shareholders must show prejudice to their interests. The court cannot confirm a conditional reduction."

5. Mr. Bulchandani submitted that in this case the petitioner company had failed to follow the procedure under section [101](#) and was hence not entitled to relief for the reduction of its capital.

6. I am unable to accept this contention. The said section itself provides that the procedure may be dispensed with by the court if it thinks fit and proper. In the present case, as stated earlier, it was only after scrutinizing the fiscal health of the company and considering the ramifications of the scheme and considering the resolutions passed by the shareholders that an order was passed dispensing with the procedure under section [101](#). Furthermore, barring making a submission, Mr. Bulchandani has not been able to state as to who has complained of any prejudice being caused or to whom it is caused or as to who has complained of the reduction of capital being unfair or, if the Company Law Board finds it unfair, and in what manner. The contention canvassed by Mr. Bulchandani must now be negated.

7. Mr. Bulchandani has next argued that section [391](#) of the Companies Act contemplates that where a compromise or arrangement is arrived at between the company and its creditors and/or the company and its shareholders, it may approach the court for the sanction of the same. The expression "arrangement" has been defined in section [390](#), sub-clause (b), which reads as follows :

"390. In sections [391](#) and [393](#) .....

(b) the expression 'arrangement' includes a reorganisation of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods; and ..."

8. The proposed scheme does not contemplate a reorganisation of the share capital of the company by the consolidation of shares of different classes. On the other hand, the scheme contemplates an adjustment or modification of rights, and if this be so, then it cannot fall within the ambit of the expression "arrangement" used in section [390](#). In support of his contention as to the import of the word "arrangement" in section [390](#) of the Act, Mr. Bulchandani relied upon the observation in Hindustan Commercial Bank Ltd. v. Hindustan General Electrical Corporation Ltd. [MANU/WB/0172/1960](#), and the observations in another case in In re Chowgule & Co. P. Ltd. [1972] TLR 2163. Mr. Bulchandani urged that in view of this, the petitioner would not be entitled to come under section [391](#) and hence no relief can be granted on this score.

9. I am unable to accept this contention. The word "arrangement" as set out in section [390\(b\)](#) is an inclusive definition and contemplates all arrangements and not only reorganisation of the share capital. This is all the more clear, because the word used is "includes".

10. Coming to the case of Hindustan Commercial Bank Ltd. v. Hindustan General Electrical Corporation Ltd. [MANU/WB/0172/1960](#), I do not see how this case can assist Mr. Bulchandani, for in paragraph 27 it has been stated as follows (page 381 of 30 Comp Cas) :

"The word 'arrangement' in section [391](#) is of wide import. By section [390](#), 'arrangement' includes reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares of different classes or by both those methods. The court has the power to sanction a scheme of arrangement though the scheme modifies the special rights attached to a class of shares."

11. These observations on the contrary support the position that the word "arrangement" used in section [391](#) is inclusive and that a scheme of arrangement which modifies rights of the shareholders can be brought under this section.

12. As regards the other citation in In re Chowgule and co. [1972] TLR 2163, Mr. Bulchandani has stressed the observations appearing in para 8 and reading as follows :

"As for the argument that the present application has to be made under section [391](#), Shri Palkhivala contends that this section was not attracted for two reasons, the first being that there was in the present case no arrangement between the petitioner and their creditors or any class of them or between the petitioner and its members or any class of them, and the second being that the petitioner is not liable to be wound up under the Act. Indeed, after reading the special resolution dated September 30, 1971, and the petition for confirmation of conversion, I do not see how the entire scheme could be regarded as a compromise or arrangement between the petitioner and its creditors or between the petitioner and its creditors or between the petitioner and its members. It is true that in view of the provisions of section [390\(b\)](#) of the Act, the expression 'arrangement' occurring in section [391](#) includes a reorganisation of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods, but the word 'arrangement' used in the section means something analogous in some sense to a compromise and a compromise necessarily implies two parties. In the instant case, there is only one party to the proceeding."

13. With respect to the learned judge, in view of what is aforesaid, I am unable to agree with his observations.

14. Apart from all this, I had asked Mr. Bulchandani if the "arrangement" was not to be the subject-matter of section [391](#), then under what procedure should the petitioner proceed. I am afraid, Mr. Bulchandani was unable to point out any other provisions. In view of this, Mr. Bulchandani's contention must be negatived.

15. Mr. Bulchandani then argued that the Companies Act itself provides for issue of debentures. That it was for the Controller of Capital Issues and other authorities to sanction and approve the issue of debentures. That if this court sanctions the scheme of arrangement, it must mean that the court had decided the issue of debentures bypassing the Controller of Capital Issued and all other authorities concerned with the issue of capital. That it was not open to the company to short-circuit the procedure for obtaining permission from the authorities prescribed for the issue of debentures in this manner.

16. As regards this argument, it must be stated that prayer (g) itself provides that the scheme is conditional and subject to the requisite sanction or approval, if any, of the Controller of Capital Issues under the Capital Issues Control Act, 1947, and of any other concerned authorities being obtained and granted in the matter in respect of which such sanctions or approvals shall be required. Hence, if such sanctions are not granted, the proposed scheme must fail. The question of the petitioner-company short-circuiting the procedure for issue of debentures does not survive.

17. In view of this discussion, what comes about is that there is no reason why this petition should not be made absolute.

18. In the result, the petition is made absolute in terms of prayers (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) of the petition. From of minute set forth in the schedule is hereby approved. The petitioner to pay the costs of the Regional Director of the Company Law Board at Bombay, quantified at Rs. 300.

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